

# AGENDA

COUNCIL MEETING  
Tuesday, January 24, 2023  
5:30 P.M.

## CITY HALL COUNCIL CHAMBERS

**I. CALL TO ORDER:**

**II. OPEN FORUM: This is a time for any concerned citizen to speak to the Council on an item that is not on the agenda. Limit of 3-5 minutes per speaker.**

**III. CONSENT ITEMS:**

- A. 1/10/23 regular Council minutes.
- B. Fareway Stores, Inc., #888, Class E liquor license
- C. Pay estimate #5 of \$23,928.00 of CDBG funds for 123 N Chestnut Street

**IV. NEW BUSINESS:**

- A. 2023 Annual appointments.
- B. Public hearing for maximum property levy.
- C. Consider approval of resolution of maximum property tax levy.
- D. Public hearing for City Hall entrance plans and specifications
- E. Consider approval of resolution for City Hall entrance plans and specifications
- F. Public hearing for status of funded activities for Upper Story project at 123 North Chestnut St.
- G. Consideration to move forward with drafting amendment to City ordinance to allow operation of ATVs.
- H. Consider approval of third reading of revised sewer rate ordinance effective for FY 2023-2024.
- I. Set date for 2023-2024 budget workshop.
- J. Consider approval of purchase agreement for the property located at 105 E Adams St
- K. Consider approval of Service agreement with ICE technologies for monthly office software and technology services.
- L. Consider approval of agreement with DOT for \$1.5 million of funding for Jackson bridge replacement.
- M. Consider approval addendum to engineer professional service agreement for Russell Street watermain improvement project
- N. Consider approval of professional service agreement with Bolton and Menk for Construction phase at Wastewater Treatment Facility Improvement project.
- O. Consider approval of ordinance creating an Animal Shelter Board.

**V. REPORTS:**

- A. Engineer, City Clerk, Attorney, City Administrator
- B. Departments
- C. Council & Committees
- D. Mayor

**VI. ADJOURN.**

COUNCIL MEETING

JANUARY 10, 2023

5:30 P.M.

PRESENT: Ahrenholtz, Jackson, Sloan, Wetrich, Zmolek

ABSENT: None

Mayor Pro tem Zmolek presided

Tim Pound addressed the Council during open forum on the new state ATV/UTV law and would like to see the city ordinance amended for people to be able to operate an ATV on city streets. He asked Council to bring back up for vote at a future council meeting.

Duane Forkner addressed the Council during open forum with a petition to terminate Chad Stevens as Code Enforcement Officer for the City of Jefferson, Iowa. Council received petition and will take under advisement.

On motion by Sloan, second by Jackson, the Council approved the following consent items:  
December 13, 2022 Council Minutes, Casey's General Store #1617, Class E Retail Alcohol License, Oly's C Store, Class E Retail Alcohol License, pay estimate #9 of \$26,436.60 to Jensen Builders, LTD for Greene County Animal Shelter, pay estimate #2 of \$27,412.25 to Westbrooke Construction Company for swimming pool restroom remodel. sidewalk reimbursement of \$960 for Ken and Sue Bose at 103 S Maple Street, pay estimate #4 of \$140,884.00 of CDBG funds for 123 N. Chestnut Street and payment of monthly bills.

AYE: Ahrenholtz, Jackson, Sloan, Wetrich, Zmolek

NAY: None

On motion by Jackson, second by Ahrenholtz, the Council approved the following Mayor/Council appointments:

**Matt Wetrich**

Park & Rec  
Golf Course  
Recycling  
Animal Shelter  
Grow Greene County Gaming Corporation  
Bell Tower Foundation

**Dave Sloan**

Streets  
Chamber/Jefferson Main Street  
Hwy 30  
Downtown Buildings

**Pat Zmolek**

Mayor Pro tem  
PD Committee  
LEC Entity  
Wage and Benefit  
Finance Committee  
Downtown Buildings

**Harry Ahrenholtz**

Wage and Benefit  
Housing  
GCDC  
Finance Committee  
Public Works

**Darren Jackson**

Park and Rec  
Housing  
Library  
Cemetery  
Animal Shelter

**Matt Gordon**

PD Committee  
Fire Department  
LEC Entity  
Hotel/Motel  
Finance Committee

AYE: Zmolek, Wetrich, Sloan, Jackson, Ahrenholtz  
NAY: None

On motion by Jackson, and second by Wetrich, the Council approved to hire Hether Dobney as part-time Animal Facility Custodian at the rate of \$12 per hour.

AYE: Wetrich, Zmolek, Sloan, Jackson, Ahrenholtz  
NAY: None

On motion by Ahrenholtz, second by Sloan, the Council approved the second reading of revised ordinance adjusting sewer service rates effective for FY 2023-2024 by 15%.

AYE: Ahrenholtz, Jackson, Sloan, Wetrich, Zmolek  
NAY: None

**RESOLUTION NO. 1-23**

On motion by Ahrenholtz, second by Wetrich, the Council approved Resolution No. 1-23, a resolution approving Region XII's updated Community Development Block Grant Procurement Policy.

AYE: Jackson, Sloan, Zmolek, Wetrich, Ahrenholtz  
NAY: None

**RESOLUTION NO. 2-23**

On motion by Wetrich, second by Sloan, the Council approved Resolution No. 2-23, a resolution agreeing to become a member of the Safety Group Central Iowa South (SGIS) and Iowa Association of Municipal Utilities (IAMU) agreement for the City of Jefferson, Iowa.

AYE: Zmolek, Wetrich, Sloan, Jackson, Ahrenholtz  
NAY: None

**RESOLUTION NO. 3-23**

On motion by Jackson, second by Ahrenholtz, the Council approved Resolution No. 3-23, a resolution approving the New Member Addendum to the Safety Group Central Iowa South (SGIS) Chapter 28 E Agreement.

AYE: Sloan, Jackson, Wetrich, Zmolek, Ahrenholtz  
NAY: None

**RESOLUTION NO. 4-23**

On motion by Sloan, second by Wetrich, the Council approved Resolution No. 4-23, a resolution setting date for public hearing on Detailed Plans and Specifications, Form of Contract, and Estimate of Cost for the City Hall Entrance Improvement Project and setting date for receiving bids. The public hearing has been set for January 24, 2023 at 5:30 p.m.

AYE: Ahrenholtz, Jackson, Sloan, Wetrich, Zmolek  
NAY: None

**RESOLUTION NO. 5-23**

On motion by Jackson, second by Sloan, the Council approved Resolution No. 5-23, a resolution setting public hearing regarding status funded activities for 123 North Chestnut Street Second Story Project. The public hearing has been set for January 24, 2023 at 5:30 p.m.

AYE: Zmolek, Sloan, Wetrich, Jackson, Ahrenholtz  
NAY: None

**RESOLUTION NO. 6-23**

On motion by Ahrenholtz, second by Wetrich, the Council approved Resolution No. 6-23, a resolution to set Public Hearing for Annual Maximum Property Tax Levy. The public hearing has been set for January 24, 2023 at 5:30 p.m.

AYE: Jackson, Wetrich, Sloan, Ahrenholtz, Zmolek  
NAY: None

Resident at 904 W. Madison regarding a hearing with the City Council regarding a notice to abate nuisance letter that was received from City of Jefferson Code Enforcer Chad Stevens. Resident provided information to the Council regarding the status of the vehicle and presented pictures. Council also heard from the Code Enforcer. Resident gave a time frame and Council agreed to give her time to comply with the ordinance.

On motion by Jackson, second by Ahrenholtz, the Council approved to set a date of September 15, 2023 by putting a stay on the enforcement abatement for resident to comply with ordinance.

AYE: Zmolek, Sloan, Jackson, Ahrenholtz Wetrich  
NAY: None

The following bills were approved for payment from City funds:

ABC PEST CONTROL	PEST CONTR	386.25
ACCESS SYSTEMS LEASING	COPIER LEASES	1320.69
ACCO UNLIMITED CORP	WA CHEM	9,175.67
AFLAC	AFLAC INS W/H	17.68
AG SOURCE COOP SERV	TSTG	2,119.25
ALEX MONTHEI	WA DEP REF	93.91
ALLIANT ENERGY	UTILITIES	32,530.46
ASCAP	HOT/MOT MUSIC LIC	420.00
AXON ENTERPRISE, INC.	PD TASER CERT BUNDLE	2,880.00
BAKER & TAYLOR INC.	LB BOOKS/MOVIES	1,154.47
BARBARA BARTLEY	RN REFUND	144.00
BOLTON & MENK INC	ENGINEERING	52,461.80
BOMGAARS	SUPP	2,028.84
BRIAN WIND	PA SANITIZER	3.21
BRICK GENTRY P.C.	PA LEGAL FEES	420.00
BYTESPEED COMPUTERS, LLC	LB CAMERAS/LICENSE	2,470.00
CARD SERVICE CENTER	CREDIT CARD	449.10
CARROLL CO SOLID WASTE	RC MRKTG FEES	217.00
CARROLL HYDRAULICS CO INC	RUT MACHINING/LABOR	421.09
CENTRAL IOWA SYSTEMS	LB INSTALL CAMERAS	535.00
CHIARA ANDERSON	WA DEP REF	17.97
CINTAS CORPORATION	FIRST AID	444.95
CLEANING SOLUTIONS INC.	RN CLEAN	2,376.00
COBRAHELP	PA FEE	25.00
COLLECTION SERVICES CENTE	CASE #895827	569.09
COMPASS MINERALS AMERICA	WA SALT	8,109.90
CORE & MAIN	WA GASKETS	125.19
COVETRUS	ANIM SHEL FREIGHT	2,156.00
DANNY MORANVILLE	H INS SINK C SH DEP	3,015.68

<b>BUDGET FY</b>  2023	<b>General Accounting Expenditure</b>		<b>DOCUMENT NUMBER</b>  5
	DATE 1/19/2023	ACCTG PERIOD (mm/yy)	

VENDOR CODE	AGENCY NAME	
VENDOR NAME AND ADDRESS City of Jefferson 220 N. Chestnut St. Jefferson, IA 50129	BILL TO ADDRESS (ORDERING AGENCY) Iowa Economic Development Authority 200 E. Grand Ave. Des Moines, Iowa 50309	SHIP TO ADDRESS

TERMS	FOB	ORDER APPROVED BY	GOODS RECEIVED/SERVICES PERFORMED DATE INITIALS
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QUANTITY		VENDOR'S INVOICE NUMBER 5	DATE
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ORDERED	RECEIVED	UNIT OF MEASURE	UNIT PRICE	TOTAL PRICE
			Request for Payment under CDBG Contract Number: <b>#20-CVN-008</b>  Report Number: <u>5</u>	23,928.00

<b>DOCUMENT TOTAL</b>	23,928.00
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**CLAIMANT'S CERTIFICATION**

I CERTIFY THAT THE ITEMS FOR WHICH PAYMENT IS CLAIMED WERE FURNISHED FOR STATE BUSINESS UNDER THE AUTHORITY OF THE LAW AND THAT THE CHARGES ARE REASONABLE, PROPER, AND CORRECT, AND NO PART OF THIS CLAIM HAS BEEN PAID.

