



**AGENDA FOR  
REGULAR CITY COUNCIL MEETING  
TUESDAY, DECEMBER 20, 2022 – 5:00 P.M.**

1. **Pledge of Allegiance**
2. **Call to Order**
  - Roll Call and Establishment of Quorum
3. **Approval of Agenda**
  - Council Changes
  - Staff Changes
4. **Approval of Minutes**
  - A. December 6, 2022
5. **Audience Participation** (10-minute time limit for items not on the agenda)
6. **Consent Agenda**
  - A. Approve KLGR Advertising Exchange
  - B. Ratify Purchase and Funding of Police Body Worn Camera System
  - C. Approve 2023 Business License Renewal Applications
7. **Scheduled Public Hearings**
8. **Old Business**
  - A. Supplement to the Code of Ordinances – Ordinance #83
9. **Regular Agenda**
  - A. MnDOT Delegated Contract Process Agreement – Resolution #73
  - B. Bolton & Menk Master Service Agreement – Resolution #74
  - 6:00 pm C. 2023 Final Levy, Payments in Lieu of Taxes and Final Budget – Resolutions #75, 76 & 77
10. **Other Items and Communications**
  - A. Council Items
  - B. Staff Items
11. **Paid Bills and Claims – For Informational Purposes**
  - A. City of Redwood Falls Accounts Payable Summary
12. **Adjournment**

**MINUTES  
REGULAR COUNCIL MEETING  
CITY OF REDWOOD FALLS, MINNESOTA  
TUESDAY, DECEMBER 6, 2022**

Pursuant to due call and notice thereof, a regular meeting of the Redwood Falls City Council was called to order in the Municipal Chambers on Tuesday, December 6, 2022, at 5:00 p.m.

Roll call indicated Mayor Tom Quackenbush and Council Members Matt Smith, Denise Kerkhoff, Larry Arentson, Jim Sandgren, and John T. Buckley were present, constituting a quorum.

Also present were City Administrator Keith Muetzel, Finance Director Kari Klages, City Attorney Trenton Dammann, Public Works Project Coordinator Jim Doering, and Deputy City Clerk Caitlin Kodet.

A motion was made by Council Member Kerkhoff and seconded by Council Member Arentson to approve the agenda. Motion passed by unanimous vote.

A motion was made by Council Member Smith and seconded by Council Member Buckley to approve the November 15, 2022, minutes as presented. Motion passed by unanimous vote.

A motion was made by Council Member Sandgren and seconded by Council Member Buckley to approve the following items on the Consent Agenda.

1. Approve Fire Department Appointments
2. Approve Well #2 Control Panel Upgrades
3. Approve Business License Renewal Applications
4. Approve 2023 Tobacco License Application

Motion passed by unanimous vote.

Police Chief Jason Cotner was present to introduce the Installation of a Stop Sign on Wyoming Street at the Intersection with Drew Street.

Chief Cotner stated the issue of uncontrolled intersections within the City of Redwood Falls has been under review for several years and Council has approved the installation of signage in several locations. Recently the area of Wyoming Street at Halvorson Street and Drew Street was identified as another location where uncontrolled intersections are a concern. A committee made up of City Administrator Keith Muetzel, Police Chief Jason Cotner, Street Superintendent Darrell Bowers, and Public Works Project Coordinator Jim Doering reviewed this area for additional signage. The committee found eastbound and westbound traffic on Wyoming Street can travel Lincoln Street to Gould Street without stopping for a controlled intersection. This five-block distance creates the opportunity for vehicles to travel above the posted speed limit, which is often a contributing factor in crashes, particularly at uncontrolled intersections. Staff recommends installation of stop signs on Wyoming Street at Drew Street to stop eastbound and westbound traffic.

A motion was made by Council Member Smith and seconded by Council Member Buckley to approve the Installation of a Stop Sign on Wyoming Street at the Intersection with Drew Street. Motion passed by unanimous vote.

Finance Director Klages introduced Resolution No. 70 of 2022 – Resolution Adjusting Water, Sanitary Sewer, and Storm Sewer Service Charges.

Ms. Klages stated DGR Engineering developed water rates to provide an increase of 9% per cubic foot sold and 9% per infrastructure base charge. The sanitary sewer rates have been developed to provide an increase of 8% per cubic foot used and 8% per infrastructure base charge. The storm sewer rates have been developed to provide an increase of 7% per infrastructure base charge.

Ms. Klages stated these recommended 2023 rate increases are consistent with the utility rate recommendations financial advisor Shannon Sweeney outlined as part of the Reflections Residential & Business Park project financing plan presented at the April 5, 2022 City Council meeting. Staff recommends approval of the proposed 2023 rates.

A motion was made by Council Member Buckley and seconded by Council Member Kerkhoff to waive the reading of Resolution No. 70 of 2022 – Resolution Adjusting Water, Sanitary Sewer, and Storm Sewer Service Charges. Motion passed by unanimous vote.

A motion was made by Council Member Arentson and seconded by Council Member Smith to approve Resolution No. 70 of 2022 – Resolution Adjusting Water, Sanitary Sewer, and Storm Sewer Service Charges. Motion passed by unanimous vote.

Finance Director Klages introduced Resolution No. 71 of 2022 – Resolution Establishing Rates for Municipal Electric Utilities.

Ms. Klages stated DGR Engineering compiled results from a study done of the allocated cost of serving various classes of the Public Utilities retail customers. As a result of the study, the rates have been developed to provide an overall increase in revenues of 5%. Staff recommends approval of the rate changes.

A motion was made by Council Member Sandgren and seconded by Council Member Kerkhoff to waive the reading of Resolution No. 71 of 2022 – Resolution Establishing Rates for Municipal Electric Utilities. Motion passed by unanimous vote.

A motion was made by Council Member Buckley and seconded by Council Member Arentson to approve Resolution No. 71 of 2022 – Resolution Establishing Rates for Municipal Electric Utilities. Motion passed by unanimous vote.

Finance Director Klages introduced Resolution No. 72 of 2022 – Resolution Establishing Rates for Purchased Power Avoidance Cost.

Ms. Klages stated Resolution No. 72 would enact the electric utility purchased power avoidance cost rates as of Jan 1, 2023. Solar customers that generate excess power will be reimbursed for that power at a specified rate. Solar customers utilize a City-owned meter to determine the power usage, called net metering. The City of Redwood Falls will reimburse using the Annual All Hours Rate of \$0.04271 per kilowatt-hour. Staff recommends approval.

A motion was made by Council Member Smith and seconded by Council Member Arentson to waive the reading of Resolution No. 72 of 2022 – Resolution Establishing Rates for Purchased Power Avoidance Cost. Motion passed by unanimous vote.

A motion was made by Council Member Arentson and seconded by Council Member Kerkhoff to approve Resolution No. 72 of 2022 – Resolution Establishing Rates for Purchased Power Avoidance Cost. Motion passed by unanimous vote.

City Administrator Muetzel introduced the Golf Course Lease – Right of First and Last Refusal.

Mayor Quackenbush declared a conflict of interest and would not participate in the discussion due to being a shareholder and voting member of the Redwood Falls Golf Club.

Council Member Smith stated he is a member of the Redwood Falls Golf Club but is not a shareholder or voting member of the Redwood Falls Golf Club therefore would be participating in the discussion and vote.

Ryan Fernelius, Redwood Falls Golf Club General Manager was present.

Mr. Fernelius stated on November 22, 2022, Fernelius Enterprises, LLC, presented the Golf Club Member Shareholders with a proposal to acquire the course for the outstanding debt in the amount of approximately \$655,280. Fernelius Enterprises is requesting the City act on whether or not to exercise the Right of First and Last Refusal as provided in the 2001 lease agreement.

Mr. Muetzel stated in 2001, the City of Redwood Falls and the Redwood Falls Golf Club entered into a lease agreement allowing the Golf Club to construct and operate a portion of the golf course on land owned by the City. The lease agreement includes provisions granting the City the Right of First Refusal and the Right of Last Refusal to purchase the golf course in the event it is ever sold. Since Mr. Fernelius has presented the Redwood Falls Golf Club with a purchase offer, the City needs to decide whether or not to exercise the Right of First and Last Refusal in order for Mr. Fernelius to move forward with his offer to the Golf Club. Staff has discussed the request and feels the City has no interest in purchasing the golf course. Staff recommends adopting a motion to not exercise the Right of First and Last Refusal as provided in the 2001 lease agreement.

Mr. Muetzel stated if Mr. Fernelius purchases the Golf Club, a new lease agreement would need to be established for the portion of the Golf Club that is constructed on City property. The City would maintain ownership of that land and it would not be included in the sale.

A motion was made by Council Member Smith and seconded by Council Member Buckley to approve the request to not exercise the Right of First and Last Refusal. Motion passed by unanimous vote.

City Administrator Muetzel introduced Ordinance No. 83, Fourth Series – An Ordinance Enacting and Adopting a Supplement to the Code of Ordinances for the City of Redwood Falls.

Mr. Muetzel stated as part of the Supplement Service Plan with American Legal Publishing Corporation for the Codification Services Agreement, the City received the Twelfth Supplement to the Code of Ordinances. Ordinances No. 72-81, Fourth Series, and other amendments have now been incorporated into the code and are ready for adoption.

A motion was made by Council Member Smith and seconded by Council Member Sandgren to waive the reading of Ordinance No. 83, Fourth Series – An Ordinance Enacting and Adopting a Supplement to the Code of Ordinances for the City of Redwood Falls. Motion passed by unanimous vote.

