



AGENDA OF THE SPECIAL MEETING OF  
THE CITY COUNCIL  
CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA  
April 20, 2023  
5:00 P.M.

NOTE: Due to Open Meeting Law restrictions, the City Council may be discussing agenda items for the first time. Your patience and understanding are appreciated during this process.

**OPEN MEETING NOTICE OF ABSENT MEMBER**

Mayor Margaret Ford should she choose to attend or if needed for a quorum, will be attending virtually from the public lobby-area of The Ritz-Carlton, Tyson's Corner, 1700 Tyson's Blvd, McLean, VA 22102. GPS Coordinates: 38.9244 N, 77.2235 W.

*(This notice is intended to satisfy the requirements of Minnesota Statute 13D.02 Subd. 1(a)5 and Subd. 4)*

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**APPROVE AGENDA**

**AGENDA (unfinished New Business from regular meeting in April)**

- A. Approve City Engineer Contract\* (pp.3-17)
- B. Approve City Planner Contract\* (pp. 18-23)

**ADJOURN**

**Re: URGENT: Special Meeting Availability, Thursday at 5 PM**

Margaret Ford <Margaret.Ford@cityofbirchwood.com>

Mon 4/17/2023 10:03 AM

To: Rebecca Kellen <Rebecca.Kellen@cityofbirchwood.com>

Hello Becky,

I am scheduled for an out of town family commitment so I won't be able to attend. I have reviewed the two revised contracts under consideration and have no further comments. I understand that Mark Foster will convene and run the meeting.

Best,

Margaret

Sent from my iPhone

On Apr 17, 2023, at 8:53 AM, Rebecca Kellen <rebecca.kellen@cityofbirchwood.com> wrote:

Please let me know if you are available at 5 PM this Thursday, April 20<sup>th</sup> for a short Special Meeting to approve the Engineer and Planner contracts. Thank you.

<Outlook-a5vobvkk.png>

Rebecca Kellen, MBA

City Administrator

City of Birchwood Village, MN

office: (651) 426-3403

fax: (651) 426-7747

email: [rebecca.kellen@cityofbirchwood.com](mailto:rebecca.kellen@cityofbirchwood.com)

website: <http://www.cityofbirchwood.com/>



**Confidentiality Notice:** The information contained in this e-mail communication and any attached documentation may be privileged, confidential or otherwise protected from disclosure. They are intended for the sole use of intended recipient(s). Any unauthorized review, use, disclosure, distribution or copying is prohibited. The unauthorized disclosure or interception of e-mail is a federal crime. See 18 U.S.C. SEC. 2517(4). If you are not the intended recipient, please contact the sender by replying to this e-mail and destroying/deleting all copies of this message.

# AGREEMENT FOR DESIGNATED CITY ENGINEER AND PROJECT TASK ORDERS

## CITY OF BIRCHWOOD VILLAGE and BOLTON & MENK, INC.

This Agreement made this 21<sup>ST</sup> day of March 2023, by and between the City of Birchwood Village, 207 Birchwood Avenue, Birchwood Village, MN 55110, (“CLIENT” or “City”), and BOLTON & MENK, INC., 3507 High Point Drive North, Bldg. 1 Suite E130, Oakdale, MN 55128, (“CONSULTANT”).

WITNESS, whereas the CLIENT requires professional services for: 1) general municipal engineering matters, including designation of a licensed professional engineer for CLIENT’S City Engineer position, and 2) various project specific assignments or tasks; and whereas the CONSULTANT agrees to furnish the necessary professional services required and assigned as needed by the CLIENT.