**DATE** \_\_\_\_\_ **TITLE** \_\_\_\_\_

CLAIMANT'S SIGNATURE \_\_\_\_\_

**AGENCY CERTIFICATION**

I CERTIFY THAT THE ABOVE EXPENSE WERE INCURRED AND THE AMOUNTS ARE CORRECT AND SHOULD BE PAID FROM THE FUNDS APPROPRIATED BY:

**CODE OR CHAPTER SECTION(S)** \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

**THE FOLLOWING FIELDS ARE FOR STATE ACCOUNTING USE ONLY**

DOC TYPE (GAX) <b>GAX</b>	DOC NUMBER 5	DOC DATE	ACCTG PRD	BUDGET FY #####	ACTION NEW/MOD	PO SHIP INSTR	GAX TYPE 1	INT IND	INT SELLER FUND	INT SELLER AGCY
VENDOR CODE 2129431		ADDR OVERRIDE	F/A INDICATOR	EFT IND Y	TEXT -po's only (Y/N)		TEXT (po's only)			
REF DOC TYPE	REF DOC NUMBER	REF DOC LINE	COM LN	VEND INVOICE # 5	COMMODITY CODE	GS CONTRACT				

LINE	FUND	AGCY	ORG	SUB ORG	ACTV	FUNC	OBJT	SUB OBJT	JOB NUMBER	REP CAT	QUANTITY / UNITS	I/D	DESCRIPTION	AMOUNT	I/D	P/F
01	0340	269	4610	#2			4125							23,928.00		
02																
03																
04																
05																
06																
07																

<b>DOCUMENT TOTAL</b>	23,928.00
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**GAX**

WARRANT # \_\_\_\_\_

AUDITED BY \_\_\_\_\_

PAID DATE \_\_\_\_\_

Council Appointments

Roxanne Gorsuch	City Clerk
David Morain	City Attorney
James D. Leiding, P.E.	City Engineer
Chad Stevens	Code Enforcement Officer/Building & Zoning Official
Roxanne Gorsuch	City Treasurer
Health Officer	Vacant

**NOTICE OF PUBLIC HEARING - CITY OF JEFFERSON - PROPOSED PROPERTY TAX LEVY**  
**Fiscal Year July 1, 2023 - June 30, 2024**

The City Council will conduct a public hearing on the proposed Fiscal Year City property tax levy as follows:

**Meeting Date:** 1/24/2023 **Meeting Time:** 05:30 PM **Meeting Location:** Jefferson City Hall

At the public hearing any resident or taxpayer may present objections to, or arguments in favor of the proposed tax levy. After adoption of the proposed tax levy, the City Council will publish notice and hold a hearing on the proposed city budget.

City Website (if available)  
[www.cityofjeffersoniowa.org](http://www.cityofjeffersoniowa.org)

City Telephone Number  
 (515) 386-3111

	<b>Current Year Certified Property Tax 2022 - 2023</b>	<b>Budget Year Effective Property Tax 2023 - 2024</b>	<b>Budget Year Proposed Maximum Property Tax 2023 - 2024</b>	<b>Annual % CHG</b>
Regular Taxable Valuation	140,765,495	138,213,853	138,213,853	
Tax Levies:				
Regular General	1,140,201	1,140,201	1,119,532	
Contract for Use of Bridge			0	
Opr & Maint Publicly Owned Transit			0	
Rent, Ins. Maint. Of Non-Owned Civ. Ctr.			0	
Opr & Maint of City-Owned Civic Center			0	
Planning a Sanitary Disposal Project			0	
Liability, Property & Self-Insurance Costs	50,000	50,000	51,000	
Support of Local Emer. Mgmt. Commission			0	
Emergency	38,007	38,007	37,318	
Police & Fire Retirement			0	
FICA & IPERS	252,218	252,218	270,591	
Other Employee Benefits	335,097	335,097	365,450	
<b>Total Tax Levy</b>	<b>1,815,523</b>	<b>1,815,523</b>	<b>1,843,891</b>	<b>1.56</b>
<b>Tax Rate</b>	<b>12.89750</b>	<b>13.13561</b>	<b>13.34085</b>	

**Explanation of significant increases in the budget:**

Notable increases within the City budget were made for FICA & IPERS and Other Employee Benefits.

**If applicable, the above notice also available online at:**

[www.cityofjeffersoniowa.org](http://www.cityofjeffersoniowa.org)

\*Total city tax rate will also include voted general fund levy, debt service levy, and capital improvement reserve levy.

\*\*Budget year effective property tax rate is the rate that would be assessed for these levies if the dollars requested is not changed in the coming budget year

RESOLUTION NO.

APPROVAL OF FY 2023-2024 MAXIMUM PROPERTY TAX DOLLARS

WHEREAS, the City Council of the City of Jefferson, Iowa, have considered the proposed FY 2023-2024 city maximum property tax dollars for the affected levy total, and

WHEREAS, a notice concerning the proposed city maximum property tax dollars was published as required and posted on city website and/or social media accounts if applicable,

WHEREAS, a public hearing concerning the proposed city maximum property tax dollars was held on January 24, 2023 at Jefferson City Hall at 5:30PM.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Jefferson, Iowa, that the maximum property tax dollars for the affected tax levies for FY 2023-2024 shall not exceed the following total:

Total maximum levy for affected property tax levies: \$1,843,891.00

The Maximum Property Tax dollars requested in the total maximum levy for affected property tax levies for FY 2023-2024 does not represent greater than 102% of the Maximum Property Tax dollars requested for the current FY 2022-2023.

Roll Call Vote:

Sloan - YEA/NAY

Arhenholtz - YEA/NAY

Zmolek- YEA/NAY

Jackson - YEA/NAY

Wetrich - YEA/NAY

Adopted and approved on January 24, 2022.

\_\_\_\_\_  
Matt Gordon, Mayor

Attest:

\_\_\_\_\_  
Roxanne Gorsuch, City Clerk



**NOTICE OF PUBLIC HEARING**  
**CITY HALL ENTRANCE IMPROVEMENTS**  
**CITY OF JEFFERSON, IOWA**

Public Hearing on Proposed Contract Documents and Estimated Costs for Repair or Improvement. A public hearing will be held by the City of Jefferson on the proposed contract documents (plans, specifications and form of contract) and estimated cost for the improvement at its meeting at 5:30 p.m. on January 24, 2023, at City Hall, 220 N. Chestnut Street, Jefferson, Iowa 50129.

Project Description. Improvement to the front entrance of the City Hall Building including removal of existing sidewalks, steps, retaining wall, plantings and landscaping. Installation of new PCC sidewalk and steps, curb and gutter, pavers, retaining wall, planting, and other miscellaneous items.

At said hearing, the **CITY COUNCIL** will consider the plans, specifications, proposed form of contract, and estimated total cost for the project, the same now being on file in the office of the City Clerk, reference to which is made for a more detailed and complete description of the proposed improvements, and at said time and place the said **CITY COUNCIL** will also receive and consider any objections to said plans, specifications, estimate of cost, and form of contract made by any interested party.

**NOTICE OF PUBLIC HEARING ON THE  
STATUS OF FUNDED ACTIVITIES FOR THE  
CITY OF JEFFERSON**

Pursuant to the requirements of Section 508 of the Housing and Community Development Act of 1987, as amended, the Jefferson City Council will hold a public hearing on Tuesday January 24, 2023, at 5:30 P.M. at Jefferson City Hall, 220 North Chestnut St., Jefferson, IA 50129. The purpose of the hearing will be to discuss the status of funding for the City of Jefferson Upper Story Housing Program. The project, located at 123 North Chestnut Street, Jefferson, IA. 50129, is being funded in part through a Community Development Block Grant provided by the Iowa Economic Development Authority and the City of Jefferson.

During the course of the public hearing a review of the following will be presented: a general description of accomplishments to date, a summary of expenditures to date, a general description of remaining work and a general description of changes (if any) made to the project budget, performance targets, activity schedules, project scope, objectives or beneficiaries, and a description of how the public has reasonable access to all local meeting, project records, and information relating to the proposed and actual use of CDBG funds.

Interested citizens are encouraged to attend this Status of Funded Activities Public Hearing. If you have questions concerning the project or if you require special accommodations to attend the hearing such as handicapped accessibility or translation services you may contact City Clerk Roxanne Gorsuch, 220 North Chestnut St., Jefferson, IA 50129, (515) 386-3111. Requests for these services must be received no later than January 19, 2023 at 4:00 P.M. Written comments or questions should be forwarded to the attention of City Clerk Roxanne Gorsuch, 220 North Chestnut St., Jefferson, IA 50129, (515) 386-3111. Written comments must be received no later than January 24, 2023 at 4:00 P.M.

ORDINANCE NO. \_\_\_\_\_  
 AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY  
 OF JEFFERSON, IOWA, 2017, BY AMENDING PROVISION  
 PERTAINING TO SEWER USER CHARGES

Be it enacted by the City Council of Jefferson, Iowa:

SECTION 1. Section Amended. Section 99.04 of the Code of Ordinances of the City of Jefferson, Iowa, 2017, is repealed and the following adopted in lieu thereof:

**99.04 SEWER USER CHARGE.** Each customer shall pay a flat rate user charge and user charge rate for operation and maintenance as follows:

Fiscal Year	Flat Rate User Charge (per month)	User Charge Rate (per 100 cubic feet of water used per month)
2022-23	\$17.14	\$7.23
2023-24	\$19.71	\$8.31
2024-25	\$22.67	\$9.56
2025-26	\$26.07	\$10.99
2026-27	\$29.98	\$12.64

SECTION 2. Severability. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. When effective. This ordinance shall be effective as of the beginning of the monthly water and sewer billing cycle that commences immediately after this ordinance is published as required by law.

Finally passed by the Council and approved on \_\_\_\_\_, 2022.

\_\_\_\_\_  
 Matt Gordon, Mayor

Attest:

\_\_\_\_\_  
 Roxanne Gorsuch, City Clerk

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I hereby certify that the foregoing ordinance was published in The Jefferson Herald on \_\_\_\_\_, 2022.

\_\_\_\_\_  
 Roxanne Gorsuch, City Clerk

## REAL ESTATE PURCHASE AGREEMENT

This Agreement (the "Agreement") is made as of January \_\_\_\_\_, 2023, by and between **Johnson & Sons, Inc. (the "SELLER")**; and the **City of Jefferson (the "BUYER")**.