City Administrator Muetzel gave an update on the lot sales for the Reflection Prairie housing development. As of today, there are signed purchase agreements for 10 of the 20 traditional lots and one of the seven estate lots. The \$5,000 discount on the traditional lots ends December 31, 2022.

Bills and Claims were presented to Council for informational purposes. No questions, comments, or concerns were raised.

There being no further business, a motion was made by Council Member Sandgren and seconded by Council Member Buckley to adjourn the meeting at 5:29 p.m. Motion passed by unanimous vote.

ATTEST:

---

Keith Muetzel  
City Administrator

---

Tom Quackenbush  
Mayor



Ross Nachreiner  
Redwood Falls Parks & Rec Director  
Phone: 507-616-7444  
Fax: 507-644-2199  
rnachreiner@ci.redwood-falls.mn.us

---

**Council Meeting Date:** 12/20/2022

**Agenda Item:** Advertising Exchange

**Date:** 12/13/2022

**Recommendation/Action Requested:**

Approve the requested advertising exchange with KLGR and the Parks & Recreation Department

**Summary/Overview:**

The Redwood Falls Parks & Recreation Department have exchanged memberships & punch passes for the KLGR radio auction in exchange for advertising credits for the value of these items.

Staff is requesting approval to continue the practice of exchanging memberships and passes for the radio auction in the amount of \$3,604.00 to be auctioned by June 30<sup>th</sup>, 2023. This will include a January and April radio auction.

Meeting Date: December 20, 2022

### **Agenda Recommendation**

**Agenda Item:** -Approve Purchase of Axon Body Worn Camera (BWC) System  
-Allocation of RFFD ARPA Funds to BWC System

**Recommendation/Action Requested:** Staff recommends approval

### **Summary/Overview:**

In 2021 the City of Redwood Falls received approximately \$525,000 pursuant to the American Rescue Plan Act (ARPA). Among the items approved under the grant were Body Worn Camera (BWC) systems. Police Chief Jason Cotner made a proposal to City Administrator Keith Muetzel to allocate \$80,000 of the city's funds to purchase a BWC system for the Redwood Falls Police Department (RFPD). Mr. Muetzel supported this request and the process to purchase the system began.

Minnesota statute lays out requirements local governments are required to follow prior to purchasing and implementing a BWC system. First, public hearings must be held prior to purchasing a system. Redwood Falls City Council held a public hearing on this issue on November 16, 2021. Next, local elected government authority must provide input on draft policies which govern the use of BWC systems prior to implementation. Redwood Falls City Council received took up this topic during the City Council meeting on December 21, 2021. The final BWC policy was presented and approved by City Council at the council meeting on January 18, 2022. Once these steps were completed the City of Redwood Falls selected the Axon BWC system for use by the RFPD.

A review of the process prior to, and after implementation of, the BWC system by Finance Director Kari Klages revealed the statutory requirements for implementing the BWC program were met, however, the council was never presented a specific request to approve the purchase of the system as required by the City's Procurement Policy for purchases over \$10,000.

In addition, at the time of the purchase, BWC systems were new technology at RFPD and items and components of the system were purchased based on company recommendations. Once purchased and training was provided by Axon staff it was discovered the video redaction software which RFPD purchased was not needed, however, a transcription program that was not purchased was an essential component. Chief Cotner submitted a request to Axon that we be allowed to swap these programs. Axon ultimately approved the change but the final cost was not provided to RFPD until December 13, 2022 when it was discovered the transcription software cost an additional \$7000 over the five year contract with Axon.

This \$7000 was not budgeted within the RFPD 2022 budget nor was it accounted for when the RFPD ARPA funds were allocated. However, Finance Director Klages advised there was approximately \$7000 which had been allocated to a Redwood Falls Fire Department project that was no longer needed. Those funds could be used toward the shortfall.

This agenda item is being presented to satisfy the requirement that city council approve the purchase of the RFPD BWC system and approve the use of RFPD ARPA funds toward the purchase of the Axon BWC system.

**Attachments:**



**Caitlin Kodet**  
Deputy City Clerk  
Phone: 507-616-7400  
Fax: 507-637-2417  
ckodet@ci.redwood-falls.mn.us

---

## AGENDA RECOMMENDATION

**Meeting Date:** December 20, 2022

**Agenda Item:** Business License Renewal Applications

**Recommendation/Action Requested:** The following establishment has completed the necessary application process for a **2023** license. Therefore, it is recommended that the City Council approve the issuance of the following licenses:

**ON SALE LIQUOR:**

- Bridge Street Cuisine, Inc. d.b.a. The Falls Café (formerly Country Kitchen)

**ON SALE SUNDAY LIQUOR:**

- Bridge Street Cuisine, Inc. d.b.a. The Falls Café (formerly Country Kitchen)





Caitlin Kodet  
Deputy City Clerk  
Phone: 507-616-7400  
Fax: 507-637-2417  
ckodet@ci.redwood-falls.mn.us

---

## AGENDA RECOMMENDATION

**Meeting Date:** December 20, 2022

**Agenda Item:** Proposed Ordinance No. 83 - Enacting and Adopting a Supplement to the Code of Ordinances

**Recommendation/Action Requested:** The proposed ordinance was introduced at the December 6, 2022, City Council Meeting. At tonight's meeting, the Council is to discuss the proposed ordinance. If there are no concerns, staff requests that the Council approve the ordinance by motion and roll call vote in accordance with Chapter 4 of the City Charter.

**Summary/Overview:** As part of our Supplement Service Plan with American Legal Publishing Corporation for our Codification Services Agreement, we received our Twelfth Supplement to the Code of Ordinances. Ordinances No. 72-81, Fourth Series, and other amendments have now been incorporated into the code and are ready for your adoption. Attached is Ordinance No. 83, Fourth Series, enacting and adopting this supplement to the code of ordinances.

**Attachments:** Proposed Ordinance No. 83, Fourth Series

**ORDINANCE NO. 83, FOURTH SERIES**

**AN ORDINANCE ENACTING AND ADOPTING A SUPPLEMENT TO THE  
CODE OF ORDINANCES FOR THE CITY OF REDWOOD FALLS**

**WHEREAS**, American Legal Publishing Corporation of Cincinnati, Ohio, completed the Twelfth Supplement to the Code of Ordinances of the City of Redwood Falls, which supplement contains all Ordinances of a general and permanent nature enacted since the prior supplement to the Code of Ordinances of the City of Redwood Falls;

**NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE AUTHORITY OF THE  
CITY OF REDWOOD FALLS:**

**SECTION 1.** That the Twelfth Supplement to the Code of Ordinances of the City of Redwood Falls, as submitted by American Legal Publishing Corporation of Cincinnati, Ohio, which includes Ordinances:

72 AN ORDINANCE AMENDING REDWOOD FALLS CODE OF ORDINANCES §6.25  
RELATING TO TAXICABS.

73 AN ORDINANCE ENACTING AND ADOPTING A SUPPLEMENT TO THE CODE OF  
ORDINANCES FOR THE CITY OF REDWOOD FALLS

74 AN ORDINANCE AMENDING REDWOOD FALLS CODE OF ORDINANCES §2.21, §2.41,  
§2.42, AND §2.55 AND REPEALING ORDINANCE NO. 55, THIRD SERIES, ADOPTED ON  
DECEMBER 5, 2000, TITLED "AN ORDINANCE AMENDING CHAPTER 2 BY ADDING  
NEW SUBSECTIONS AND REVISING 2.55 - HOSPITAL COMMISSION."

75 AN ORDINANCE REPEALING ORDINANCE NO. 261, ADOPTED ON FEBRUARY 20,  
1975, TITLED "AN ORDINANCE RELATING TO THE REDWOOD FALLS MUNICIPAL  
HOSPITAL ESTABLISHING A HOSPITAL COMMISSION AND PRESCRIBING THE  
POWERS AND DUTIES THEREOF."

76 AN ORDINANCE AMENDING ZONING ORDINANCE

77 AN ORDINANCE AMENDING ZONING ORDINANCE

78 AN ORDINANCE AMENDING ZONING ORDINANCE

79 AN ORDINANCE AUTHORIZING THE SALE OF REAL PROPERTY LOCATED AT 511  
DEKALB STREET (GARNETTE GARDENS)

- 80 AN ORDINANCE AMENDING SUBDIVISION 3 OF ORDINANCE NO. 66, AND TITLED  
 “AN ORDINANCE DELETING IN ITS ENTIRETY THE LANGUAGE OF REDWOOD FALLS  
 CODE OF ORDINANCE § 3.50 AND ENACTING A NEW ORDINANCE ALLOWING FOR  
 THE INSPECTION OF PROPERTY TO DETERMINE IF THERE IS DISCHARGE OF  
 PROHIBITED CLEAR WATER DRAINAGE, TO PROVIDE A SURCHARGE FOR NON-  
 COMPLIANCE AND CONNECTION REQUIREMENTS.”
- 81 AN ORDINANCE AMENDING THE REDWOOD FALLS CODE OF ORDINANCES § 5.52  
 PERTAINING TO TEMPORARY LIQUOR LICENSES

and all other amendments, be and the same is hereby adopted by reference as if set out in its entirety; and

**SECTION 2.** Such supplement shall be deemed published as of the day of its adoption and approval by the Legislative Authority, and the Clerk of the City of Redwood Falls is hereby authorized and ordered to insert such supplement into the copy of the Code of Ordinances kept on file in the Office of the Clerk.

**PASSED AND ADOPTED** by the City Council of the City of Redwood Falls, Minnesota this 20<sup>th</sup> day of December 2022.