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

### SECTION 1- CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to perform the various professional general and project engineering services as hereinafter described.
- B. GENERAL AND DESIGNATED CITY ENGINEER SERVICES
  1. The CONSULTANT shall serve in the position as City Engineer under the direction of the City Administrator and provide the following City Engineer Services.
    - a. The CONSULTANT agrees to assign an experienced licensed professional engineer from its staff to be the designated City Engineer and perform the required services and to provide such other staff as may be appropriate or necessary to complete requested services.
    - b. For calendar year 2023, CONSULTANT and CITY hereby designate and appoint Marcus Johnson P.E. as the designated City Engineer.
    - c. Except as may be otherwise specifically required for oversight and administration of CLIENT’S state aid transportation program, the term "City Engineer" as used herein shall refer to the designated City Engineer or the CONSULTANT staff performing requested services under the direct supervision of the designated City Engineer.
  2. The City Engineer shall attend City council and planning commission meetings as requested and shall assist CLIENT staff on engineering related issues.
  3. The City Engineer shall advise and provide engineering services to CLIENT staff and Council for general engineering matters in which the City becomes involved.
  4. General and Designated City Engineer Services shall be compensated on the following basis:
    - a. General and Designated City Engineer compensation will be made as set forth in Section 3.A on a \$300 lump sum basis to attend city council and planning commission meetings, and an hourly rate of \$149/hour for other City Engineer services.

- b. General and Designated City Engineer Services assigned in Section I.B to CONSULTANT staff other than the Designated City Engineer, will be compensated as Additional Services on an hourly basis at the Schedule of Fees rates listed in Section 3.A.
5. Upon request by CLIENT staff, the City Engineer, or its qualified CONSULTANT staff designee, shall review building and site plans and other documents for conformance with CLIENT engineering standards. CONSULTANT is entitled to rely on accuracy of documents as furnished for review without independent verification or calculation. Such reviews are solely for the information and benefit of the CLIENT as a professional opinion limited to consideration of CLIENT's established review criteria. CONSULTANT's services shall not be construed as verification, approval or acceptance of any third-party design or documents. If additional review, beyond that described herein, is desired by CLIENT, such services will be performed as Additional Services.
6. Other specific assigned duties of City Engineer under this agreement.

C. PROJECT SPECIFIC SERVICES

1. Engineering and other professional services requested for specific project related studies, surveys, design, plan and specification preparation and construction administration may be authorized as Project Specific Services by separate 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 (Exhibit A) is attached at the end of this Agreement.
2. Scope, schedule, and compensation for each Project Specific Services assignment shall be documented by a separate Task Order or Addendum and invoiced under a separate project or task number for each assignment. Upon acceptance of the Task Order or Addendum, the CONSULTANT agrees to perform the required services for the assignment.
3. Project Specific Services shall be compensated in accordance with Section 3.A and as expressly set forth in the applicable Task Order or Addendum for such Services.

D. ADDITIONAL SERVICES

1. Upon mutual agreement of the parties, Additional Services may be authorized as described in Paragraph 4.B. Additional Services will be compensated as set forth in Section 3.A.

**SECTION 2- THE CLIENT'S RESPONSIBILITIES**

- A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section 3 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, utility information, 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 City Administrator is the designated 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 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.

### SECTION 3 - COMPENSATION FOR SERVICES

#### A. FEES.

1. The CLIENT will compensate the CONSULTANT in accordance with the attached Exhibit B Schedule of Fees ("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.
2. Additional services as outlined in Section 1.D will vary depending upon project conditions and will be billed on an hourly basis at the rates described in Exhibit B, or as that Exhibit may subsequently be adjusted as described below.
3. The attached Schedule of Fees (**Exhibit B**) shall apply for services provided through December 31, 2023. Hourly rates may be adjusted by CONSULTANT, on an annual basis thereafter to reflect reasonable changes in its operating costs, or as may be appropriate for a specific Task Order. Adjusted rates will become effective on January 1st of each subsequent year; or, upon mutual agreement of the parties and inclusion in a Task Order, upon execution of that Task Order.
4. 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.

5. 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 fees 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.
6. Reimbursable Direct Expenses: Except for those expenses identified in Paragraph 3.A.5, any expenses required to complete the agreed scope of services or identified in this paragraph will be listed separately on the invoice, 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. Unless otherwise explicitly described in a Task Order or Addendum for the specific assignment, CONSULTANT shall be reimbursed at cost plus an overhead fee (not-to-exceed 10%) for these Direct Expenses incurred in the performance of the work, subject to any limit set forth in Section 3 or any Task Order.