1. **REAL ESTATE PURCHASE.** SELLER agrees to sell, and BUYER agrees to purchase, certain real estate in Greene County, Iowa, locally described as 105 East Adams Street, Jefferson, IA, and legally described as:

The North Half (N1/2) of Lot Eighteen (18), in Block Five (5), in the Original Town of Jefferson, Greene County, Iowa; and the North Half of the East Half (N1/2 E1/2) of the vacated alley running North and South through Block Five (5) in the Original Town of Jefferson, Greene County, Iowa.

together with any easements and appurtenant servient estates, but subject to easements, zoning restrictions, restrictive covenants and mineral reservations of record, herein referred to as the "Property," upon the following terms and conditions. The exact legal description shall be taken from the abstract of title.

2. **PURCHASE PRICE.** The Purchase Price shall be \$25,000.00. The balance of the Purchase Price shall be paid in cash, or other immediately available funds at the time of closing with adjustments for closing costs to be added or deducted from this amount. The parties agree that they will cooperate with the closing agent in providing information necessary for the preparing and filing of Form 1099-S reporting the amounts reflected herein with respect to the real estate assets.
3. **REAL ESTATE TAXES.** SELLER shall pay the real estate taxes payable in the current fiscal year in which possession is given and any unpaid real estate taxes payable in prior fiscal years. BUYER shall pay all subsequent real estate taxes. At closing SELLER shall pay BUYER, or BUYER shall be given a credit for, the prorated taxes for the taxes accruing to the date of possession. The prorated taxes shall be based upon the last known actual net real estate taxes payable according to public records. However, if such taxes are based upon a partial assessment of the present property improvements or a changed tax classification as of the date of possession, such proration shall be based on the current levy rate, assessed value, legislative tax rollbacks and real estate tax exemptions that will actually be applicable as shown by the assessor's records on the date of possession.
4. **SPECIAL ASSESSMENTS.** SELLER shall pay in full at closing all special assessments that are a lien on the Property as of the date of this Agreement and, if not paid, would become delinquent during the calendar year this Agreement is made, and all prior installments thereof. BUYER shall pay all other special assessments or installments not payable by SELLER.
5. **RISK OF LOSS AND INSURANCE.** SELLER shall bear the risk of loss or damage to the Property prior to closing or possession, whichever first occurs. SELLER agrees to

maintain existing insurance and BUYER may purchase additional insurance. In the event of substantial damage or destruction prior to closing, this Agreement shall be null and void; provided, however, BUYER shall have the option to complete the closing and receive insurance proceeds regardless of the extent of damages. The property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition on or before the closing date.

1. **POSSESSION AND CLOSING.** If BUYER timely performs all obligations, title to the Property shall be delivered to BUYER on or before the Closing Date. Closing shall occur on a date mutually agreeable to the parties but not later than March 15, 2023 (the "Date of Closing"), at Hoyt, Morain & Hommer, P.C., in Jefferson, IA, or at such other place as may be mutually agreed by the parties, and any charges attributable to the SELLER'S possession shall be made as of the date of closing. If possession is given on a day other than closing, the parties shall make a separate agreement with adjustments as of the date of possession. Closing shall occur after the approval of title by BUYER. This transaction shall be considered closed upon the filing of the title transfer documents and receipt of all funds due at closing from BUYER under the Agreement. SELLER shall pay the transfer tax (revenue stamps), and BUYER shall pay all filing fees due to the county recorder in connection with this transaction.
2. **FIXTURES.** Included with the Property shall be all fixtures, except any that may be included on an attached exhibit of excluded fixtures, that integrally belong to, are specifically adapted to or are a part of the real estate, whether attached or detached, such as: attached wall-to-wall carpeting, built-in appliances (including the kitchen refrigerator and stove), light fixtures (including light bulbs), water softeners (except rentals), shutters, shades, rods, blinds, venetian blinds, awnings, storm windows, storm doors, screens, television antennas (including satellite dishes), air conditioning equipment (except window type), door chimes, automatic garage door openers, electrical service cables, attached mirrors, fencing, gates, attached shelving, bushes, trees, shrubs and plants.
3. **CITY COUNCIL APPROVAL.** The enforceability of this Agreement is contingent upon BUYER obtaining proper approval from the Jefferson City Council to purchase the described Property. BUYER shall, in good faith, make all efforts necessary to obtain such authorization from the City Council.
4. **INSPECTION CONTINGENCY.** The obligations of the Buyer as set forth in this Agreement are contingent upon Buyer's satisfactory inspection of the Property. The Buyer shall have the right to conduct an inspection of the Property prior to the Date of Closing. The choice and appointment of the inspector shall be the sole discretion of the Buyer who shall also solely bear the costs of the same. The time and date of the inspection shall be at the option of the Buyer but must be at a reasonable time and notice. In the event that upon completion of the inspection, the Buyer is not satisfied with the state of the Property, the Buyer shall notify the Seller of the unsatisfactory conditions and request the Seller to remedy the same. The Seller shall have 30 days after receiving such notice to remedy the same. In the event that the Seller refuses to allow access to the Property to accommodate the inspection or fails to remedy the unsatisfactory conditions stated in the notice, the Buyer

may, in the Buyer's sole discretion, accept the Property as it is and proceed with the purchase under this Agreement, or terminate this Agreement. If BUYER waives its right to inspect the Property, BUYER accepts the Property "As Is" in its present condition.

5. **CONDITION OF PROPERTY.** Except as otherwise provided in Section 4, the Property as of the date of this Agreement, including buildings, grounds, and all improvements, will be preserved by the SELLER in its present condition until possession, ordinary wear and tear and repairs in accordance with Section 8 excepted. SELLER makes no warranties, expressed or implied, as to the condition of the Property. SELLER shall provide to BUYER a completed residential property disclosure and lead-based paint property disclosure. SELLER shall not be obligated to perform any repairs at the Property except as otherwise agreed to by the parties.
6. **ABSTRACT AND TITLE.** SELLER, at their expense, shall promptly obtain an abstract of title for the Property, in one or more parts, continued through the date of acceptance of this Agreement, and deliver it to BUYER'S attorney for examination. It shall show marketable title in SELLER in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association. SELLER shall make every reasonable effort to promptly perfect title. If closing is delayed due to SELLER'S inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten days written notice to the other party. The abstract shall become the property of BUYER when the Purchase Price is paid in full. SELLER shall pay the costs of any additional abstracting and title work due to any act or omission of SELLER, including transfers by or the death of SELLER or their assignees.
7. **SURVEY.** If a survey is required under Iowa Code Chapter 354, or city or county ordinances, BUYER shall pay the costs thereof. BUYER may, at BUYER'S expense prior to closing, have the property surveyed and certified by a registered land surveyor whether required or not by law. If the survey shows an encroachment on the Property or if any improvements located on the Property encroach on lands of others, the encroachments shall be treated as a title defect.
8. **ENVIRONMENTAL MATTERS.** SELLER warrants to the best of their knowledge and belief that there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property, the Property does not contain levels of radon gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards, and SELLER has done nothing to contaminate the Property with hazardous wastes or substances. SELLER warrants that the Property is not subject to any local, state, or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks. SELLER shall also provide BUYER with a properly executed Groundwater Hazard Statement at Closing. A septic system services the Property. SELLER and BUYER acknowledge that the septic tank has been replaced and the leach beds are in acceptable condition. BUYER agrees to be responsible for executing a binding acknowledgment with the Greene County Sanitarian for final inspection of said system in compliance with the Iowa DNR Time of Transfer

regulations, if needed. Should final inspection of said system be noncompliant with the Iowa DNR Time of Transfer regulations, the parties agree that SELLER shall be responsible for any costs incurred to bring said system in compliance. If conditions are present to warrant the necessity of a properly executed Groundwater Hazard Statement, SELLER shall provide BUYER, on the date of Closing, a properly executed Groundwater Hazard Statement showing no wells, private burial sites, solid waste disposal sites, private sewage disposal system, hazardous waste and underground storage tanks on the Property.

9. **DEED.** Upon payment of the Purchase Price, SELLER shall convey the Property to BUYER by Corporate Warranty Deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement. General warranties of the title shall extend to the time of delivery of the deed excepting liens and encumbrances suffered or permitted by BUYER.

10. **USE OF PURCHASE PRICE.** At time of settlement, funds of the Purchase Price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.

11. **REMEDIES OF THE PARTIES.** If BUYER fails to timely perform this Agreement, SELLER may forfeit it as provided in the Iowa Code (Chapter 656), and all payments made shall be forfeited; or, at SELLER'S option, upon thirty days written notice of intention to accelerate the payment of the entire balance because of BUYER'S default (during which thirty days the default is not corrected), SELLER may declare the entire balance immediately due and payable. Thereafter this Agreement may be foreclosed in equity and the Court may appoint a receiver. If SELLER fails to timely perform this Agreement, BUYER has the right to have all payments made returned to them. BUYER and SELLER are also entitled to utilize any and all other remedies or actions at law or in equity available to them, and the prevailing parties shall be entitled to obtain judgment for costs and attorney fees.

12. **NOTICE.** Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery or mailed by certified mail, addressed to the parties at the addresses given below.

a. If to Seller, sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. If to Buyer, sent to:

City of Jefferson  
220 N. Chestnut St.  
Jefferson, IA 50129

With a copy to:  
David F. Morain  
Hoyt, Morain & Hommer, P.C.  
101 N. Grimmell Rd.  
Jefferson, IA 50129

13. **ASSIGNMENT.** Upon written notice to SELLER, BUYER shall have the right to assign its interest in this Agreement, in full or in part, and in BUYER's sole discretion, at any time prior to Closing. The rights and obligations created under this Agreement shall be binding upon any assignee to the extent of their interest.
14. **CONTRACT BINDING ON SUCCESSORS IN INTEREST.** This Agreement shall apply to and bind the successors in interest of the parties.
15. **AUTHORIZATION.** Both SELLER and BUYER warrant that each has the authorization to enter into this Agreement.
16. **GENERAL PROVISIONS.** Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall survive the closing. This Agreement contains the entire agreement of the parties and shall not be amended except by a written instrument duly signed by SELLER and BUYER. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context. Delivery of an executed counterpart of this Agreement by facsimile or by email transmission of a PDF or similar copy shall be equally as effective as delivery of an original executed counterpart of this Agreement.
17. **SELLER'S REPRESENTATIONS AND COVENANTS.** SELLER has full power and lawful authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated by this Agreement. The party executing this Agreement on behalf of the SELLER has the requisite lawful authority to bind the SELLER. All action on the part of SELLER necessary for the execution and delivery of this Agreement has been taken and SELLER covenants to take all further action as necessary to complete the transactions. SELLER covenants that neither the execution and delivery of this Agreement nor the performance of its terms will contravene or violate any law, ordinance, or governmental rule or regulation to which SELLER is subject.
18. **NO REAL ESTATE AGENT OR BROKER.** Neither party has used the service of a real estate agent or broker in connection with this transaction.
19. **TIME IS OF THE ESSENCE.** In the performance of each part of this Agreement, time shall be of the essence.
20. **CERTIFICATION.** BUYER and SELLER each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive



Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

21. **EXECUTION.** When signed by SELLER and BUYER, this Agreement shall become a binding contract. The parties may sign by original, electronic signature or facsimile at their discretion

**BUYER:**

CITY OF JEFFERSON

\_\_\_\_\_  
Matt Gordon, Mayor

Attest: \_\_\_\_\_  
Roxanne Gorsuch, City Clerk

**SELLER:**

JOHNSON & SONS, INC.