ATTEST:

\_\_\_\_\_  
 Keith Muetzel  
 City Administrator

\_\_\_\_\_  
 Tom Quackenbush  
 Mayor

(City Seal)

Subscribed and sworn to before me this  
 20<sup>th</sup> day of December 2022.

\_\_\_\_\_  
 Notary Public

**Introduction:** 12/06/22  
**Posting:** 12/09/22  
**Adopted:** 12/20/22  
**Approval Published:** 12/29/22

**Meeting Date: December 20, 2022**

**AGENDA RECOMMENDATION**

**Agenda Item:** Resolution No. 73 of 2022

**Recommendation/Action Requested:** Read the proposed Resolution or make a motion to waive the reading of the Resolution. Discuss the proposed Resolution. If no concerns, adopt proposed Resolution by motion in accordance with Chapter 4 of the City Charter.

**Summary/Overview:** Resolution No.73 of 2022 delegates the Commissioner of Transportation and MnDOT to act as the City's agent in accepting federal aid. This agreement, MnDOT Contract No. 1052152, covers all federally funded projects that the City is awarded funds for until revisions are needed to the agreement. The proposed agreement supersedes the previous agreement No. 102994 from 2017.

Staff recommends approval of this Resolution, as it pertains to anticipated federal funding for the reconstruction of 4th Street and the Redwood Falls Municipal Airport.

**Attachments:** Resolution No. 73 of 2022  
Agency Agreement for Federal Participation in Construction # 1052152

**RESOLUTION NO. 73 OF 2022**

**AUTHORIZING AN AGENCY DELEGATED CONTRACT PROCESS AGREEMENT  
WITH THE MINNESOTA DEPARTMENT OF TRANSPORTATION  
MNDOT CONTRACT NUMBER 1052152**

**WHEREAS**, pursuant to Minnesota Statutes §161.36 the City of Redwood Falls (“Local Government”) desires MnDOT to act as the Local Government’s agent in accepting federal funds on the Local Government’s behalf for the construction, improvement, or enhancement of transportation, which is financed either in whole or in part by the Federal Highway Administration (FHWA) federal funds, hereinafter referred to as the “Project’s”; and

**WHEREAS**, this Agreement is intended to cover all federal aid projects initiated by the Local Government and therefore has no specific State Project number associated with it; and

**WHEREAS**, this Agreement is associated with ALN number(s) 20.205, 20.224, 20.933 or another Department of Transportation ALN as listed on SAM.gov and supersedes agreement number 102994; and

**FURTHERMORE**, the Projects will be for construction only and MnDOT requires that the terms and conditions of this Local Government be set forth in an Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF REDWOOD FALLS, MINNESOTA, AS FOLLOWS:** pursuant to the Minnesota Statute §161.36, the Commissioner of Transportation is appointed as Agent of the City of Redwood Falls to accept as its’ Agent, federal aid funds which may be made available for eligible transportation related projects.

**BE IT FURTHER RESOVLED**, the Mayor and City Administrator are hereby authorized and directed for and on behalf of the City of Redwood Falls to execute and enter into the Agreement with the Commissioner of Transportation prescribing the terms and conditions of said federal aid participation as set forth and contained in “Minnesota Department of Transportation agency Agreement No. 1052152”, a copy of said Agreement was before the City Council and is made a part of this Resolution by reference.

**PASSED AND ADOPTED** by the City Council of the City of Redwood Falls this 20<sup>th</sup> day of December 2022.

ATTEST:

\_\_\_\_\_  
Keith Muetzel  
City Administrator

\_\_\_\_\_  
Tom Quackenbush  
Mayor

(City Seal)

STATE OF MINNESOTA  
COUNTY OF REDWOOD

I hereby certify that the foregoing Resolution is a true and correct copy of the Resolution presented to and adopted by the Redwood Falls City Council at a duly authorized meeting thereof held on the 20<sup>th</sup> day of December 2022 as shown by the minutes of said meeting in my possession.

\_\_\_\_\_  
City Administrator

Notary Public  
My Commission expires \_\_\_\_\_

(SEAL)



**STATE OF MINNESOTA**

**AGENCY AGREEMENT**

for

**FEDERAL PARTICIPATION IN CONSTRUCTION**

This Agreement is entered into by and between City of Redwood Falls ("Local Government") and the State of Minnesota acting through its Commissioner of Transportation ("MnDOT").

**RECITALS**

---

1. Pursuant to Minnesota Statutes Section 161.36, the Local Government desires MnDOT to act as the Local Government's agent in accepting federal funds on the Local Government's behalf for the construction, improvement, or enhancement of transportation financed either in whole or in part by Federal Highway Administration ("FHWA") federal funds, hereinafter referred to as the "Project(s)"; and
2. This Agreement is intended to cover all federal aid projects initiated by the Local Government and therefore has no specific State Project number associated with it, and
  - 2.1. The Assistance Listing Number (ALN) is 20.205, 20.224, 20.933 or another Department of Transportation ALN as listed on SAM.gov and
  - 2.2. This project is for construction, not research and development.
  - 2.3. MnDOT requires that the terms and conditions of this agency be set forth in an agreement.

**AGREEMENT TERMS**

---

**1. Term of Agreement; Prior Agreement**

- 1.1. **Effective Date.** This Agreement will be effective on the date that MnDOT obtains all required signatures under Minn. Stat. §16C.05, Subd. 2. This Agreement will remain effective until it is superseded or terminated pursuant to section 14.
- 1.2. **Prior Agreement.** This Agreement supersedes the prior agreement between the parties, MnDOT Contract Number 1029994.

**2. Local Government's Duties**

- 2.1. **Designation.** The Local Government designates MnDOT to act as its agent in accepting federal funds on its behalf made available for the Project(s). Details on the required processes and procedures are available on the State Aid Website.
- 2.2. **Staffing.**
  - 2.2.1. The Local Government will furnish and assign a publicly employed and licensed engineer, ("Project Engineer"), to be in responsible charge of the Project(s) and to supervise and direct the work to be performed under any construction contract let for the Project(s). In the alternative, where the Local Government elects to use a private consultant for construction engineering services, the Local Government will provide a qualified, full-time public employee of the Local Government to be in responsible charge of the Project(s). The services of the Local Government to be performed hereunder may not be assigned, sublet, or transferred unless the Local Government is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This

written consent will in no way relieve the Local Government from its primary responsibility for performance of the work.

2.2.2. During the progress of the work on the Project(s), the Local Government authorizes its Project Engineer to request in writing specific engineering and/or technical services from MnDOT, pursuant to Minnesota Statutes Section 161.39. Such services may be covered by other technical service agreements. If MnDOT furnishes the services requested, and if MnDOT requests reimbursement, then the Local Government will promptly pay MnDOT to reimburse the state trunk highway fund for the full cost and expense of furnishing such services. The costs and expenses will include the current MnDOT labor additives and overhead rates, subject to adjustment based on actual direct costs that have been verified by audit. Provision of such services will not be deemed to make MnDOT a principal or co-principal with respect to the Project(s).

2.3. **Pre-letting.** The Local Government will prepare construction contracts in accordance with Minnesota law and applicable Federal laws and regulations.

2.3.1. The Local Government will solicit bids after obtaining written notification from MnDOT that the FHWA has authorized the Project(s). Any Project(s) advertised prior to authorization **without permission** will not be eligible for federal reimbursement.

2.3.2. The Local Government will prepare the Proposal for Highway Construction for the construction contract, which will include all federal-aid provisions supplied by MnDOT.

2.3.3. The Local Government will prepare and publish the bid solicitation for the Project(s) as required by state and federal laws. The Local Government will include in the solicitation the required language for federal-aid construction contracts as supplied by MnDOT. The solicitation will state where the proposals, plans, and specifications are available for the inspection of prospective bidders and where the Local Government will receive the sealed bids.

2.3.4. The Local Government may not include other work in the construction contract for the authorized Project(s) without obtaining prior notification from MnDOT that such work is allowed by FHWA. Failure to obtain such notification may result in the loss of some or all of the federal funds for the Project(s). All work included in a federal contract is subject to the same federal requirements as the federal project.

2.3.5. The Local Government will prepare and sell the plan and proposal packages and prepare and distribute any addenda, if needed.

2.3.6. The Local Government will receive and open bids.

2.3.7. After the bids are opened, the Local Government will consider the bids and will award the bid to the lowest responsible bidder or reject all bids. If the construction contract contains a goal for Disadvantaged Business Enterprises (DBEs), the Local Government will not award the bid until it has received certification of the Disadvantaged Business Enterprise participation from the MnDOT Office of Civil Rights.

2.3.8. The Local Government must disclose in writing any potential conflict of interest to the Federal awarding agency or MnDOT in accordance with applicable FHWA policy.

2.4. **Contract Administration.**

2.4.1. The Local Government will prepare and execute a construction contract with the lowest responsible bidder, hereinafter referred to as the "Contractor," in accordance with the special provisions and the latest edition of MnDOT's Standard Specifications for Construction when the contract is awarded and all amendments thereto. All contracts between the Local Government and third parties or subcontractors must contain all applicable provisions of this Agreement, including the applicable



federal contract clauses, which are identified in Appendix II of 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and as identified in Section 18 of this Agreement.