## 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 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 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 or its 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 4 - 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 this Agreement, 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. Except for Additional Services required to address emergencies or acts of God that impact the Project, the CONSULTANT shall furnish an estimate of additional cost, prior to authorization of the changed scope of work. Any 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 in proportion to CONSULTANT's fault as determined by a final non-appealable judgment by a court of competent jurisdiction or as agreed by CONSULTANT in a binding settlement agreement.
3. Liability of CONSULTANT; Limit. CONSULTANT shall procure and maintain insurance as required by this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's officers, directors, members, partners, agents, employees, and subconsultants to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to any Project or this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of CONSULTANT or CONSULTANT's officers, directors, members, partners, agents, employees, or subconsultants (hereafter "CLIENTS Claims"), shall not exceed the then total available insurance proceeds paid or payable on behalf of or to CONSULTANT by CONSULTANT's insurers in settlement or satisfaction of CLIENT'S Claims under the terms and conditions of CONSULTANT's insurance policies applicable thereto, up to the then available amount of insurance under the applicable policy of insurance.

4. 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. Except where due to CONSULTANT'S negligence, the CLIENT shall to the fullest extent permitted by law hold CONSULTANT harmless from any and all liability, loss, damage, or expense, including attorney's fees resulting from claims, demands, costs, or judgments arising out of CONSULTANT'S performance relating to this Agreement or the Project.
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.
6. 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.
7. CLIENT waives all claims against individuals involved in the services provided by CONSULTANT under this Agreement and agrees that any claim, demand, or suit shall be directed/asserted only against the CONSULTANT's corporate entity.
8. For those services provided by the CONSULTANT while serving in the role of designated City Engineer under Section 1.B of this Agreement, including professional and technical oversight or supervision of CLIENT staff, the CLIENT shall, to the fullest extent permitted by law and in addition to any other requirements of this Agreement, indemnify and hold harmless the CONSULTANT from and against any claims, costs, losses and damages to the same extent as CLIENT would indemnify and hold harmless a CLIENT employee providing similar City Engineer services.

#### 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 General and Designated City Engineer Services or 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.

#### 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 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 for the longer of a period of two (2) years after written authorization to proceed is issued by CLIENT; 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, after which time the Agreement may be extended upon mutual agreement of both parties.

## K. HAZARDOUS MATERIALS

1. Except as expressly stated in a specific Task Order, the parties acknowledge that CONSULTANT'S Services do not include any services related to Constituents of Concern. If CONSULTANT or any other party encounters, uncovers, or reveals a Constituent of Concern at the Project site or should it become known in any way that such materials may be present at the site or any adjacent areas that may affect the performance of the CONSULTANT's services, then CONSULTANT may, at its option and without liability for consequential or any other damages: 1) suspend performance of Services on the portion of the Project affected thereby until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove such materials, and warrant that the site is in full compliance with applicable laws and regulations; or, 2) terminate the applicable specific Task Order for cause if it is not practical to continue providing Services.
  - a. Constituent of Concern is defined as asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

## L. TERMINATION

1. For Cause: This Agreement or any Task Order may be terminated by either party upon 7 days written notice in the event of substantial failure by other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.
  - a. 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.
  - b. For termination by CLIENT, Cause includes, but is not limited to, failure by CONSULTANT to perform its services or provide deliverables per a proper Task Order in the required or established timelines when provided.
  - c. Notwithstanding the foregoing and with consent of terminating party, this Agreement will not terminate under paragraph 4.L.1 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.
2. For Convenience: This Agreement or any Task Order may be terminated 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. 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 3 of this Agreement. Upon receipt of payment, 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 Paragraph 4. H.
5. In event of termination by CLIENT for cause, CLIENT shall compensate CONSULTANT for all undisputed amounts owed CONSULTANT as of date of termination and, upon receipt of payment, CONSULTANT shall deliver to CLIENT and CLIENT shall have at its sole risk, right of use of any completed or partially completed deliverables, subject to the provisions of Section 4.H. All other matters will be resolved in accordance with the Dispute Resolution clause of this Agreement.

#### M. 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.

#### N. 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.

#### O. 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.

#### P. ASSIGNMENT

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

#### Q. SURVIVAL

All obligations, representations and provisions made in or given in Section 4 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.

#### R. 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.

#### S. 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.

#### T. 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.

#### U. 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 to CONSULTANT 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 to the extent those costs are recoverable from the requesting party by law.

#### V. 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.

[Signature Page Follows.]