\_\_\_\_\_  
Erick E. Johnson, President

## We have prepared a quote for you

### Managed Services and Licensing

Quote # 002865

Version 1

Prepared for:

### Jefferson City Hall

Roxanne Gorsuch

[roxanneg@cityofjeffersoniowa.org](mailto:roxanneg@cityofjeffersoniowa.org)

Subscription Software

Description	Recurring	Qty	Ext. Recurring
<b>Remote Management Agent</b> Remote Management Agent - Server or Workstation	\$10.60	10	\$106.00
<b>Fortify Endpoint (EDR) with SOC Svcs</b> Cloud based licensing on a per device basis for workstations and servers - includes SentinelOne Complete and Security Operations Center Services.	\$8.25	10	\$82.50
<b>Microsoft 365 Apps for Business (Monthly Pre-Paid)</b> The Office suite for PC and Mac with apps for tablets and phones, plus 1 TB personal file storage and sharing. Does not include email service. For organizations with up to 300 users.	\$8.30	1	\$8.30
<b>Microsoft 365 Business Standard (Monthly Pre-Pay)</b> The Office suite for PC and Mac with apps for tablets and phones, plus email, instant messaging, HD video conferencing, 1 TB personal file storage and sharing. For organizations with up to 300 users.	\$12.50	6	\$75.00
<b>Exchange Online Plan 1 (Monthly Pre-Paid)</b> Messaging, calendaring, and email archiving plan accessible from Outlook on PCs, the Web and mobile devices.	\$4.00	5	\$20.00
Monthly Subtotal:			\$291.80

Managed Recurring Services

Description	Recurring	Qty	Ext. Recurring
<b>Proactive Services for Managed Services Foundation</b> Proactive Services for Managed Services Foundation	\$168.75	1	\$168.75
<b>Firewall Management</b> Firewall Management includes: -Active 7X24 monitoring and issue alerting -Asset Management -Periodic software/operating system updates -VPN Tunnel Monitoring		1	
<b>Backup Management Service</b> Monitor backup alerts and correct failures, update software as needed to maintain currency for SaaS and other Cloud backup solutions. (Server backup monitoring covered in Server Remote Management) Quantity beyond one is to scale for higher user counts		1	

Managed Recurring Services

Description	Recurring	Qty	Ext. Recurring
<b>Technology Review - Annual Service - SMB</b> Annual Technology Review Services		0.25	
<b>Server Remote Management (Per Server)</b> Proactive Remote Server Management Services for Servers including: -Proactive monitoring and reporting -Operating system patching -AV/AMP maintenance -Asset Tracking -Backup Management Migrations, adds, moves, changes, incident response (support) - SOLD SEPARATELY	\$115.00	1	\$115.00
Monthly Subtotal:			\$283.75

## Terms

**SUBSCRIPTION SOFTWARE and PRODUCT PRICES:** Pricing is provided at today's current price. Prices are subject to change at any time, based on vendor pricing changes and product availability.

**TRAVEL/EXPENSES:** Travel time will be invoiced at 1/2 the hourly rate and actual mileage (IRS max allowable rate per mile) will be invoiced as incurred from the closest ICE office location unless Client is located in the same town as the primary office location, in which case travel is included in the hourly service fees. From time to time "small" supplies (adapters, cables, etc.) may also be required out of ICE inventory or from local sources to complete a project - those expenses will be invoiced as incurred and detail will be provided to justify the expense.

**MANAGED SERVICES SCOPE:** Limited to the services described herein and any included attachments.

**AUDITS:** ICE shall periodically review the counts and quantities of licenses, users and devices and will adjust fees to reflect the actual quantities. Proactive services will be reviewed on an annual basis and adjusted if there is significant growth or decline in number of users, servers, networking equipment, locations, etc.

**INITIAL TERM / AGREEMENT:** Beginning on the first of the month following acceptance and shall continue for 24 months.

**RENEWALS:** This agreement and associated fees shall auto-renew at the end of the initial term and every year thereafter for a period of 12 months.

**RATE CHANGES:** Service fees and rates are reviewed and adjusted annually using the process outlined in the Master Services Agreement.

**CANCELLATION:** Client or ICE may cancel the agreement without cause after the Initial Term with at least a 90-day written notice from an officer of Client or ICE indicating the preferred date of termination.

**PER-INCIDENT SUPPORT AND PROJECT FEES:** The fees in this agreement do not include support or project related services. Any support or project requests will be invoiced on a time and materials basis at current rates.

## Managed Services and Licensing



Prepared by:  
**Anatomy IT**  
Skye Ball  
(877) 754-8420  
Fax 641-628-8842  
[skye.ball@anatomyit.com](mailto:skye.ball@anatomyit.com)

Prepared for:  
**Jefferson City Hall**  
220 N Chestnut  
Jefferson, IA 50129  
Roxanne Gorsuch  
(515) 386-3111  
[roxanneg@cityofjeffersoniowa.org](mailto:roxanneg@cityofjeffersoniowa.org)

Quote Information:  
**Quote #: 002865**  
Version: 1  
Delivery Date: 12/14/2022  
Expiration Date: 02/06/2023

## Monthly Expenses Summary

Description	Amount
Subscription Software	\$291.80
Managed Recurring Services	\$283.75
Monthly Total:	\$575.55

**\*This is not an invoice... Please do not pay based on this quote.\***

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders due to pricing or other errors.

The terms and conditions of the Master Service Agreement is hereby incorporated by reference herein as if set forth herein. The Master Service Agreement can be found at <https://www.icetechnologies.com/msa>.

### Anatomy IT

Signature: *Skye Ball*  
Name: Skye Ball  
Title: Product Quoting & Procurement Specialist  
Date: 12/14/2022

### Jefferson City Hall

Signature: \_\_\_\_\_  
Name: Roxanne Gorsuch  
Date: \_\_\_\_\_



## MASTER SERVICE AGREEMENT

ON THIS DAY, THIS MASTER SERVICE AGREEMENT (hereinafter "*Agreement*") is made and entered into by and between ICE Technologies, Inc., an Iowa corporation ("**ICE**" or "**Provider**"), and the person or entity for which the quote to which this Agreement is attached or reference being the "**Client**".

### Background:

WHEREAS, ICE is engaged in certain business activities, including the provision of consulting Services (as defined below) to small and medium sized businesses.

WHEREAS, Client desires to engage ICE, and ICE desires to be engaged by Client, to provide such consulting Services from time to time upon the terms and subject to the conditions set forth in this Agreement, and as the case may be, by Quotes (as defined below) specifying the details of the Services.

WHEREAS, In consideration of the mutual promises and agreements set forth herein, ICE and Client hereby agree as follows:

### Agreement:

#### 1. Services.

1.1. This Agreement shall serve as a master agreement between the parties. This Agreement sets forth the basic terms that shall apply to the provision of consulting services, including, without limitation, assistance in project planning and management, strategic advisory, systems analysis and design, configuration support, diagnosis, coding and testing, performance tuning, performance measurement, consultation, operations, implementation, integration, documentation, and other related consulting and technical tasks (the "**Services**") by ICE during the term of this Agreement. The specific details of each assignment as well as any document, report, data to be generated to Client ("**Deliverables**") will be separately negotiated and specified in a written form attached to this Agreement (a "Quote") without having to renegotiate the basic terms and conditions herein.

1.2. Each Quote, when executed by the parties, shall be attached hereto and by reference incorporated herein. ICE acknowledges and agrees that Client or its Affiliates are not required to enter into any further Quotes under this Agreement and there may be periods of time during the term of this Agreement when no Services are being provided.

1.3. ICE shall propose an estimate of costs, schedule and method of payment upon Client's request, to perform Services (a "**Quote**" to Client or any entities which directly or indirectly controls or is controlled by Client (an "**Affiliate**").

#### 2. Changes.

2.1. Either party may request changes to a Quote by preparing and submitting a written proposal ("**Change Request**"), which sets forth any modifications needed to complete the applicable Quote. An executed Change Request or other written agreement approved and signed by both parties is the only means of modifying a Quote. When both parties sign the Change Request, the change will become a part of the Quote as of the date of its signature. The most recent Change Request will modify and take precedence over any inconsistent terms of either the Quote or any previous Change Request. Neither party is obligated to execute a Change Request but both parties agree to use reasonable commercial efforts to address and resolve any Change Request.

2.2. In addition to the Change Request procedure set forth above, ICE may periodically evaluate service upgrades and changes, and in the event that these evaluations identify ways in which ICE may improve performance or service at no additional cost to Client, ICE may implement them without a Change Request or Change Authorization.

#### 3. People.

3.1. ICE shall ensure that its employees or approved subcontractors ("ICE Personnel") have the necessary skill, experience, qualifications, expertise, and education to perform the applicable Services. ICE shall be fully responsible for the management, compensation and performance of ICE Personnel, and the filing of any and all returns and reports and the withholding and/or payment of all applicable federal, state and local wage tax, or employment related taxes, including, but not limited to, income taxes, gross receipt taxes, taxes measured by income, social security taxes and unemployment taxes for ICE and ICE Personnel.

3.2. Notwithstanding the foregoing, ICE Personnel shall adhere in all material respects to Client's reasonable supervision, policies and procedures while performing the Services. ICE represents and warrants that each ICE Personnel has undergone a criminal background check and that such background check will be made available to Client upon request.

3.3. Except as provided in a Quote, ICE may reassign any ICE Personnel or otherwise remove any ICE Personnel in its discretion and ICE shall notify Client of such ICE Personnel being unavailable with as much prior written notice as reasonably practicable and explain (to the extent legally permitted) in such notice the reasoning for the removal of such ICE Personnel.

#### 4. Client Responsibilities and Cooperation.

4.1. Client acknowledges that the successful and timely rendering of the Services will require the good faith cooperation of Client. Client will provide staff and resources necessary to satisfy all its responsibilities and obligations with respect to the milestones set forth in the applicable Quote, including assigning a management contact who will serve as ICE's primary contact with Client and who shall have full authority to approve and validate on Client's behalf matters under the Agreement.