- 2.4.2. The Project(s) will be constructed in accordance with the plans, special provisions, and standard specifications of each Project. The standard specifications will be the latest edition of MnDOT Standard Specifications for Highway Construction and all amendments thereto. The plans, special provisions, and standard specifications will be on file at the Local Government Engineer's Office. The plans, special provisions, and specifications are incorporated into this Agreement by reference as though fully set forth herein.
- 2.4.3. The Local Government will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project(s). The services of the Local Government to be performed hereunder may not be assigned, sublet, or transferred unless the Local Government is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This written consent will in no way relieve the Local Government from its primary responsibility for performance of the work.
- 2.4.4. The Local Government will document quantities in accordance with the guidelines set forth in the Construction Section of the Electronic State Aid Manual that are in effect at the time the work was performed.
- 2.4.5. The Local Government will test materials in accordance with the Schedule of Materials Control in effect at the time each Project was let. The Local Government will notify MnDOT when work is in progress on the Project(s) that requires observation by the Independent Assurance Inspector, as required by the Independent Assurance Schedule.
- 2.4.6. The Local Government may make changes in the plans or the character of the work, as may be necessary to complete the Project(s), and may enter into Change Order(s) with the Contractor. The Local Government will not be reimbursed for any costs of any work performed under a change order unless MnDOT has notified the Local Government that the subject work is eligible for federal funds and sufficient federal funds are available.
- 2.4.7. The Local Government will request approval from MnDOT for all costs in excess of the amount of federal funds previously approved for the Project(s) prior to incurring such costs. Failure to obtain such approval may result in such costs being disallowed for reimbursement.
- 2.4.8. The Local Government will prepare reports, keep records, and perform work so as to meet federal requirements and to enable MnDOT to collect the federal aid sought by the Local Government. Required reports are listed in the MnDOT State Aid Manual, Delegated Contract Process Checklist, available from MnDOT's authorized representative. The Local Government will retain all records and reports and allow MnDOT or the FHWA access to such records and reports for six years.
- 2.4.9. Upon completion of the Project(s), the Project Engineer will determine whether the work will be accepted.

## 2.5. Limitations.

- 2.5.1. The Local Government will comply with all applicable Federal, State, and local laws, ordinances, and regulations.
- 2.5.2. **Nondiscrimination.** It is the policy of the Federal Highway Administration and the State of Minnesota that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (42 U.S.C. 2000d). Through expansion of the mandate

for nondiscrimination in Title VI and through parallel legislation, the proscribed bases of discrimination include race, color, sex, national origin, age, and disability. In addition, the Title VI program has been extended to cover all programs, activities and services of an entity receiving Federal financial assistance, whether such programs and activities are Federally assisted or not. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies is expected to take affirmative action to assure that no person is excluded from participation in, or is denied the benefits of, the program or activity on the grounds of race, color, national origin, sex, age, or disability. It is the responsibility of the Local Government to carry out the above requirements.

2.5.3. **Utilities.** The Local Government will treat all public, private or cooperatively owned utility facilities which directly or indirectly serve the public and which occupy highway rights of way in conformance with 23 CFR 645 "Utilities", which is incorporated herein by reference.

2.6. **Maintenance.** The Local Government assumes full responsibility for the operation and maintenance of any facility constructed or improved under this Agreement.

### 3. MnDOT's Duties

3.1. **Acceptance.** MnDOT accepts designation as Agent of the Local Government for the receipt and disbursement of federal funds and will act in accordance herewith.

#### 3.2. Project Activities.

3.2.1. MnDOT will make the necessary requests to the FHWA for authorization to use federal funds for the Project(s) and for reimbursement of eligible costs pursuant to the terms of this Agreement.

3.2.2. MnDOT will provide to the Local Government copies of the required Federal-aid clauses to be included in the bid solicitation and will provide the required Federal-aid provisions to be included in the Proposal for Highway Construction.

3.2.3. MnDOT will review and certify the DBE participation and notify the Local Government when certification is complete. If certification of DBE participation (or good faith efforts to achieve such participation) cannot be obtained, then Local Government must decide whether to proceed with awarding the contract. Failure to obtain such certification will result in the Project becoming ineligible for federal assistance, and the Local Government must make up any shortfall.

3.2.4. MnDOT will provide the required labor postings.

3.3. **Authority.** MnDOT may withhold federal funds, where MnDOT or the FHWA determines that the Project(s) was not completed in compliance with federal requirements.

3.4. **Inspection.** MnDOT, the FHWA, or duly authorized representatives of the state and federal government will have the right to audit, evaluate and monitor the work performed under this Agreement. The Local Government will make all books, records, and documents pertaining to the work hereunder available for a minimum of six years following the closing of the construction contract.

### 4. Time

4.1. The Local Government must comply with all time requirements described in this Agreement. In the performance of this Agreement, time is of the essence.

4.2. The period of performance is defined as beginning on the date of federal authorization and ending on the date defined in the federal financial system or federal agreement ("end date"). **No work completed** after the **end date** will be eligible for federal funding. Local Government must submit all contract close out paperwork to MnDOT at least twenty-four months prior to the **end date**.

## 5. Payment

- 5.1. **Cost.** The entire cost of the Project(s) is to be paid from federal funds made available by the FHWA and by other funds provided by the Local Government. The Local Government will pay any part of the cost or expense of the Project(s) that is not paid by federal funds. MnDOT will receive the federal funds to be paid by the FHWA for the Project(s), pursuant to Minnesota Statutes § 161.36, Subdivision 2. MnDOT will reimburse the Local Government, from said federal funds made available to each Project, for each partial payment request, subject to the availability and limits of those funds.
- 5.2. **Indirect Cost Rate Proposal/Cost Allocation Plan.** If the Local Government seeks reimbursement for indirect costs and has submitted to MnDOT an indirect cost rate proposal or a cost allocation plan, the rate proposed will be used on a provisional basis. At any time during the period of performance or the final audit of a Project, MnDOT may audit and adjust the indirect cost rate according to the cost principles in 2 CFR Part 200. MnDOT may adjust associated reimbursements accordingly.
- 5.3. **Reimbursement.** The Local Government will prepare partial estimates in accordance with the terms of the construction contract for the Project(s). The Project Engineer will certify each partial estimate. Following certification of the partial estimate, the Local Government will make partial payments to the Contractor in accordance with the terms of the construction contract for the Project(s).
  - 5.3.1. Following certification of the partial estimate, the Local Government may request reimbursement for costs eligible for federal funds. The Local Government's request will be made to MnDOT and will include a copy of the certified partial estimate.
  - 5.3.2. Upon completion of the Project(s), the Local Government will prepare a final estimate in accordance with the terms of the construction contract for the Project(s). The Project Engineer will certify the final estimate. Following certification of the final estimate, the Local Government will make the final payment to the Contractor in accordance with the terms of the construction contract for the Project(s).
  - 5.3.3. Following certification of the final estimate, the Local Government may request reimbursement for costs eligible for federal funds. The Local Government's request will be made to MnDOT and will include a copy of the certified final estimate along with the required records.
  - 5.3.4. Upon completion of the Project(s), MnDOT will perform a final inspection and verify the federal and state eligibility of all payment requests. If the Project is found to have been completed in accordance with the plans and specifications, MnDOT will promptly release any remaining federal funds due the Local Government for the Project(s). If MnDOT finds that the Local Government has been overpaid, the Local Government must promptly return any excess funds.
  - 5.3.5. In the event MnDOT does not obtain funding from the Minnesota Legislature or other funding source, or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the Local Government may continue the work with local funds only, until such time as MnDOT is able to process the federal aid reimbursement requests.
- 5.4. **Matching Funds.** Any cost sharing or matching funds required of the Local Government in this Agreement must comply with 2 CFR 200.306.
- 5.5. **Federal Funds.** Payments under this Agreement will be made from federal funds. The Local Government is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for failure to comply with any federal requirements including, but not limited to, 2 CFR Part 200. If, for any reason, the federal government fails to pay part of the cost or expense incurred by the Local Government, or in the event the total amount of federal funds is not available, the Local Government will be responsible for any and all costs or expenses incurred under this Agreement. The Local Government further

agrees to pay any and all lawful claims arising out of or incidental to the performance of the work covered by this Agreement in the event the federal government does not pay the same.

- 5.6. **Closeout.** The Local Government must liquidate all obligations incurred under this Agreement for each Project and submit all financial, performance, and other reports as required by the terms of this Agreement and the Federal award at least twenty-four months prior to the **end date** of the period of performance for each Project. MnDOT will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with funds will continue following project closeout.
6. **Conditions of Payment.** All services provided by Local Government under this Agreement must be performed to MnDOT's satisfaction, as determined at the sole discretion of MnDOT's Authorized Representative, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Local Government will not receive payment for work found by MnDOT to be unsatisfactory or performed in violation of federal, state, or local law.

## 7. Authorized Representatives

7.1. MnDOT's Authorized Representative is:

Name: Kristine Elwood, or her successor.

Title: State Aid Engineer

Phone: 651-366-4831

Email: Kristine.elwood@state.mn.us

MnDOT's Authorized Representative has the responsibility to monitor Local Government's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, MnDOT's Authorized Representative will certify acceptance on each invoice submitted for payment.

7.2. The Local Government's Authorized Representative is:

Name: Keith Muetzel or their successor.

Title: Redwood Falls City Administrator

Phone: 507-637-5755

Email: kmuetzel@ci.redwood-falls.mn.us

If the Local Government's Authorized Representative changes at any time during this Agreement, the Local Government will immediately notify MnDOT.

## 8. Assignment Amendments, Waiver, and Agreement Complete

- 8.1. **Assignment.** The Local Government may neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of MnDOT and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 8.2. **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 8.3. **Waiver.** If MnDOT fails to enforce any provision of this Agreement, that failure does not waive the provision or MnDOT's right to subsequently enforce it.
- 8.4. **Agreement Complete.** This Agreement contains all negotiations and agreements between MnDOT and the

Local Government. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

- 8.5. **Severability.** If any provision of this Agreement, or the application thereof, is found to be invalid or unenforceable to any extent, the remainder of the Agreement, including all material provisions and the application of such provisions, will not be affected and will be enforceable to the greatest extent permitted by the law.
- 8.6. **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 8.7. **Certification.** By signing this Agreement, the Local Government certifies that it is not suspended or debarred from receiving federal or state awards.