**SECTION 5 - 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, except as expressly set forth in Section 4.L.

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

CLIENT: City of Birchwood Village

CONSULTANT: Bolton & Menk, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Rebecca Kellen, its Administrator  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Margaret Ford, its Mayor  
Printed Name

Address for giving notice:  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notice:  
207 Birchwood Ave, Birchwood, MN 55110

CLIENT's Representative with authority for ordering engineering services and transmitting instructions:  
Rebecca Kellen or her designee

ATTACHMENTS:  
Sample Task Order Form (Include Scope directly in each Task Order or attach as Exhibit A)  
Exhibit B Schedule of Fees (hourly rates table)

**SAMPLE**  
**PUBLIC CLIENT AND BOLTON & MENK, INC.**  
**TASK ORDER TO AGREEMENT FOR PROFESSIONAL SERVICES**

**TASK ORDER NO:** **XXX**

**CLIENT:** Name of Client

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

**DATE OF THIS TASK ORDER:** Month xx, 20xx

**DATE OF MASTER AGREEMENT FOR PROFESSIONAL SERVICES:** Month xx, 20xx

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 (Exhibit A)**. All terms and conditions of the Master Agreement are incorporated by reference in this Task Order, except as explicitly modified in writing herein. [MODIFY AS NEEDED]

**2.0 Fees:**

CLIENT shall pay CONSULTANT in accordance with Section 3 of the Master Agreement and as follows or as described in the attached Scope. Total cost of services and reimbursable direct expenses provided by CONSULTANT for this Task Order shall not exceed \$XX,XXX.XX without prior approval of CLIENT. Total cost does not include authorized Additional Services as may subsequently be required and authorized. [MODIFY AS NEEDED FOR LUMP SUM, HOURLY, HOURLY NOT TO EXCEED, OR OTHER METHOD and coordinate with Section 3 of Master Agreement for treatment of Total Cost, Additional Services and reimbursable expenses.]

**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 Month xx, 20xx. [MODIFY AS NEEDED]

**4.0 Deliverables**

Deliverables will be as follows or as set forth in the attached Scope. [MODIFY AS NEEDED TO LIST KEY DELIVERABLES]

**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**

[LIST ANY OTHER CONDITIONS OR CHANGES IN MASTER AGREEMENT THAT APPLY TO

TASK ORDER, SUCH AS UPDATED FEE SCHEDULE, CHANGED INSURANCE REQUIREMENTS, ETC. IF NONE, STATE "NONE."]

**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:

<b>CLIENT:</b>	BOLTON & MENK, INC.
Name	Name
Address	Office Address
City, State, Zip	City, State, Zip
Office Phone: xxx-xxx-xxxx	Office Phone: xxx-xxx-xxxx
Email: xxx@xxx	Email: xxx@xxx

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

CLIENT: \_\_\_\_\_

CONSULTANT: Bolton & Menk, Inc. \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTACHMENTS TO THIS TASK ORDER: List or, if none, state "NONE"

**INSTRUCTIONS AND KEY**

**GRAY HIGHLIGHTS REQUIRE CHANGES SPECIFIC TO SCOPE, FEE AND DELIVERABLES.**

**YELLOW HIGHLIGHTS ARE SPACE HOLDERS FOR PROJECT SPECIFIC CHANGES AND REQUIRE CUSTOMIZATION FOR EACH AGREEMENT AND TASK ORDER.**

**IT IS ANTICIPATED THAT A SEPARATE SCOPE WILL BE ATTACHED (AS EXHIBIT A) FOR MOST TASK ORDERS.**

**DELETE HIGHLIGHTS AND THESE INSTRUCTIONS BEFORE SUBMITTING.**



Exhibit B

Schedule of Fees

# FEE SCHEDULE

The following fee schedule is based upon competent, responsible professional services and is the minimum, below which adequate professional standards cannot be maintained. It is, therefore, to the advantage of both the professional and the client that fees be commensurate with the service rendered. Charges are based on hours spent at hourly rates in effect for the individuals performing the work. The hourly rates for principals and members of the staff vary according to skill and experience. The current specific billing rate for any individual can be provided upon request.

The fee schedule shall apply for the period through December 31, 2023. These rates may be adjusted annually thereafter to account for changed labor costs, inflation, or changed overhead conditions.