4.2. Client shall supply ICE Personnel with suitable work facilities and will furnish the personnel with supplies and equipment reasonably needed to perform their assigned tasks. Further and subject to the terms and conditions of this Agreement, Client agrees that the ICE personnel shall be provided reasonable access to the appropriate personnel, systems, networks, databases and applications required to perform their tasks. Client shall provide all appropriate and necessary information with respect to Client's IT environment in a complete and accurate manner to ensure successful deployment, installation and implementation of the Services.

4.3. The provision of the aforementioned facilities, access and information are essential to ICE's ability to perform Services in a timely manner and at the pricing defined herein. In the event of Client's breach of any of its obligations under the Agreement, ICE will provide written notice of breach of its obligations under the Agreement to Client. If Client fails to promptly remedy such breach, ICE may terminate the contract under Section 12.5 herein and ICE may collect and/or retain any and all fees for Services delivered up to date of termination and/or any early termination fees provided for herein.

4.4. Client agrees to cooperate with ICE, and to use best efforts, to comply with terms of software licenses and other contracts that ICE enters into from time to time with various software providers and other service providers, as part of ICE's furnishing of Services to Client. ICE expects to enter into software licenses with software providers on the same standard terms that are required of any licensed commercial user, including by example provisions prohibiting the copying or reselling of the software, reverse-engineering the software, or using it for any illegal purpose or other purpose for which it is not intended.

4.5. Client shall not knowingly use ICE's or any third-party vendor's system in any way that violates Federal, State, Local, or International Law. This prohibits, but is not limited to, any actions which are threatening, obscene, defamatory, or which violate trade secret, copyright, or patent protection, or rights of privacy or publicity, or which result in the spread of computer viruses, or other damaging programs or data files. In the course of monitoring for individuals improperly using the Services or in the course of system maintenance, the activities of authorized individuals of Client may be monitored.

4.6. If ICE purchases equipment ("Equipment") for use in providing Services to Client during the Term of the Agreement or any renewal or extension thereof (regardless of where such "Equipment" is located, including at Client's offices), and such Equipment is not specifically invoiced to and paid for by Client, then: (i) the Equipment will continue to belong to ICE; (ii) ICE shall service the Equipment during such Term, renewal or extension, in accordance with its service policies described in the Quote or in any other attachments to this Agreement and (iii) Client agrees:



(a) to use the Equipment only for the purposes of receiving the Services provided by ICE, and for no other purpose; (b) to prevent any connections to the Equipment which are not expressly authorized by ICE; (c) to prevent tampering, alteration, or repair of the Equipment by any person other than ICE or ICE's authorized personnel, and (d) to assume complete responsibility for improper use, damage or loss of such Equipment regardless of cause except for damage caused by ICE, or its employees or third party vendors). Client authorizes ICE and its employees, agents, contractor's representatives, and vendors to enter Client's premises, with reasonable notice and during normal business hours (or as otherwise authorized by Client), in order to install, maintain, repair, and/or remove any Equipment, as applicable, and/or to perform the agreed Services. Upon Agreement termination or expiration without renewal or extension, Client must return the Equipment with paid shipping to ICE in the same condition, except for normal wear and tear, that it was provided in, and will be responsible for any damaged or unrecoverable hardware. The Client will be given thirty (30) days to return all Equipment. If hardware is not returned within the thirty (30) day grace period, Client shall pay ICE the original cost of the Equipment and any and all costs or expenses incurred by ICE in connection with retrieving said Equipment.

4.7. Client acknowledges that some of the Services are priced based on levels of user counts. Client certifies that its user counts fall within the specified levels identified in the Quote(s), or on any attachment or exhibit attached to the Quote(s). Client further acknowledges that it is the Client's responsibility to inform ICE if and when user counts increase so that pricing may be increased accordingly. Failure to notify ICE of such changes is a violation of U.S. software license laws and a material breach of the terms of this Contract.

5. Testing and Acceptance. Testing and acceptance of Deliverables shall be completed in accordance with the methodology, processes and procedures set forth in the applicable Quote.

6. Payments. In consideration for the Services rendered by ICE to Client, Client will make payments to ICE in accordance with this Agreement and the applicable Quote ("**Contract Price**") as follows:

6.1. All work performed as a result of this Agreement and the applicable Quote will be on a time and material basis for such services, unless otherwise specifically set forth in the Quote. Time charges quoted are for work performed during normal working hours, 8:00 a.m. - 5:00 p.m. Monday through Friday, excluding holidays. Unless specifically addressed in the Quote and/or mutually agreed upon by ICE and Client, any work required on a holiday or outside of normal working hours will be billed at one and one half (1.5) times the time rate for normal working hours.

6.2. In addition to the stipulated service charges, Client will pay, to the extent incurred by ICE hereunder or applicable Quote, reasonable out-of-pocket expenses incurred in performing the Services such as long-distance telephone charges, postage, and shipping. Unless otherwise specifically provided in a Quote, reasonable travel and living expenses incurred by ICE Personnel for required travel outside ICE Personnel's home metropolitan area to a Client's site will be billed to Client. ICE shall provide all reasonably requested information by Client to verify such costs.

6.3. Invoices will be rendered in accordance with the terms of the Quote. Terms are thirty (30) days net from date of invoice. Unless Client reasonably disputes any invoice in writing, ICE shall have the right to assess a monthly service charge on the unpaid balance of any delinquent invoice at the rate of one and one-half (1.5%) percent per month or if less, the maximum amount permitted by law. Other sections of this Agreement or any Quote notwithstanding, ICE reserves the right to discontinue Services to Client in the event of nonpayment of undisputed fees for Services on the part of Client, provided that ICE notifies Client in writing of such nonpayment and Client does not cure such nonpayment within fifteen (15) days after such notice.

6.4. In the event Client disputes any invoice in whole or in part, Client shall notify ICE of the dispute as soon as practicable, but in no event later than fifteen (15) days from receipt of such invoice, and shall pay the undisputed portion in accordance with Section 6.3 above without abatement, reduction or set off of any nature.

6.5. Client shall be responsible for the payment of all federal, state or local sales, use, property or like taxes (but not including state or federal income taxes of ICE) of any nature that may be applicable as a result of this Agreement.

6.6. Any Quote that is six months past the Quote Effective Date and with work yet to be performed, the Quote Fees (contract price) will be modified by ICE on the 1<sup>st</sup> of January every year in the aggregate to reflect: (1) any percentage increases in the Consumer Price Index (CPI-U) as published and updated by the U.S. Department of Labor – Bureau of Labor Statistics (specifically found at [www.bls.gov](http://www.bls.gov)) found under the expenditure category description of

"Services, Less Energy Services" and (2) other significant local IT labor, software licensing and hardware maintenance related market trends.

7. Limited Warranty

7.1. ICE represents and warrants that (i) the Services shall be provided in a professional and workmanlike manner in compliance with all applicable laws, rules and regulations in all material respects; (ii) it has all necessary rights and authority to execute and deliver this Agreement and perform its obligations hereunder and (iii) neither this Agreement nor ICE's performance of its obligations hereunder will place ICE in breach of any other contract or obligation of ICE and (iv) that the Services and Deliverables created by and provided by ICE will not infringe any patent, trade secret or copyright, or misappropriate a trade secret or otherwise violate any other proprietary or contractual right of a third party.

7.2. Client represents and warrants that (i) it has all necessary rights and authority to execute and deliver this Agreement and perform its obligations hereunder; (ii) neither this Agreement nor Client's performance of its obligations hereunder will place Client in breach of any other contract or obligation and will not violate the rights of any third party and (iii) Client will not use the Services and Deliverables in any manner which is in violation of any law or regulation or the rights of any other person.

7.3. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1 HEREIN, ICE DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT ICE WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS, OR THAT THE SERVICE WILL BE COMPLETELY SECURE. THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE TEMPORARY LOSS OF SERVICE AVAILABILITY. ICE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CLIENT'S CONTENT OR THIRD-PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES. ICE SHALL HAVE NO OBLIGATION WITH RESPECT TO A WARRANTY CLAIM (i) IF NOTIFIED OF SUCH A CLAIM AFTER THE WARRANTY PERIOD OR (ii) IF THE CLAIM IS THE RESULT OF THIRD-PARTY HARDWARE OR SOFTWARE FAILURES, OR THE ACTIONS OF CLIENT OR A THIRD PARTY.

FOR ANY BREACH OF THE SERVICES WARRANTY, CLIENT'S EXCLUSIVE REMEDY AND ICE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ICE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CLIENT MAY END THE DEFICIENT SERVICES AND ICE WILL REFUND TO CLIENT THE FEES FOR THE TERMINATED SERVICES THAT CLIENT PRE-PAID TO ICE FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

TO THE EXTENT NOT PROHIBITED BY LAW, CUSTOMER ACKNOWLEDGES THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS BY THE ICE OR ANY THIRD-PARTY VENDORS' INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THAT THOSE THIRD-PARTY VENDORS DISCLAIM ANY AND ALL LIABILITY, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL, ARISING FROM THE SERVICES.

ICE MAY LINK TO OR OFFER THIRD-PARTY SERVICES FOR RESALE. ANY PURCHASE OF, ENABLING OF, OR ENGAGEMENT OF THIRD-PARTY SERVICES, INCLUDING BUT NOT LIMITED TO IMPLEMENTATION, CUSTOMIZATION, CONSULTING SERVICES, E-MAIL, WEB HOSTING, SERVER HOSTING, PHONE SERVICES, AND ANY EXCHANGE OF DATA BETWEEN CLIENT AND ANY THIRD-PARTY SERVICE, IS SOLELY BETWEEN CLIENT AND THE APPLICABLE THIRD-PARTY SERVICE PROVIDER AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SUCH THIRD-PARTY PROVIDERS. ICE DOES NOT WARRANT THIRD-PARTY SERVICES AND IS NOT RESPONSIBLE OR LIABLE FOR SUCH SERVICES OR ANY LOSSES OR ISSUES THAT RESULT AS CLIENT'S USE OF SUCH SERVICES. IF CLIENT PURCHASES, ENABLES OR ENGAGES ANY THIRD-PARTY SERVICES FOR USE IN CONNECTION WITH THE SERVICES, CLIENT ACKNOWLEDGES THAT COMPANY MAY ALLOW PROVIDERS OF THOSE THIRD-PARTY SERVICES TO ACCESS CLIENT'S DATA USED IN CONNECTION WITH THE SERVICES AS REQUIRED FOR THE INTEROPERATION OF SUCH THIRD-PARTY SERVICES WITH THE SERVICES. CLIENT REPRESENTS AND WARRANTS THAT CLIENT'S USE OF ANY THIRD-PARTY SERVICES SIGNIFIES CLIENT'S INDEPENDENT

CONSENT TO THE ACCESS AND USE OF CLIENT'S DATA BY THE THIRD-PARTY SERVICES PROVIDER, AND THAT SUCH CONSENT, USE, AND ACCESS IS OUTSIDE OF PROVIDER'S CONTROL. ICE WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DISCLOSURE, MODIFICATION OR DELETION OF DATA RESULTING FROM ANY SUCH ACCESS BY THIRD-PARTY SERVICE PROVIDER.