## 9. Liability and Claims

- 9.1. **Tort Liability.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs MnDOT liability.
- 9.2. **Claims.** The Local Government acknowledges that MnDOT is acting only as the Local Government's agent for acceptance and disbursement of federal funds, and not as a principal or co-principal with respect to the Project. The Local Government will pay any and all lawful claims arising out of or incidental to the Project including, without limitation, claims related to contractor selection (including the solicitation, evaluation, and acceptance or rejection of bids or proposals), acts or omissions in performing the Project work, and any *ultra vires* acts. To the extent permitted by law, the Local Government will indemnify, defend (to the extent permitted by the Minnesota Attorney General), and hold MnDOT harmless from any claims or costs arising out of or incidental to the Project(s), including reasonable attorney fees incurred by MnDOT. The Local Government's indemnification obligation extends to any actions related to the certification of DBE participation, even if such actions are recommended by MnDOT.

## 10. Audits

- 10.1. Under Minn. Stat. § 16C.05, Subd.5, the books, records, documents, and accounting procedures and practices of the Local Government, or any other party relevant to this Agreement or transaction, are subject to examination by MnDOT and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. The Local Government will take timely and appropriate action on all deficiencies identified by an audit.
- 10.2. All requests for reimbursement are subject to audit, at MnDOT's discretion. The cost principles outlined in 2 CFR 200.400-.476 will be used to determine whether costs are eligible for reimbursement under this Agreement.
- 10.3. If Local Government expends \$750,000 or more in Federal Funds during the Local Government's fiscal year, the Local Government must have a single audit or program specific audit conducted in accordance with 2 CFR Part 200.

11. **Government Data Practices.** The Local Government and MnDOT must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by MnDOT under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Local Government under this Agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either the Local Government or MnDOT.
12. **Workers Compensation.** The Local Government certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Local Government's employees and agents will

not be considered MnDOT employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way MnDOT's obligation or responsibility.

- 13. Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.
- 14. Termination; Suspension**
- 14.1. Termination by MnDOT.** MnDOT may terminate this Agreement with or without cause, upon 30 days written notice to the Local Government. Upon termination, the Local Government will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 14.2. Termination for Cause.** MnDOT may immediately terminate this Agreement if MnDOT finds that there has been a failure to comply with the provisions of this Agreement, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that the Local Government has been convicted of a criminal offense relating to a state agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. MnDOT may take action to protect the interests of MnDOT of Minnesota, including the refusal to disburse additional funds and/or requiring the return of all or part of the funds already disbursed.
- 14.3. Termination for Insufficient Funding.** MnDOT may immediately terminate this Agreement if:
- 14.3.1. It does not obtain funding from the Minnesota Legislature; or
- 14.3.2. If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Local Government. MnDOT is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Local Government will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. MnDOT will not be assessed any penalty if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MnDOT will provide the Local Government notice of the lack of funding within a reasonable time of MnDOT's receiving that notice.
- 14.4. Suspension.** MnDOT may immediately suspend this Agreement in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. Work performed by the Local Government during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.
- 15. Data Disclosure.** Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, the Local Government consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to MnDOT, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Local Government to file state tax returns and pay delinquent state tax liabilities, if any.
- 16. Fund Use Prohibited.** The Local Government will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Local Government from utilizing these funds to pay any party who might be disqualified or debarred after the Local Government's contract award on this Project.

**17. Discrimination Prohibited by Minnesota Statutes §181.59.** The Local Government will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

**18. Federal Contract Clauses**

- 18.1. Appendix II 2 CFR Part 200.** The Local Government agrees to comply with the following federal requirements as identified in 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and agrees to pass through these requirements to its subcontractors and third-party contractors, as applicable. In addition, the Local Government shall have the same meaning as “Contractor” in the federal requirements listed below.
- 18.1.1. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 18.1.2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- 18.1.3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- 18.1.4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision

- for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 18.1.5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 18.1.6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 18.1.7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 18.1.8. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 18.1.9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must



also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

18.1.10. Local Government will comply with 2 CFR § 200.323.

18.1.11. Local Government will comply with 2 CFR § 200.216.

18.1.12. Local Government will comply with 2 CFR § 200.322.

18.2. **Drug-Free Workplace.** The Local Government will comply with the Drug-Free Workplace requirements under subpart B of 49 C.F.R. Part 32.

18.3. **Title VI/Non-discrimination Assurances.** The Local Government hereby agrees that, as a condition of receiving any Federal financial assistance under this Agreement, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d), related nondiscrimination statutes (i.e., 23 U.S.C. § 324, Section 504 of the Rehabilitation Act of 1973 as amended, and the Age Discrimination Act of 1975), and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, disability, or age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Local Government receives Federal financial assistance.

The Local Government hereby agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: [https://edocs-public.dot.state.mn.us/edocs\\_public/DMResultSet/download?docId=11149035](https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035). If federal funds are included in any contract, the Local Government will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. State may conduct a review of the Local Government's compliance with this provision. The Local Government must cooperate with State throughout the review process by supplying all requested information and documentation to State, making Local Government staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by State.

18.4. **Buy America.** The Local Government must comply with the Buy America domestic preferences contained in the Build America, Buy America Act (Sections 70901-52 of the Infrastructure Investment and Jobs Act, Public Law 117-58) and as implemented by US DOT operating agencies.

18.5. **Federal Funding Accountability and Transparency Act (FFATA)**

18.5.1. This Agreement requires the Local Government to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Local Government is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Local Government provides information to the MnDOT as required.

a. Reporting of Total Compensation of the Local Government's Executives.

b. The Local Government shall report the names and total compensation of each of its five most highly compensated executives for the Local Government's preceding completed fiscal year, if in the Local Government's preceding fiscal year it received:

i. 80 percent or more of the Local Government's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <https://www.sec.gov/answers/execomp.htm>).

Executive means officers, managing partners, or any other employees in management positions.

- c. Total compensation means the cash and noncash dollar value earned by the executive during the Local Government's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
- 18.5.2. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- 18.5.3. The Local Government must report executive total compensation described above to the MnDOT by the end of the month during which this Agreement is awarded.
- 18.5.4. The Local Government will obtain a Unique Entity Identifier number and maintain this number for the term of this Agreement. This number shall be provided to MnDOT on the plan review checklist submitted with the plans for each Project.
- 18.5.5. The Local Government's failure to comply with the above requirements is a material breach of this Agreement for which the MnDOT may terminate this Agreement for cause. The MnDOT will not be obligated to pay any outstanding invoice received from the Local Government unless and until the Local Government is in full compliance with the above requirements.

**[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK.]**

**City of Redwood Falls**

Local Government certifies that the appropriate person(s) have executed the contract on behalf of the Local Government as required by applicable articles, bylaws, resolutions or ordinances.

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

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

Date: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

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

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

Date: \_\_\_\_\_

**COMMISSIONER OF ADMINISTRATION**

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

Date: \_\_\_\_\_



Jim Doering  
Public Works Project Coordinator  
Phone: 507-616-7400  
Fax: 507-637-2417  
jdoering@ci.redwood-falls.mn.us

---

**Meeting Date: December 20, 2022**

## **AGENDA RECOMMENDATION**

**Agenda Item:** Resolution No. 74 of 2022

**Recommendation/Action Requested:** Read the proposed Resolution or make a motion to waive the reading of the Resolution. Discuss the proposed Resolution. If no concerns, adopt proposed Resolution by motion in accordance with Chapter 4 of the City Charter.

**Summary/Overview:** Resolution No. 74 executes the Master Service Agreement for 2023. The Master Service Agreement lists responsibilities for both parties and outlines basic services to be provided by Bolton & Menk Inc. as assigned by the City of Redwood Falls. This will be done on a project by project basis that is to be outlined by individual “Task Orders” presented to Council for subsequent approval throughout the year.

The term for this Master Agreement will have a start of January 1, 2023 and is slated to terminate December 31, 2023 but roll over annually if both parties agree. This does not supersede the Council from formerly appointing Bolton & Menk Inc. Owen Todd P.E. as our City Engineer at their first business meeting of the new year.

This Agreement has been reviewed by Bolton & Menk Inc. with no changes suggested and Staff also recommends its approval.

**Attachments:** Resolution No. 74 of 2022  
Master Agreement for Professional Services 2023

**RESOLUTION NO. 74 OF 2022**

**AUTHORIZATION TO EXECUTE  
MASTER AGREEMENT FOR PROFESSIONAL SERVICES 2022  
CITY OF REDWOOD FALLS AND BOLTON & MENK, INC.**

**WHEREAS**, the City of Redwood Falls is authorized to enter into an annual Master Agreement with Bolton & Menk Inc, pursuant to Minnesota Statutes Section §412.221, subd. 2 for the benefit of its citizens, and;

**WHEREAS**, Bolton & Menk Inc. of Sleepy Eye, MN is the designated Redwood Falls Municipal Civil Engineer as set by Council, and;

**WHEREAS**, Bolton & Menk Inc. agrees to perform the various Basic Services as assigned by the City of Redwood Falls under this agreement and further described in a subsequent Task Orders or Addendums for each assignment and in connection with each proposed project (referred to as “Project” or “project”) associated with that Task Order or Addendum, and;

**FURTHERMORE**, the Mayor and/or City Administrator are authorized to execute this agreement and negotiate in good faith, future changes or amendments as are necessary, and;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF REDWOOD FALLS, MINNESOTA, AS FOLLOWS:**

1. The agreement described above is approved and executed in the form submitted to the City Council and made a part of this resolution by reference.