These rates include labor, general business, and other normal and customary expenses associated with operating a professional business. For projects with typical expenses and unless otherwise agreed, the above rates include vehicle and personal expenses, mileage, telephone, survey stakes, and routine expendable supplies; no separate charges will be made for these activities and materials. Expenses beyond typical project expenses, non-routine expenses, and expenses beyond the agreed scope of services, such as out of town travel expenses, long travel distances, large quantities of prints, extra report copies, outsourced graphics and photographic reproductions, document recording fees, outside professional and technical assistance, and other items of this general nature will be invoiced separately. Rates and charges do not include sales tax, if applicable.

Bolton & Menk proposes a **monthly fee for attendance at one regularly scheduled planning commission and city council meeting of \$300 each**. Marcus Johnson, acting as your city engineer, will attend as requested.

Employee Classification	Hourly Billing Rates
City Engineer—Marcus Johnson	\$149
Senior Advisor—Brian Bachmeier	\$208
Senior Project Manager	\$175-264
Project Manager	\$104-198
Senior Project Engineer	\$140-198
Project Engineer	\$130-188
Design Engineer	\$110-186
Graduate Engineer	\$110-145
Senior Planner	\$115-198
Planner	\$115-171
Senior Landscape Architect	\$150-204
Landscape Architect	\$120-160
Landscape Designer	\$100-169
Licensed Project Surveyor	\$160-240
Graduate Surveyor	\$130-181
Survey Technician	\$85-173
Senior Technician	\$110-195
Technician	\$79-168
Specialist*	\$95-205
Practice Expert**	\$205-308
Senior Principal	\$195-314
Principal	\$160-289
Administrative/Corporate Specialists	\$64-194
GPS/Robotic Survey Equipment	NO CHARGE
CAD/Computer Usage	NO CHARGE
Routine Office Supplies	NO CHARGE
Routine Photo Copying/Reproduction	NO CHARGE
Field Supplies/Survey Stakes & Equipment	NO CHARGE
Mileage	NO CHARGE

<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.

\*Specialized role not classified above otherwise, incl. graphic design, project communication, funding support, etc.

\*\*Highly specialized and industry expertise unique to the market or area of discipline.

# CONSULTING SERVICES AGREEMENT

**I. The Parties.** This Consulting Services Agreement ("Agreement") is made effective as of March 30, 2023, by and between an individual known as Ben Wikstrom with a mailing address of 112 Mill Avenue, WATERTOWN, Minnesota, 55388 ("Consultant") and a business entity known as City of Birchwood Village with a mailing address of 207 Birchwood Avenue, Birchwood, Minnesota, 55110 ("Client").

**II. Services.** Consultant agrees to provide the following services ("Services"):

Planning Consulting. Consultant shall abide by, administer, and enforce the Land Use Regulations (Sections 300-310) of the City Code, and other Code sections as applicable. Specific duties are listed in the attached Exhibit A.

**III. Term.** The Services shall commence on the date of May 1, 2023, and shall continue until either Consultant or Client gives Notice of terminating this Agreement and the associated Notice Period elapses (See Section VII).

**IV. Payment.** In consideration for the Services provided, the Consultant is to be paid the following: Monthly Fee ("Payment"): See Exhibit A for fee amount and duties covered by fee.

**V. Payment Interval.** Consultant shall be paid on a monthly basis after the Services have started. After the Services have been completed, if there is any remaining balance it shall be paid within thirty (30) days by the Client.

**VI. Expenses.** The Consultant shall be responsible for all expenses related to providing the Services under this Agreement EXCEPT any "out-of-pocket" expenses. Out-of-pocket expenses are considered to be an expense that requires the Consultant to pay a third (3rd) party as a direct or indirect result of providing the Services. However, the Consultant will be required to pay for their internal expenses which includes, but is not limited to, supplies, equipment, operating costs, business costs, employment costs, taxes, Social Security contributions and/or payments, disability insurance, unemployment taxes, and any other cost that may or may not be in connection with the Services provided by the Consultant. Client agrees to pay the Consultant within thirty (30) days of receiving notice of any expense directly associated with the Services. Upon request by the Client, the Consultant may have to show receipt(s) or proof(s) of purchase for said expense.