8. Indemnification.

8.1. Subject to the limitations set forth in this Agreement, each party agrees to indemnify, defend, and hold the other party and its successors, officers, directors, and employees harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses, and damages (including attorney's fees) arising out of, or in connection with, a breach of this Agreement by such party.

8.2. Furthermore, ICE agrees to indemnify, hold harmless and defend Client, its Affiliates, and each of their employees, officers, directors, customers, owners, agents, representatives, consultants, and subcontractors (the "**Indemnified Parties**") from and against all alleged injuries, liability, claims, causes of action, damages, losses, suits, proceedings, expenses (including attorneys' fees) and costs arising out of or related in any manner to claims by third parties against the Indemnified Parties resulting from: (i) ICE or ICE Personnel violating any Federal, state or local law, rule or regulation; or (ii) damages to physical property or injuries to persons, caused by or resulting from the willful or negligent acts or omissions of ICE or ICE Personnel; or (iii) .

8.3. Furthermore, Client agrees to indemnify, hold harmless and defend Client, its Affiliates, and each of their employees, officers, directors, customers, owners, agents, representatives, consultants, and subcontractors (the "**Indemnified Parties**") from and against all alleged injuries, liability, claims, causes of action, damages, losses, suits, proceedings, expenses (including attorneys' fees) and costs arising out of or related in any manner to claims by third parties against the Indemnified Parties resulting from: (i) ICE's use, access or modifications of any software that Client have requested that ICE use, access or modify as part of the Services infringes any patent, copyright, trademark, trade secret or other intellectual property right, or (ii) related to Client's software licensing and software licensing compliance.

9. LIMITATION OF LIABILITY.

9.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, EACH PARTY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST SAVINGS, LOST PRODUCTIVITY, LOSS OF DATA, LOSS FROM INTERRUPTION OF BUSINESS, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE THAT RESULT FROM THE USE OR INABILITY TO USE THE SERVICES OR FROM MISTAKES, THE SERVICES NOT MEETING CLIENT'S REQUIREMENTS OR EXPECTATIONS, OMISSIONS, TRANSLATIONS AND SYSTEM WORDINGS, FUNCTIONALITY OF FILTERS, MIGRATION ISSUES, INTERRUPTIONS, DELETION OF FILES OR DIRECTORIES, HARDWARE FAILURES, UNAVAILABILITY OF BACKUPS, ERRORS, DEFECTS, DELAYS IN OPERATION, TRANSMISSION, SECURITY BREACH, OR THIRD-PARTY SERVICE FAILURES, EVEN IF PREVIOUSLY ADVISED OF THEIR POSSIBILITY AND REGARDLESS OF WHETHER THE FORM OF ACTION IS IN CONTRACT, TORT OR OTHERWISE. ICE WILL NOT BE LIABLE FOR ANY KIND OF AUTHORIZED ACCESS OR ANY HARM THAT MAY BE CAUSED BY CLIENT'S ACCESS TO THIRD PARTY APPLICATION PROGRAMMING INTERFACES OR THE EXECUTION OR TRANSMISSION OF MALICIOUS CODE OR SIMILAR OCCURRENCES, INCLUDING WITHOUT LIMITATION, DISABLING DEVICES, DROP DEAD DEVICES, TIME BOMBS, LOGIC BOMBS, TRAP DOORS, TROJAN HORSES, WORMS, VIRUSES, HACKERS, PHISHERS, CRYPTO-LOCKERS, RANSOMWARE, AND SIMILAR MECHANISMS, EVEN IF ONE PARTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. CLIENT AGREE THAT THE TOTAL LIABILITY OF ICE AND CLIENT'S SOLE REMEDY FOR ANY CLAIMS REGARDING THE SERVICES UNDER THIS AGREEMENT, INCLUDING ANY SCHEDULE, OR OTHERWISE IS LIMITED TO PROCEEDS IN SECTION APPLICABLE INSURANCE COVERAGE.

9.2. THE REMEDIES OF CLIENT SET FORTH HEREIN ARE EXCLUSIVE, AND EXCEPT IN THE CASE OF ICE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF ICE WITH RESPECT TO THIS AGREEMENT AND SERVICES AND DELIVERABLES FURNISHED HEREUNDER, AND IN CONNECTION WITH THE PERFORMANCE OR BREACH THEREOF, WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY, PRODUCT S LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF (1) THE PROCEEDS OF ANY ICE'S PROFESSIONAL LIABILITY INSURANCE MAINTAINED BY ICE UNDER ITS APPLICABLE INSURANCE POLICIES, TOGETHER WITH ANY SELF-INSURED RETENTION AMOUNTS IN CONNECTION WITH THOSE POLICIES, OR (2) THE AMOUNTS PAID

BY CUSTOMER TO ICE UNDER THIS AGREEMENT AND ALL SERVICE DESCRIPTIONS DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF ANY SUCH CLAIM. IN THE EVENT OF AN INSURANCE COVERAGE DISPUTE, ICE IS NOT REQUIRED TO DISPUTE THE COVERAGE DETERMINATION AND IS NOT REQUIRED TO FILE A DECLARATORY JUDGMENT ACTION.

10. Confidentiality and Non-Disclosure.

10.1. ICE and Client acknowledge that materials provided and/or otherwise made available by ICE and Client to the other may contain confidential or proprietary information, embody substantial creative efforts or contain valuable trade secrets, ("**Confidential Information**").

10.2. ICE and Client agree:

10.2.1. Not to disclose any Confidential Information, in whole or in part, either directly or indirectly, to any third party without the prior written consent of the other.

10.2.2. To not use any Confidential Information for any purpose except as necessary to perform its obligations under this Agreement or applicable Quote, without the prior written consent of the other party in each instance.

10.2.3. Not to assist any third party in making commercial use of any Confidential Information, in whole or in part, without prior written consent of the other.

10.2.4. To ensure that ICE and Client employees, agents and subcontractors are all given access to any Confidential Information received from the other party only on a need-to-know basis for the purpose of this Agreement and shall be required to comply with the requirements of confidentiality set forth in this Agreement

10.2.5. The obligations set forth in this section shall not apply to the extent that the other party's Confidential Information is required to be disclosed by law, subpoena, court order or other governmental authority; provided, however, that the disclosing party shall (i) deliver prompt written notice of such requirement so that the other party may seek a protective order or other appropriate relief; and (ii) shall disclose only that information required to be disclosed by law, subpoena, court order or other governmental authority.

10.3. Confidential Information does not include any of the following, for which neither ICE nor Client shall bear any responsibility for its disclosure, inadvertent or otherwise:

10.3.1. Information that at the time of disclosure is generally available to the public;

10.3.2. Information that after disclosure becomes generally available to the public by publication, or otherwise, through no breach of this Agreement;

10.3.3. Information that was in the possession of the receiving party prior to disclosure by the disclosing party, which information was not acquired directly or indirectly from the disclosing party;

10.3.4. Information that the receiving party receives from a source other than disclosing party or a third party under no obligation to maintain such information confidential; and

10.3.5. Information as may be authorized by the disclosing party to be disclosed.

10.4. ICE and Client acknowledge that the disclosure of Confidential Information in violation of this Section 10 will cause irreparable injury to the non-breaching party and its personnel that is not adequately compensable in monetary damages. Accordingly, ICE and Client acknowledge and agree that the non-breaching party will be entitled to injunctive relief without any requirement to post bond or other security therefor in any court of competent jurisdiction, in addition to any other remedies available in law or equity.

10.5. Except as otherwise provided herein, Confidential Information shall remain the property of the disclosing party.

10.6. The obligation of confidentiality in this Section 10 shall terminate three (3) years after receipt of such information/ termination of this Agreement; provided however, that ICE shall retain the right to use the residuals

resulting from access to or work with such Confidential Information. "Residuals" means information (ideas, concepts, know-how or techniques) in non-tangible and non-specific form, which may be retained by a person who had rightful access to the Confidential Information without conscious attempt to memorize this information and does not include written materials.

11. Intellectual Property.

11.1. **ICE-Owned Works.** Notwithstanding the forgoing, Client acknowledges that ICE possesses certain inventions, processes, know-how, trade secrets, improvements, other intellectual properties and other assets, including, but not limited to; [analytical methods, procedures and techniques, procedure manuals, personnel data, financial information, computer technical expertise and software], that have been independently developed by ICE and that relate to its business or operations (collectively "**ICE's Property**"). ICE and Client agree that any of ICE's Property or improvements thereto that are used, improved, modified or developed by ICE under or during the term of this Agreement are the sole and exclusive property of ICE.

11.2. **Client-Owned Works.** Any original work, regardless of medium, that ICE delivers to Client that is based on specifications provided by Client and that does not consist of modifications to an existing ICE Work (as defined below) is a "Client Work," is to be deemed a "work made for hire" under U.S. law, and is the sole, exclusive property of Client, except for the following items, which do not constitute Client Works:

11.2.1. Software, including but not limited to any proprietary code, source code and object code, that is subject to third-party license agreements;

11.2.2. Those portions of any deliverable consisting of information in the public domain;

11.2.3. Those portions of any deliverable consisting of generic ideas, concepts, business know-how and work processes, and techniques within the computer design, support and consulting business generally; and

11.2.4. Those portions of any deliverable consisting of general computer consulting knowledge and information ICE had or acquired during the performance of its Service for Client, not including any proprietary business information of Client, conveyed to ICE by Client.

11.2.5. To the extent any Client Work may be deemed not to be a "work made for hire" under applicable law, ICE hereby irrevocably assigns and conveys to Client all of its copyright in that Client Work. ICE further hereby irrevocably assigns to Client all of its patent, copyright, trade secret, know-how and other proprietary and associated rights in any Client Work.

11.3. **License to Client Works.** Client hereby grants ICE a limited, non-exclusive, revocable, royalty-free license to use any Client Works for ICE's internal business purposes during the term of this MSA.

11.4. **License Restrictions.** Client shall not:

11.4.1. Modify, copy or create derivative works based on the Services or on the ICE Property;

11.4.2. Build a product or service using similar ideas, features, functions or graphics of the Service, or

11.4.3. Copy any ideas, features, functions or graphics of the Service.

11.4.4. Additional license restrictions may be set forth in a Quote.

11.5. **Improvements to Services.** Client hereby assign to ICE any and all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client or Client's users relating to any proposed improvements of or modifications to the Services.