**BE IT FURTHER RESOLVED** that the City Council of the City of Redwood Falls, Minnesota, approves the agreement contingent upon compliance with all the requirements of the Minnesota State Statutes.

**PASSED AND ADOPTED** by the City Council of the City of Redwood Falls, Minnesota this 20th day of December 2022.

ATTEST:

\_\_\_\_\_  
Keith Muetzel  
City Administrator

\_\_\_\_\_  
Tom Quackenbush  
Mayor

(City Seal)

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

**INTERIM MASTER AGREEMENT FOR PROFESSIONAL SERVICES 2023**

**CITY OF REDWOOD FALLS AND BOLTON & MENK, INC.**

This Interim Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, is by and between the CITY OF REDWOOD FALLS, 333 S. Washington St. P.O. Box 526 Redwood Falls, MN 56283, (“CLIENT”), and BOLTON & MENK, INC., 1243 Cedar Street NE, Sleepy Eye, MN 56085 (“CONSULTANT”).

**RECITALS**

WHEREAS, the CLIENT requires professional services in conjunction with various assignments or tasks; and

WHEREAS, the CONSULTANT agrees to furnish the various professional services required and assigned as needed by the CLIENT using Task Orders or Addenda to this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties hereto, it is agreed:

**SECTION I - CONSULTANT'S SERVICES**

- A. The CONSULTANT agrees to perform the various Basic Services as assigned by the CLIENT and specifically described in the Task Order or Addendum for each assignment and in connection with each proposed project (referred to as “Project” or “project”) associated with that Task Order or Addendum. A sample Task Order form is attached at the end of this Agreement.
- B. Upon mutual agreement of the parties hereto, Additional Services may be authorized as described in the respective Task Order.

**SECTION II - THE CLIENT'S RESPONSIBILITIES**

- A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section III of this Agreement.
- B. The CLIENT shall place any and all previously acquired information in its custody at the disposal of the CONSULTANT for its use. Such information shall include, but is not limited to: boundary surveys, topographic surveys, preliminary sketch plan layouts, building plans, soil surveys, abstracts, deed descriptions, tile maps and layouts, aerial photos, utility agreements, environmental reviews, and zoning limitations. The CONSULTANT may rely upon the accuracy and sufficiency of all such information in performing services unless otherwise instructed, in writing, by CLIENT.
- C. The CLIENT will guarantee access to and make all provisions for entry upon public portions of the project and reasonable efforts to provide access to private portions and pertinent adjoining properties.
- D. The CLIENT will give prompt notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the proposed project.

- E. The CLIENT shall designate a liaison person to act as the CLIENT'S representative with respect to services to be rendered under this Agreement. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define the CLIENT'S policies with respect to the project and CONSULTANT'S services.
- F. The CONSULTANT'S services do not include legal, insurance counseling, accounting, independent cost estimating, financial advisory or "municipal advisor" (as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 and the municipal advisor registration rules issued by the SEC) professional services and the CLIENT shall provide such services as may be required for completion of the project described in this Agreement.
- G. The CLIENT will obtain any and all regulatory permits required for the proper and legal execution of the Project. CONSULTANT will assist CLIENT with permit preparation and documentation to the extent described in the appropriate Task Order.
- H. The CLIENT may hire, at its discretion, when requested by the CONSULTANT, an independent test company to perform laboratory and material testing services, and soil investigation that can be justified for the proper design and construction of the project. The CONSULTANT shall assist the CLIENT in selecting a testing company. Payment for testing services shall be made directly to the testing company by the CLIENT and is not part of this Agreement. If CLIENT elects not to hire an independent test company, CLIENT shall provide CONSULTANT with guidance and direction on completing those aspects of design and construction that require additional testing data.

(Remainder of this page intentionally left blank)

### SECTION III - COMPENSATION FOR SERVICES

A. FEES.

1. The CLIENT will compensate the CONSULTANT in accordance with the following Schedule of Fees for the time spent in performance of Agreement services or as otherwise explicitly described in the Task Order or Addendum for the specific assignment.

#### Schedule of Fees

Employee Classification	Hourly Billing Rates
Senior Principal	\$150-280/Hour
Principal Engineer/Surveyor/Planner/GIS/Landscape Architect	\$140-225
Senior Engineer/Surveyor/Planner/GIS/Landscape Architect	\$110-210
Project Manager (Inc. Survey, GIS, Landscape Architect)	\$100-195
Project Engineer/Surveyor/Planner/Landscape Architect	\$85-190
Design Engineer/Landscape Designer/Graduate Engineer/Surveyor	\$80-190
Specialist (Nat. Resources; GIS; Traffic; Graphics; Other)	\$60-175
Senior Technician (Inc. Construction, GIS, Survey1)	\$85-180
Technician (Inc. Construction, GIS, Survey1)	\$65-150
Administrative/Corporate Specialists	\$45-125
Structural/Electrical/Mechanical/Architect	\$120-150
<b>GPS/Robotic Survey Equipment</b>	<b>NO CHARGE</b>
<b>CAD/Computer Usage</b>	<b>NO CHARGE</b>
<b>Routine Office Supplies</b>	<b>NO CHARGE</b>
<b>Routine Photo Copying/Reproduction</b>	<b>NO CHARGE</b>
<b>Field Supplies/Survey Stakes &amp; Equipment</b>	<b>NO CHARGE</b>
<b>Mileage</b>	<b>NO CHARGE</b>

<sup>1</sup> No separate charges will be made for GPS or robotic total stations on Bolton & Menk, Inc. survey assignments; the cost of this equipment is included in the rates for Survey Technicians.

2. The preceding Schedule of Fees shall apply for services provided through December 31, 2023. Hourly rates may be adjusted by CONSULTANT, in consultation with CLIENT, on an annual basis thereafter to reflect reasonable changes in its operating costs. Adjusted rates will become effective on January 1st of each subsequent year, upon written acceptance by CLIENT.
3. Rates and charges do not include sales tax. If such taxes are imposed and become applicable after the date of this Agreement CLIENT agrees to pay any applicable sales taxes.
4. The rates in the Schedule of Fees include labor, general business and other normal and customary expenses associated with operating a professional business. Unless otherwise agreed in writing, the above rates include vehicle and personal expenses, mileage, telephone, survey stakes and routine expendable supplies; and no separate charges will be made for these activities and materials.



5. Additional services as outlined in Section I.B will vary depending upon project conditions and will be billed on an hourly basis at the rate described in Section III.A.1.
6. Expenses required to complete the agreed scope of services or identified in this paragraph will be invoiced separately, and include, but are not limited to: large quantities of prints, extra report copies, out-sourced graphics and photographic reproductions, document recording fees, special field and traffic control equipment rental, outside professional and technical assistance, geotechnical services, and other items of this general nature required by the CONSULTANT to fulfill the terms of this Agreement. CONSULTANT shall be reimbursed at cost plus an overhead fee (not-to-exceed 5%) for these Direct Expenses incurred in the performance of the work, except as otherwise explicitly described in the Task Order or Addendum for the specific assignment.

## B. PAYMENTS AND RECORDS

1. The payment to the CONSULTANT will be made by the CLIENT upon billing at intervals not more often than monthly at the herein rates and terms.
2. If CLIENT fails to make any payment due to the CONSULTANT for undisputed services and expenses within 45 days after date of the CONSULTANT'S invoice, a service charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance.
3. In addition to the service charges described in preceding paragraph, if the CLIENT fails to make payment for undisputed services and expenses within 60 days after the date of the invoice, the CONSULTANT may, upon giving seven (7) days' written notice to CLIENT, suspend services and withhold project deliverables due under this Agreement and/or any Task Order until CONSULTANT has been paid in full for all past due amounts for undisputed services, expenses and charges, without waiving any claim or right against the CLIENT and without incurring liability whatsoever to the CLIENT.
4. Documents Retention. The CONSULTANT will maintain records that reflect all revenues, costs incurred and services provided in the performance of the Agreement. The CONSULTANT will also agree that the CLIENT, State, or their duly authorized representatives may, at any time during normal business hours and as often as reasonably necessary, have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices of the CONSULTANT which are relevant to the contract for a period of six years.

## SECTION IV - GENERAL

### A. STANDARD OF CARE

Professional services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT'S profession currently practicing under similar conditions. No warranty, express or implied, is made.

### B. CHANGE IN PROJECT SCOPE

In the event the CLIENT changes or is required to change the scope or duration of the project from that described in any Task Order or Addendum, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to additional compensation at the

applicable hourly rates. To the fullest extent practical, the CONSULTANT shall give notice to the CLIENT of any Additional Services, prior to furnishing such Additional Services. The CONSULTANT shall furnish an estimate of additional cost, prior to authorization of the changed scope of work and the change will be memorialized in writing and executed, either as an Addendum to this Agreement or the affected Task Order; or issuance of a new Task Order for the Additional Services.