**VII. Termination Clause.** The Consultant and Client may terminate this Agreement at any time with 60 Day(s) Notice of Termination.

**VIII. Government Data.** Consultant acknowledges that by providing services to a governmental entity in Minnesota his records and communications may constitute Government Data as that term is defined in Chapter 13 of Minnesota State Statute. Consultant shall produce, and may be asked to deliver, some or all records, notes, and data of any nature that are in the Consultant's possession or under the Consultant's control and that are of the Client's property or relate to Client's business pursuant to a valid data request. Consultant will not charge Client for fulfilling such requests beyond what the Client is able to bill the requestor pursuant to State Law.

**IX. Return of Records.** Upon termination of this Agreement, the Consultant shall deliver all records, notes, and data of any nature that are in the Consultant's possession or under the Consultant's control and that are of the Client's property or relate to Client's business.

**X. Disputes.** If any dispute arises under this Agreement, the Consultant and the Client shall negotiate in good faith to settle such dispute. If the parties cannot resolve such dispute themselves, then either party may submit the dispute to mediation by a mediator approved by both parties. If the parties cannot agree with any mediator or if either party does not wish to abide by any decision of the mediator, they shall submit the dispute to arbitration by any mutually acceptable arbitrator, or the American Arbitration Association (AAA). The costs of the arbitration proceeding shall be borne according to the decision of the arbitrator, who may apportion costs equally or in accordance with any finding of fault or lack of good faith of either party. If either party does not wish to abide by any decision of the arbitrator, they shall submit the dispute to litigation. The jurisdiction for any dispute shall be administered and decided upon the Client.

**XI. Liability Insurance.** The Consultant agrees to bear all responsibility for the actions related to themselves and their employees or personnel under this Agreement. In addition, the Consultant agrees to obtain comprehensive liability insurance coverage in case of bodily injury, personal injury, property damage, contractual liability, and cross-liability. In addition, the Consultant shall be required to have general liability insurance equal to a single-limit of \$1,000,000.00.

**XII. Legal Notice.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in-person or deposited in the United States Postal Service via Certified Mail with return receipt.

**XIII. Waiver of Contractual Right.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**XIV. Independent Contractor Status.** The Consultant, under the code of the Internal Revenue (IRS), is an independent contractor and neither the Consultant's employees or contract personnel are, or shall be deemed, the Client's employees. In its capacity as an independent contractor, the Consultant agrees and represents:

- a.) Consultant has the right to perform Services for others during the term of this Agreement;
- b.) Consultant has the sole right to control and direct the means, manner, and method by which the Services required under this Agreement will be performed; Consultant shall select the routes taken, starting and ending times, days of work, and order the work that performed;
- c.) Consultant shall not be required to wear any uniforms provided by the Client;
- e.) The Services required by this Agreement shall be performed by the Consultant, and the Client will not hire, supervise, or pay assistants to help the Consultant;
- f.) Consultant shall not receive any training from the Client for the professional skills necessary to perform the Services required by this Agreement; and

g.) Consultant shall not be required by the Client to devote full-time to the performance of the Services required by this Agreement.

**XV. State and Federal Licenses.** The Consultant represents and warrants that all employees and personnel associated shall comply with federal, state, and local laws requiring any required licenses, permits, and certificates necessary to perform the Services under this Agreement.

**XVI. Payment of Taxes.** Under this Agreement, the Client shall not be responsible for:

- a.) Withholding FICA, Medicare, Social Security, or any other Federal or State withholding taxes from the Consultant's payments to employees or personnel or make payments on behalf of the Consultant;
- b.) Making Federal and/or State unemployment compensation contributions on the Consultant's behalf; and
- c.) Making payments of taxes incurred while performing the Services under this Agreement, including all applicable income taxes and, if the Consultant is not a business entity, all applicable self-employment taxes. Upon demand, the Consultant shall provide the Client with proof that such payments have been made.