12. Expiration and Termination.

12.1. This Agreement will commence on the Effective Date and shall extend for a period of one (1) year following the Effective Date and continue for successive one (1) year periods thereafter (the "**Term**").

12.2. Either party may terminate this Agreement upon written notice of termination at least one hundred eighty (180) days prior to the end of the initial term or any renewal thereof; provided that if the term of a Quote

extends past the termination of this Agreement, the term of this Agreement shall extend until the expiration or completion of such Quote.

12.3. Notwithstanding any provision herein to the contrary, upon termination of this Agreement, Client shall be obligated to immediately pay all amounts due hereunder which are not subject to reasonable dispute, including amounts for Services rendered and costs incurred through the effective date of termination. ICE shall have the ability to raise its fees as it relates to any new Quote submitted under this Agreement.

12.4. Client shall have the right to terminate the Services being performed under Section 12.2 pursuant to any particular Quote, according to the terms of that specific Quote, without terminating the entire Agreement; provided, however, Client shall remain liable to pay for all undisputed fees for such Services rendered and reimbursable costs incurred through the date of termination of a Quote.

12.5. Should either party default in the performance of any obligation under this Agreement or breach any provision contained in this Agreement and not correct or substantially cure the default or breach within thirty (30) days after receipt of written notice by the other party of such default or breach, then in addition to the remedies set forth herein, this Agreement may be terminated by the non-defaulting/non-breaching party. In the event either party ceases its business operations, makes a general assignment for the benefit of creditors, is adjudged a bankrupt, or becomes insolvent, then the other party may, at its sole discretion, terminate this Agreement immediately upon giving written notice of termination to the other party. In addition, in the event ICE determines that the Client is in breach of Section 4.5, ICE will notify the Client in writing immediately. The Client will have 10 business days from notification to resolve the Breach in a manner satisfactory to ICE. If still unresolved after 10 business days, ICE reserves the right to immediately suspend or terminate Client's account without additional notification and shall be entitled to any compensation or early termination fees provided for herein.

13. Solicitation.

During the term of this Agreement and for a period of one year following termination thereof, (i) ICE agrees not to solicit for employment any Client employee contacted by ICE as a result of the performance of this Agreement, and (ii) Client agrees not to solicit for employment during such period any ICE Personnel assigned to perform work under this Agreement or any Quote. Notwithstanding the foregoing, Client shall not be precluded from (a) hiring an employee of ICE who independently approaches Client, or (b) conducting general recruiting activities, such as participation in job fairs or publishing advertisements in publications or on Web sites for general circulation. Client acknowledges that injury resulting from any breach of this provision would be significant and irreparable and that it would be extremely difficult to ascertain the actual amount of damages resulting from such breach. Therefore, in the event of a violation of this provision, in addition to any other right ICE may have at law or in equity, Client shall make a one-time payment to ICE in the amount of one hundred and fifty percent (150%) of the affected employee's base salary for one year. The Parties agree that such amount is not intended as a penalty and is reasonably calculated based upon the projected costs the injured party would incur to identify, recruit, hire and train suitable replacements for such personnel.

14. Independent Contractor.

The business relationship of ICE to Client is that of an independent contractor and not of a partner, joint venture, employer, employee or any other kind of relationship. Neither ICE nor any of ICE Personnel is entitled to any of the benefits that Client provides to its employees, including without limitation insurance plans, pension plans, bonus plans or any other employee benefits provided by Client.

15. Force Majeure.

Except with respect to the payment of monies due under this Agreement, neither party shall be considered in default of the performance of any obligation hereunder to the extent that the performance of such obligation is prevented or delayed by fire, flood earthquake, hurricane, explosion, disease, contamination, strike, acts of terrorism, war, insurrection, embargo, government requirement, civil or military authority, act of God, or any other event, occurrence or condition which is not caused, in whole or in part, by that party, and which is beyond the reasonable control of that party.

16. Insurance.

- 16.1. Client Obligations: Client shall maintain a minimum of One Million Dollars (US \$1,000,000) in insurance coverage through its respective carriers. Such insurance must include, at a minimum, commercial general liability, workers compensation coverage, and first party cyber liability.
- 16.2. ICE Obligations: ICE agrees to maintain during the Term, professional liability insurance including technology errors and omissions with aggregate limits of at least One Million Dollars (US \$1,000,000). Customer's insurance shall be primary over ICE's insurance. Customer agrees to waive and to require its insurers to waive any rights of subrogation or recovery they may have against ICE, its agents, officers, directors and employees.
17. Client Virtual Machine Configurations.
- 17.1. All Client virtual machine data shall belong to Client. However, Client agrees that all virtual machines and configurations of Client's network shall belong to ICE as ICE's Intellectual Property, and ICE will not transfer to Client any virtual machines or information regarding configurations. Client also agrees to keep information regarding ICE's virtual machines and configurations confidential.
18. Client Data Security & Privacy.
- 18.1. In addition to its other confidentiality obligations under an applicable Service Attachment, ICE shall not use, edit or disclose to any party other than Client any electronic data or information stored by ICE, or transmitted to ICE, using the Services ("Client Data"), except as otherwise requested by Client, or required by court order or applicable law. For purposes of this provision, all data stored on the virtualized machines assigned to Client, including locally stored personal data of individual employees, will be considered Client Data by ICE.
- 18.2. As between ICE and Client, all Client Data is owned exclusively by Client. Client Data constitutes Confidential Information subject to the terms of the MSA. ICE may access Client's User accounts, including Client Data, solely to respond to service or technical problems or otherwise at Client's request.
19. Security and Regulatory Recommendations.
- 19.1. From time to time, ICE may make recommendations regarding regulatory compliance, safety and security related to Client's network and practices (e.g., multi-factored authentication). If Client fails to adopt or implement the recommended protocols, Client is responsible for any and all damages related to regulatory, security, privacy, or data protection, including but not limited to fines, data breach notification, malware or ransomware costs, restoration, forensic investigation, restoring backups, or any other costs or damages related to Client's refusal to implement the recommended protocols.
20. Miscellaneous.
- 20.1. **Assignment.** This Agreement shall inure to the benefit of and be binding upon ICE and Client, and their permitted successors and assigns, but neither party shall assign, delegate or transfer, in whole or part, its obligations under this Agreement, except: (i) with the other party's prior written consent which shall not be unreasonably withheld; or (ii) as part of a sale of substantially all of a party's assets, a merger, stock sale, or other change of control under the law.
- 20.2. **Non- Exclusive Engagement.** ICE reserves the right to offer services of any kind or nature whatsoever to any person or entity as ICE in its sole discretion, deems appropriate. Client acknowledges that this is a non-exclusive agreement, and Client is aware that ICE markets its services to other clients.
- 20.3. **Applicable Law.** This Agreement and all Statements of Work will be governed by, construed, interpreted and enforced in accordance with the laws of the State of Iowa, excluding all rules on conflict of laws that would apply the substantive law of another jurisdiction. All disputes arising out of or related to this Agreement, the Statements of Work, and/or the Services shall be exclusively brought and exclusively maintained in the State courts located in Marion County, Iowa, or if jurisdiction is appropriate, the United States District Court for the Southern District of Iowa. Each party consents to and waives any objection to the exclusive personal jurisdiction and exclusive venue of such State and Federal courts.

20.4. **Prevailing Party.** In the event it becomes necessary for any party hereto to employ legal counsel or to bring an action at law or other proceedings to enforce any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and reasonable attorney's fees from the non-prevailing party.

20.5. **Entire Agreement.** This Agreement and the Quote executed by Client and ICE constitute the entire agreement between the parties relating to the subject matter of this Agreement and supersede all prior oral and written proposals, negotiations, representations, communications and agreements between ICE and Client. In the event of any inconsistency among or ambiguity in, among or between this Agreement, any Quote, any purchase order, or any request for proposal, the following order of precedence shall govern: (1) This Agreement; (2) Quote (except as to the terms specifically identified in a particular Quote as modifying or amending terms of this Agreement, which terms shall control over this Agreement for that Quote only); (3) purchase order and (4) Proposal. No modification or waiver of the provisions of this Agreement shall be valid or binding on either party unless in writing and signed by both parties. No waiver of any term, right or condition under this Agreement on any one occasion shall be construed or deemed to be a waiver or continuing waiver of any such term, right or condition on any subsequent occasion or a waiver of any other term, right or condition hereunder. No person other than the parties hereto or referenced herein is an intended beneficiary of this Agreement.

20.6. **Survival.** The parties' rights and obligations under Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 shall survive the termination of this Agreement.

20.7. **Notices.** All notices from one party to the other will be in writing and will be delivered by addressing the same to the addresses set forth in Quote, or at such other address as either party may specify in writing to the other. Notices shall be sent by overnight courier, certified mail, return receipt requested, or by other means of delivery requiring a written acknowledged receipt. All notices shall be effective upon receipt.

20.8. **Severability.** If one or more of the provisions of this Agreement shall, for any reason, be held invalid, illegal, or unenforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

20.9. **Headings.** The captions, headings and words contained herein are for convenience and reference only and shall in no way affect the meaning or interpretation of this Agreement.

20.10. **Incorporation by Reference.** This Agreement is incorporated by reference into the Quote as if set forth therein.





SMARTER | SIMPLER | CUSTOMER DRIVEN

[www.iowadot.gov](http://www.iowadot.gov)

Local Systems Bureau | 800 Lincoln Way | Ames, IA 50010  
Phone: 515.766.9402 | Email: [Jenifer.Bates@iowadot.us](mailto:Jenifer.Bates@iowadot.us)

January 4, 2023

City of Jefferson  
Attn: Mike Palmer, City Administrator  
220 N Chestnut Street  
Jefferson, IA 50129

Ref: City of Jefferson - FFY 2024 City Bridge Program Award Notice  
BRS-3800(602)--60-37  
S Grimmell Road over Raccoon River  
FHWA Structure No. 006710  
Agreement No. 1-22-HBP-045

Dear Mr. Palmer:

Based on the acceptance notice by the City of Jefferson, I am pleased to confirm that the above referenced bridge has been selected for Federal-aid funding through the City Bridge Program, pending the acceptance of an Iowa DOT Federal-aid Funding Agreement for a City Highway Bridge Program (HBP) Project.

The City HBP is administered on a reimbursement basis. This means all project costs must be paid up-front and then reimbursement is requested from the Iowa DOT for eligible project construction costs. Reimbursement for this project will be limited to 100% of the eligible bridge replacement or rehabilitation construction costs, or a maximum of \$1,500,000 dollars, whichever is less. You can find additional information in our Highway Bridge Programs for Cities and Counties I.M. No. 1.100 online at [https://www.iowadot.gov/local\\_systems/publications/im/1100.pdf](https://www.iowadot.gov/local_systems/publications/im/1100.pdf). If you have further questions about this program or eligible project costs, please contact me.