### C. LIMITATION OF LIABILITY

1. General Liability of CONSULTANT. For liability other than professional acts, errors, or omissions, and to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CLIENT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from claims or actions relating to the project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by the acts and omissions in the non-professional services of CONSULTANT or CONSULTANT'S employees, agents, or subconsultants.
2. Professional Liability of CONSULTANT. With respect to professional acts, errors and omissions and to the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CLIENT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from third-party claims or actions relating to the project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by a negligent act, error or omission of CONSULTANT or CONSULTANT'S employees, agents, or subconsultants. This indemnification shall include reimbursement of CLIENT'S reasonable attorneys' fees and expenses of litigation, but only to the extent that defense is insurable under CONSULTANT'S liability insurance policies.
3. General Liability of CLIENT. To the fullest extent permitted by law and subject to the maximum limits of liability set forth in Minnesota Statutes Section 466.04, CLIENT shall indemnify, defend and hold harmless CONSULTANT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from third-party claims or actions relating to the project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by the acts or omission of CLIENT or CLIENT'S employees, agents, or other consultants.
4. To the fullest extent permitted by law, CLIENT and CONSULTANT waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, from any cause or causes. CLIENT waives all claims against individuals involved in the services provided under this Agreement and agrees to limit all claims to the CONSULTANT's corporate entity.
5. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the CONSULTANT. The CONSULTANT'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services provided hereunder.

#### D. INSURANCE

1. The CONSULTANT agrees to maintain, at CONSULTANT'S expense a commercial general liability (CGL) and excess or umbrella general liability insurance policy or policies insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT'S general business activities. The general liability coverage shall provide limits of not less than \$2,000,000 per occurrence and not less than \$2,000,000 general aggregate. Coverage shall include Premises and Operations Bodily Injury and Property Damage; Personal and Advertising Injury; Blanket Contractual Liability; Products and Completed Operations Liability.
2. The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, a single limit or combined limit automobile liability insurance and excess or umbrella liability policy or policies insuring owned, non-owned and hired vehicles used by CONSULTANT under this Agreement. The automobile liability coverages shall provide limits of not less than \$1,000,000 per accident for property damage, \$2,000,000 for bodily injuries, death and damages to any one person and \$2,000,000 for total bodily injury, death and damage claims arising from one accident.
3. CLIENT shall be named Additional Insured for the CGL and Auto liability policies.
4. The CONSULTANT agrees to maintain, at the CONSULTANT'S expense, statutory worker's compensation coverage together with Coverage B, Employer's Liability limits of not less than \$500,000 for Bodily Injury by Disease per employee, \$500,000.00 for Bodily Injury by Disease aggregate and \$500,000 for Bodily Injury by Accident.
5. The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, Professional Liability Insurance coverage insuring CONSULTANT against damages for legal liability arising from a negligent act, error or omission in the performance of professional services required by this Agreement during the period of CONSULTANT'S services and for three years following date of final completion of its services. The professional liability insurance coverage shall provide limits of not less than \$2,000,000 per claim and an annual aggregate of not less than \$2,000,000 on a claims-made basis.
6. CLIENT shall maintain statutory Workers Compensation insurance coverage on all of CLIENT'S employees and other liability insurance coverage for injury and property damage to third parties due to the CLIENT'S negligence.
7. Prior to commencement of this Agreement, CONSULTANT will provide the CLIENT with certificates of insurance, showing evidence of required coverages. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement for any reason except non-payment of premium, until at least 30 days prior written notice has been given to the Certificate Holder, and at least 10 days prior written notice in the case of non-payment of premium

#### E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of any Task Order or Addendum or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since the CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of the CLIENT and the CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. The

CLIENT acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.

#### F. CONSTRUCTION SERVICES

It is agreed that the CONSULTANT and its representatives shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall CONSULTANT have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at any Project site, nor for any failure of a Contractor to comply with Laws and Regulations applicable to that Contractor's furnishing and performing of its work. CONSULTANT shall not be responsible for the acts or omissions of any Contractor. CLIENT acknowledges that on-site contractor(s) are solely responsible for construction site safety programs and their enforcement.

#### G. USE OF ELECTRONIC/DIGITAL DATA

1. Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a project deliverable for this AGREEMENT or except as otherwise explicitly provided in this AGREEMENT, all electronic/digital data developed by the CONSULTANT as part of the project is acknowledged to be an internal working document for the CONSULTANT'S purposes solely and any such information provided to the CLIENT shall be on an "AS IS" basis strictly for the convenience of the CLIENT without any warranties of any kind. As such, the CLIENT is advised and acknowledges that use of such information may require substantial modification and independent verification by the CLIENT (or its designees).
2. Provision of electronic/digital data, whether required by this Agreement or provided as a convenience to the Client, does not include any license of software or other systems necessary to read, use or reproduce the information. It is the responsibility of the CLIENT to verify compatibility with its system and long-term stability of media. CLIENT shall indemnify and hold harmless CONSULTANT and its Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from third party use or any adaptation or distribution of electronic/digital data provided under this Agreement, unless such third-party use and adaptation or distribution is explicitly authorized by this Agreement.
3. CONSULTANT acknowledges the existence of a previously executed Data Exchange License Agreement ("LICENSE") Between CLIENT and third-party Montana-Dakota Utilities Co., (Montana-Dakota) dated November 9, 2022. CONSULTANT is of the understanding that CLIENT'S obligations under the LICENSE include allowing Montana-Dakota to access CLIENTS updated GIS database, including land base data, aerial photos, and/or facility data and to use CLIENT'S GIS information to update and augment Montana-Dakota's proprietary information. CONSULTANT hereby authorizes said LICENSE and the third-party use of, or any adaptations or distributions of electronic/digital data provided under this Agreement needed by CLIENT to fulfill its obligations under the LICENSE with Montana-Dakota.

#### H. REUSE OF DOCUMENTS

1. Drawings and Specifications and all other documents (including electronic and digital versions of any documents) prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of service in respect to the project and CONSULTANT shall retain an ownership

interest therein. Upon payment of all fees owed to the CONSULTANT, the CLIENT shall acquire a limited license in all identified deliverables (including Reports, Plans and Specifications) for any reasonable use relative to the project and the general operations of the CLIENT. Such limited license to Owner shall not create any rights in third parties.

2. CLIENT may make and disseminate copies for information and reference in connection with the use and maintenance of the project by the CLIENT. However, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the project associated with any particular Task Order or Addendum or on any other project. Any reuse by CLIENT or, any other entity acting under the request or direction of the CLIENT, without written verification or adaptation by CONSULTANT for such reuse will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT and CLIENT shall indemnify and hold harmless CONSULTANT from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from such reuse.

#### I. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT'S employees and subconsultants any information obtained from CLIENT not previously in the public domain or not otherwise previously known to or generated by CONSULTANT. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of CONSULTANT; or is furnished to CONSULTANT by a third party who is under no obligation to keep such information confidential; or is information for which the CONSULTANT is required to provide by law or authority with proper jurisdiction; or is information upon which the CONSULTANT must rely for defense of any claim or legal action.

#### J. PERIOD OF AGREEMENT

This Agreement will remain in effect until December 31, 2023; or until the specified completion date for any subsequently issued Task Order or Addendum that falls after the end of that period; or such other expressly identified completion date.

By mutual agreement of the parties hereto, the term of this Agreement shall be renewable in one (1) year increments with both parties reserving the right to terminate the Agreement pursuant to the terms and requirements found in Section IV.K of this Agreement.

#### K. TERMINATION

This Agreement, or any individual Task Order, may be terminated:

1. For cause, by either party upon 7 days written notice in the event of substantial failure by either party to perform in accordance with the terms of this Agreement through no fault of the terminating party. For termination by CONSULTANT, cause includes, but is not limited to: failure by CLIENT to pay undisputed amounts owed to CONSULTANT within 120 days of invoice and delay or suspension of CONSULTANT'S services for more than 120 days for reasons beyond CONSULTANT'S cause or control; or,
2. For convenience by CLIENT upon 7 days written notice to CONSULTANT.
3. The notice of termination shall identify the individual Task Order being terminated, or if the terminating party intends to terminate the entire Agreement the notice shall so state. This Termination process shall apply only to those elements expressly identified in the notice.

4. Notwithstanding the foregoing, this Agreement or the individual Task Order identified in the required notice will not terminate under Section IV.K if the party receiving such notice immediately commences correction of any substantial failure and cures the same within 10 days of receipt of the notice.
5. In the event of termination by CLIENT for convenience or by CONSULTANT for cause, the CLIENT shall be obligated to the CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Agreement. CONSULTANT shall deliver and CLIENT shall have, at its sole risk, right of use of any completed or partially completed deliverables, subject to provisions of Section IV.H.
6. In event of termination by CLIENT for cause and in addition to any other remedies available to CLIENT, CONSULTANT shall deliver to CLIENT and CLIENT shall have right of use of any completed or partially completed deliverables, in accordance with the provisions of Section IV.H. CLIENT shall compensate CONSULTANT for all undisputed amounts owed CONSULTANT as of date of termination.

#### L. INDEPENDENT CONTRACTOR

Nothing in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the CONSULTANT or any of its employees as the agent, representative, or employee of the CLIENT for any purpose or in any manner whatsoever. The CONSULTANT is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

#### M. CONTINGENT FEE

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Agreement.

#### N. NON-DISCRIMINATION

The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein. **The CONSULTANT is an Equal Opportunity Employer** and it is the policy of the CONSULTANT that all employees, persons seeking employment, subcontractors, subconsultants and vendors are treated without regard to their race, religion, sex, color, national origin, disability, age, sexual orientation, marital status, public assistance status or any other characteristic protected by federal, state or local law.

#### O. ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement without the prior written consent of the other party.

#### P. SURVIVAL

All obligations, representations and provisions made in or given in Section IV and Documents Retention clause of this Agreement will survive the completion of all services of the CONSULTANT under this Agreement or the termination of this Agreement for any reason.

#### Q. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### R. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Minnesota and venued in courts of Minnesota; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the project is located.