**XVII. Employees' Compensation.** The Consultant shall be solely responsible for the following:

- a.) Employee Benefits. The Consultant understands and agrees that they are solely responsible and shall be liable to all benefits that are provided to their employees including, but not limited to, retirement plans, health insurance, vacation time-off, sick pay, personal leave, or any other benefit provided.
- b.) Unemployment Compensation. The Consultant shall be solely responsible for the unemployment compensation payments on behalf of their employees and personnel. The Consultant themselves shall not be entitled to unemployment compensation with the Services performed under this Agreement.
- c.) Workers' Compensation. The Consultant shall be responsible for providing all workers' compensation insurance on behalf of their employees. If the Consultant hires employees to perform any work under this Agreement, the Consultant agrees to grant workers' compensation coverage to the extent required by law. Upon request by the Client, the Consultant must provide certificates proving workers' compensation insurance at any time during the performance of the Services.

**XVIII. Indemnity.** Consultant shall release, defend, indemnify, and hold harmless the Client and its officers, agents, and employees from all suits, actions, or claims of any character, name, or description including reasonable attorney fees, brought on account of any injuries or damage, or loss (real or alleged) received or sustained by any person, persons, or property, arising out of services provided under this Agreement or Consultant's failure to perform or comply with any requirements of this Agreement including, but not limited to any claims for personal injury, property damage, or infringement of copyright, patent, or other proprietary rights. Client reserves the right to retain whatever funds which would be due to the Consultant under this Agreement until such suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and satisfactory evidence to that effect furnished.

**XIX. Confidentiality & Proprietary Information.** The Consultant acknowledges that it will be necessary for the Client to disclose certain confidential and proprietary information to the Consultant in order for the Consultant to perform their duties under this Agreement. The Consultant acknowledges that disclosure to a third (3rd) party or misuse of this proprietary or confidential information would irreparably harm the Client. Accordingly, the Consultant will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of the Client without the Client's prior written permission except to the extent necessary to perform the Services on the Client's behalf.

Proprietary or confidential information includes, but is not limited to:

- a.) The written, printed, graphic, or electronically recorded materials furnished by Client for Consultant to use;

Upon termination of the Consultant's Services to the Client, or at the Client's request, the Consultant shall deliver all materials to the Client in the Consultant's possession relating to the Client's business. The Consultant acknowledges any breach or threatened breach of confidentiality under this Agreement will result in irreparable harm to the Client for which damages would be an inadequate remedy. Therefore, the Client shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach of confidentiality. Such equitable relief shall be in addition to Client's rights and remedies otherwise available at law.

Furthermore, proprietary information, under this Agreement, shall include:

- a.) The product of all work performed under this Agreement ("Work Product"), including without limitation all notes, reports, documentation, drawings, will be the sole property of the Client, and Consultant hereby assigns to the Client all right, title, and interest therein, including, but not limited to, all audiovisual, literary, moral rights and other copyrights, patent rights, trade secret rights, and other proprietary rights therein. Consultant retains no right to use the Work Product and agrees not to challenge the validity of the Client's ownership in the Work Product;
- c.) The Client will be entitled to use the Consultant's name and/or likeness in written material and other media.

**XXI. Governing Law.** This Agreement shall be governed under the laws in the State of Minnesota and any legal actions filed shall be venued in Washington County.

**XXII. Severability.** This Agreement shall remain in effect in the event a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court rules that any such provision or section is invalid or unenforceable, thus, limiting the effect of another provision or section. In such case, the affected provision or section shall be enforced as so limited.

**XXIII. Entire Agreement.** This Agreement, along with any attachments or addendums, represents the entire agreement between the parties. Therefore, this Agreement supersedes any prior agreements, promises, conditions, or understandings between the Client and Consultant. This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

**Consultant's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name \_\_\_\_\_

**Client's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name \_\_\_\_\_

## EXHIBIT A

### **Included Services**

- Review of land use applications and preparation of staff reports
- Ordinance amendments
- Enforcement letters and site visits
- Phone and email correspondence with City staff, Council and Commission members, residents, applicants, etc.
- Review of permit applications as necessary
- Meeting attendance at City Council, Planning Commission, and other meetings and with residents
- Other duties as typical as referenced in Chapter 300 of the City Code

### **Additional Services (not included)**

- Comprehensive Plan review and update
- Zoning Ordinance/City Code review and update (full sections; typical amendments are included services)
- Special projects as approved by the City Council
- Large-scale development project review as approved by the City Council

### **Fee**

**\$1,600 per month**

**(No Meeting Fees or Mileage to be paid by Client)**