#### S. DISPUTE RESOLUTION

CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall then be submitted to mediation using a neutral from the Minnesota District Court Rule 114 Roster, or if mutually agreed at time of dispute submittal, a neutral from the American Arbitration Association Construction Industry roster. If mediation is unsuccessful in resolving the dispute, then either party may seek to have the dispute resolved by bringing an action in a court of competent jurisdiction.

#### T. MINNESOTA GOVERNMENT DATA PRACTICES ACT

All data collected, created, received, maintained, or disseminated, or used for any purposes in the course of the CONSULTANT'S performance of the Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Section 13.01, et seq. or any other applicable state statutes and state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy. The CONSULTANT agrees to abide by these statutes, rules and regulations and as they may be amended. In the event the CONSULTANT receives a request to release data, it shall notify CLIENT as soon as practical. The CLIENT will give instructions concerning release of data to the requesting party and CONSULTANT will be reimbursed as Additional Services by CLIENT for its reasonable expenses in complying with the request.

#### U. ETHICAL STANDARDS

No member, officer, employee or agent of the CLIENT or of a local public body thereof during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the benefits therefrom.

**SECTION V - SIGNATURES**

THIS INSTRUMENT embodies the whole agreement of the parties, there being no promises, terms, conditions or obligation referring to the subject matter other than contained herein. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their behalf.

CLIENT: City of Redwood Falls

CONSULTANT: Bolton & Menk, Inc.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ATTACHMENTS: Sample Task Order Form



**CITY OF REDWOOD FALLS AND BOLTON & MENK, INC.  
TASK ORDER TO AGREEMENT FOR PROFESSIONAL SERVICES**

**TASK ORDER NO:** \_\_\_\_\_

**CLIENT:** City of Redwood Falls

**CONSULTANT:** Bolton & Menk, Inc.

**DATE OF THIS TASK ORDER:** \_\_\_\_\_, 2023

**DATE OF MASTER AGREEMENT FOR PROFESSIONAL SERVICES:** \_\_\_\_\_

Whereas, CLIENT and CONSULTANT entered into a Master Agreement for Professional Services (“Master Agreement”) as dated above; and CONSULTANT agrees to perform and complete the following Services for CLIENT in accordance with this Task Order and the terms and conditions of the Master Agreement. CLIENT and CONSULTANT agree as follows:

**1.0 Scope of Services:**

CONSULTANT shall perform the Services listed below or in the attached Scope. All terms and conditions of the Master Agreement are incorporated by reference in this Task Order, except as explicitly modified in writing herein.

**2.0 Fees:**

CLIENT shall pay CONSULTANT in accordance with Section III of the Master Agreement and as follows or as described in the attached Scope. Total cost of services provided by CONSULTANT for this Task Order shall not exceed \$XX,XXX.XX without prior approval of CLIENT.

**3.0 Schedule:**

Schedule for performance of Services will be as follows or as set forth in attached Scope, such that all services will be completed by \_\_\_\_\_, 2023.

**4.0 Deliverables**

Deliverables will be as follows or as set forth in the attached Scope.

**5.0 Term**

In the event that the Schedule for this Task Order extends beyond the term of the Master Agreement, either intentionally or unintentionally by Task Order Scope or by Task Order extension, then this Task Order shall operate to extend the Master Agreement through the completion of CONSULTANT’S obligations under this Task Order or until a new Master Agreement is executed incorporating this Task Order.

**6.0 Other Matters**

**7.0 Project Managers**

Project managers and contact information for the CLIENT and CONSULTANT for this Task Order, if different than the Master Agreement, are as follows:

CITY OF REDWOOD FALLS  
Attn: Jim Doering  
333 S. Washington St.  
P.O. Box 526  
Redwood Falls, MN 56283  
Office Phone: 507-616-7400  
Email: jdoering@ci.redwood-falls.mn.us

BOLTON & MENK, INC.  
Attn: Owen J. Todd, P.E.  
1243 Cedar Street NE  
Sleepy Eye, MN 56085  
Office Phone: 507-794-5541  
Email: Owen.Todd@Bolton-Menk.com

CLIENT: City of Redwood Falls

CONSULTANT: Bolton & Menk, Inc.

---

---

---

---

---

---

ATTACHMENTS TO THIS TASK ORDER:



Kari Klages  
Finance Director  
City of Redwood Falls  
Phone: 507-616-7400  
Fax: 507-637-2417  
kklages@ci.redwood-falls.mn.us

AGENDA MEMO

**Meeting Date:** December 20, 2022

**Agenda Item:** Enabling 2023 Tax Levy, Payments in Lieu of Taxes, and Final Budget

**Recommendation/Action Requested:** Read the proposed Resolutions or make a motion to waive the reading of the Resolutions. Discuss the proposed Resolution. If no concerns, adopt proposed Resolutions by motion in accordance with Chapter 4 of the City Charter. Each Resolution needs its own motion.

**Summary/Overview:** State law requires local units of government to adopt and certify their final 2023 property tax levies and budgets by December 27, 2022.

**Attachments:** Resolution No. 75 of 2022 – Approving 2023 Property Tax Levy  
Resolution No. 76 of 2022 – Approving 2023 PILOT  
Resolution No. 77 of 2022 – Approving 2023 Final Budget

**RESOLUTION NO. 75 OF 2022**  
**RESOLUTION LEVYING AD VALOREM TAXES**  
**FOR THE YEAR 2023**  
**FOR THE CITY OF REDWOOD FALLS**

BE IT RESOLVED, by the City of Redwood Falls, Minnesota as follows:

That the following be levied for Ad Valorem taxes for the year 2023 for the following purposes as shown:

General Tax Levy		
General	\$	736,700
Library	\$	389,380
Port Authority	\$	<u>72,040</u>
Subtotal General Levy		\$ 1,198,120
1999 G.O. Community Center Bonds	\$	90,897
Garnette Gardens Tax Abatements	\$	4,600
2021A Fire Equipment Bonds	\$	147,914
Redwood Valley 4th Addn Tax Abatement	\$	31,547
Ponderosa Business Park Lots 1 & 2	\$	13,248
Old Hospital Building Abatement	\$	15,380
Drew Street 2022A Bonds	\$	106,601
PERA Employer Contribution Rate Incr	\$	72,684
Police Wages and Benefits	\$	<u>1,614,971</u>
Subtotal Special Levies		<u>\$ 2,097,842</u>
<b>TOTAL 2023 TAX LEVY</b>		<b><u>\$ 3,295,962</u></b>

PASSED AND ADOPTED by the City Council of the City of Redwood Falls this 20th day of December 2022.

ATTEST:

\_\_\_\_\_  
Keith T. Muetzel  
City Administrator

\_\_\_\_\_  
Tom Quackenbush  
Mayor

(City Seal)

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

**RESOLUTION NO. 76 OF 2022**

**RESOLUTION APPROVING 2023 PAYMENTS IN LIEU OF TAXES**

BE IT RESOLVED, by the City of Redwood Falls, Minnesota as follows:

That the 2023 Final Payments in Lieu of Taxes as shown below are approved.

	<b>2023</b>
	<b><u>PILOT's</u></b>
Electric Utility	\$ 396,785
Water Utility	\$ 88,235
Sanitary Sewer	\$ 58,978
Storm Sewer	\$ 18,821
Liquor	<u>\$ 120,000</u>
	\$ 682,819

PASSED AND ADOPTED by the City Council of the City of Redwood Falls this 20th day of December 2022.

ATTEST:

\_\_\_\_\_  
Keith T. Muetzel  
City Administrator

\_\_\_\_\_  
Tom Quackenbush  
Mayor

(City Seal)

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

**RESOLUTION NO. 77 OF 2022**

**RESOLUTION APPROVING 2023 FINAL BUDGETS**

BE IT RESOLVED, by the City of Redwood Falls, Minnesota as follows:

That the 2023 Final Budgets as shown below are approved.

	<u>Revenues</u>		<u>Expenditures</u>
General Fund	\$ 6,833,136	\$	6,833,136
Library	\$ 444,360	\$	444,360
Airport	\$ 325,706	\$	318,869
Park Development	\$ 100	\$	-
Fire Equipment	\$ 198,272	\$	176,730
Port Authority	\$ 113,663	\$	113,091
Revolving Loan	\$ 13,500	\$	300
Downtown Loan Program	\$ 5,510	\$	125
Community Development	\$ 84,826	\$	28,835
TIF#10-1 Runnings Redevelopment	\$ 74,520	\$	2,236
Drew Street GO Bond 2022A	\$ 106,601	\$	78,613
G.O. PIR Fund Bonds	\$ 55,736	\$	53,926
G.O. Community Center Bonds of 1999	\$ 90,897	\$	45,885
Airport Capital Improvements	\$ 222,000	\$	272,654
Reflections Project	\$ -	\$	3,817,760
Capital Projects	\$ 3,320,408	\$	3,267,808
Water Utility	\$ 1,790,701	\$	2,986,917
Sanitary Sewer Utility	\$ 1,244,564	\$	4,328,358
Storm Sewer Utility	\$ 699,805	\$	4,266,007
Electric Utility	\$ 7,618,780	\$	9,195,194
Liquor	\$ 2,457,500	\$	2,538,744
Central Garage	\$ 755,380	\$	1,137,072
Self Insurance	\$ 1,471,928	\$	1,471,703
	\$ 27,927,894	\$	41,378,322

PASSED AND ADOPTED by the City Council of the City of Redwood Falls this 20th day of December 2022.

ATTEST:

\_\_\_\_\_  
Keith T. Muetzel  
City Administrator

\_\_\_\_\_  
Tom Quackenbush  
Mayor

(City Seal)

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public