If you have not already done so, please contact the appropriate Regional Planning Affiliation (RPA) or Metropolitan Planning Organization (MPO) and request that this project be included in their Transportation Improvement Program (TIP) and the Statewide Transportation Improvement Program (STIP) for an upcoming Federal Fiscal Year that begins on October 1. Please see [https://iowadot.gov/systems\\_planning/district-transportation-planners-area-of-responsibility](https://iowadot.gov/systems_planning/district-transportation-planners-area-of-responsibility) for contact information by selecting the area on the map where you City resides. For further assistance, you may also contact the Iowa DOT District Planner for your area, Dakin Schultz at (712) 274-5837. He is also copied on this email.

Attached to this e-mail is an unsigned project agreement. Please review the agreement and exhibit to verify if it follows the intent of the project, particularly the administering agency contact information and funding. If acceptable, obtain the necessary signatures and send a scanned copy of the signed agreement to me at [Jenifer.Bates@iowadot.us](mailto:Jenifer.Bates@iowadot.us) for full execution. **This funding agreement must be signed by the City within 90 days of the date of this email.**

After the agreement is signed by the Iowa DOT, you will work with Christy VanBuskirk, P.E., Project Development Engineer, and Joe Albright, Project Development Technician, during future project development activities. **This project must proceed to an Iowa DOT letting within 3 years of the Iowa DOT signing of the agreement.**

After the project letting, you will work with the Central Region Field Engineer, Brian Catus, P.E., regarding construction and reimbursement activities. Christy, Joe, and Brian are copied on this e-mail.

Guidance for Federal-aid funded project development activities is contained in the Iowa DOT Local Systems Instructional Memorandums, available at: [https://iowadot.gov/local\\_systems/publications/im/imtoc.pdf](https://iowadot.gov/local_systems/publications/im/imtoc.pdf).

Thank-you in advance for a timely response. If you have any questions about this program or the offered funding, please let me know.

Respectfully,



Jenifer J. Bates, P. E.  
Urban Engineer  
Office of Local Systems  
[Jenifer.Bates@IowaDOT.us](mailto:Jenifer.Bates@IowaDOT.us)

cc: Christy VanBuskirk, P.E., Local Systems Project Development Engineer  
Joe Albright, Local Systems Project Development Technician  
Brian Catus, P.E., Central Region - Local Systems Field Engineer  
Dakin Schultz, District Planner  
Wade Weiss, P.E., Greene County Engineer  
Rick Hunsaker, Region XII Council of Governments

Attachment

**IOWA DEPARTMENT OF TRANSPORTATION  
Federal-aid Agreement  
for a City Highway Bridge Program Project**

RECIPIENT: City of Jefferson

Project No: BRS-3800(602)--60-37

Iowa DOT Agreement No: 1-22-HBP-045

CFDA No. and Title: 20.205 Highway Planning and Construction

This is an agreement between the City of Jefferson, Iowa (hereinafter referred to as the CITY) and Greene County, Iowa (hereinafter referred to as the COUNTY) and the Iowa Department of Transportation (hereinafter referred to as the DEPARTMENT). The CITY and COUNTY shall collectively be referred to as the RECIPIENT). Iowa Code Sections 306A.7 and 307.44 provide for the RECIPIENT and the DEPARTMENT to enter into agreements with each other for the purpose of financing transportation improvement projects on streets and highways in Iowa with Federal funds.

The Bridge Formula Program (BFP) and the Surface Transportation Block Grant (STBG) Program make Federal funds available for replacement or rehabilitation of highway bridges on public roads on and off the Federal-aid System. A portion of BFP or STBG funds have been set aside for this purpose and designated as the City Bridge Program. In the event Highway Infrastructure Program (HIP) funding is available, it may be included for this same purpose.

Pursuant to the terms of this agreement, applicable statutes, and 761 Iowa Administrative Code (IAC) Chapter 161, the DEPARTMENT agrees to provide City Bridge Program funding to the RECIPIENT for the authorized and approved costs for eligible items associated with the project.

The RECIPIENT and the DEPARTMENT currently and previously entered into the following agreement(s) for the following funding sources related to the above referenced project:

<b>Funding Source</b>	<b>Agreement No.</b>	<b>Project No.</b>	<b>Full Execution Date</b>
City Bridge HBP	This agreement	BRS-3800(602)--60-37	This agreement
County Bridge HBP	This agreement	BRS-3800(602)--60-37	This agreement

Under this agreement, the parties further agree as follows:

1. The COUNTY shall be the lead local governmental agency for carrying out the provisions of this agreement.
2. All notices required under this agreement shall be made in writing to the appropriate contact person. The DEPARTMENT's contact person will be the Local Systems Project Development Engineer, Christy VanBuskirk, and the Central Region Local Systems Field Engineer, Brian J. Catus. The RECIPIENT's contact person shall be the County Engineer, Wade Weiss.
3. The COUNTY shall be responsible for the development and completion of the following bridge project:
  - A. FHWA Structure Number: 006710
  - B. Location: South Grimmell Road over Raccoon River
  - C. Preliminary Estimated Total Eligible Construction Costs: \$3,400,000
4. The eligible project construction limits shall include the bridge plus grading and/or paving to reach a "touchdown point" determined by the DEPARTMENT. Eligible project costs include only costs associated with actual construction costs within the eligible project construction limits.

5. Costs associated with work outside the eligible project construction limits, routine maintenance activities, operations, and monitoring expenses, are not eligible. In addition, administrative costs, engineering, inspection, legal, right of way, utility relocations, activities necessary to comply with Federal and State environmental or permit requirements, and fees or interest associated with bonds or loans are not eligible.
6. The COUNTY shall receive reimbursement for costs of authorized and approved eligible construction project activities from City Bridge Program funds. The portion of the eligible construction project costs reimbursed by City Bridge Program funds shall be limited to a maximum of 100% of eligible costs or \$1,500,000, whichever is less. Reimbursed costs will be limited to funding made available for cities through the City Bridge Program outlined in 761 Iowa Administrative Code, Chapter 161 and Local Systems Instructional Memorandum ([I.M.](#)) [1.100](#) in place at the time of this agreement being fully executed.
7. The COUNTY shall conduct project development and implementation in compliance with applicable laws, ordinances, and administrative rules. For projects which also include Farm-to-Market funds, the RECIPIENT shall follow all administrative and contracting procedures required for Farm-to-Market projects.
8. The COUNTY and/or CITY shall pay for all project costs not reimbursed with City Bridge Program funds in a manner as mutually agreed upon. The COUNTY and CITY shall also provide the DEPARTMENT with a copy of their cost sharing agreement.
9. The COUNTY and/or CITY shall pay for all project costs not reimbursed with City Bridge Program funds as follows: County HBP funds will be used for the amount over the City Bridge HBP funding.
10. The COUNTY shall let the project for bids through the DEPARTMENT.
11. If any part of this agreement is found to be void and unenforceable, the remaining provisions of this agreement shall remain in effect.
12. It is the intent of both (all) parties that no third-party beneficiaries be created by this agreement.
13. Responsibility for compliance with the Federal and State laws, regulations, policies, or procedures required by this agreement is not assignable without the prior written consent of the DEPARTMENT.
14. The project shall be let to contract within 3 years of the date this agreement is signed by the DEPARTMENT. If not, the RECIPIENT may be in default, for which the DEPARTMENT may revoke funding commitments. This agreement may be extended for a period of 6 months upon receipt of a written request from the RECIPIENT at least 30 days prior to the 3-year deadline.
15. This agreement and the attached Exhibit 1 constitute the entire agreement between the DEPARTMENT and the RECIPIENT concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement shall be made in the form of an addendum to this agreement. The addendum shall become effective only upon written approval of the DEPARTMENT and the RECIPIENT.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date shown opposite its signature below.

RECIPIENT: City of Jefferson

By \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_

Title \_\_\_\_\_

I, \_\_\_\_\_, certify that I am the Clerk of the City, and that \_\_\_\_\_,

who signed said Agreement for and on behalf of the City was duly authorized to execute the same by virtue of a

formal Resolution duly passed and adopted by the City, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed \_\_\_\_\_ Date \_\_\_\_\_  
City Clerk of Jefferson, Iowa

RECIPIENT: Greene County

This agreement was approved by official action of the Greene County Board of Supervisors in official session on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
County Auditor

\_\_\_\_\_  
Chair, Board of Supervisors

IOWA DEPARTMENT OF TRANSPORTATION  
Highway Administration

By \_\_\_\_\_  
Jenifer J. Bates, P.E.  
Urban Engineer  
Local Systems Bureau

Date \_\_\_\_\_, \_\_\_\_\_

**EXHIBIT 1**  
**General Agreement Provisions for use of Federal Highway Funds on Non-primary Projects**

Unless otherwise specified in this agreement, the RECIPIENT shall be responsible for the following:

**1. General Requirements.**

- a. The RECIPIENT shall take the necessary actions to comply with applicable State and Federal laws and regulations. To assist the RECIPIENT, the DEPARTMENT has provided guidance in the Federal-aid Project Development Guide (Guide) and the Instructional Memorandums to Local Public Agencies (I.M.s) that are referenced by the Guide. Both are available on-line at: [https://www.iowadot.gov/local\\_systems/publications/im/lpa\\_ims.htm](https://www.iowadot.gov/local_systems/publications/im/lpa_ims.htm). The RECIPIENT shall follow the applicable procedures and guidelines contained in the Guide and I.M.s in effect at the time project activities are conducted.
- b. In accordance with Title VI of the Civil Rights Act of 1964 and associated subsequent nondiscrimination laws, regulations, and executive orders, the RECIPIENT shall not discriminate against any person on the basis of race, color, national origin, sex, age, or disability. In accordance with Iowa Code Chapter 216, the RECIPIENT shall not discriminate against any person on the basis of race, color, creed, age, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability. The RECIPIENT agrees to comply with the requirements outlined in [I.M. 1.070](#), Title VI and Nondiscrimination Requirements, which includes the requirement to provide a copy of the Subrecipient's Title VI Plan or Agreement and Standard DOT Title VI Assurances to the Department.
- c. The RECIPIENT shall comply with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the associated Code of Federal Regulations (CFR) that implement these laws, and the guidance provided in [I.M. 1.080](#), ADA Requirements. When bicycle and/or pedestrian facilities are constructed, reconstructed, or altered, the RECIPIENT shall make such facilities compliant with the ADA and Section 504, which includes following the requirements set forth in Chapter 12A for sidewalks and Chapter 12B for Bicycle Facilities of the Iowa DOT Design Manual.
- d. To the extent allowable by law, the RECIPIENT agrees to indemnify, defend, and hold the DEPARTMENT harmless from any claim, action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection, or use of this project. This agreement to indemnify, defend, and hold harmless applies to all aspects of the DEPARTMENT's application review and approval process, plan and construction reviews, and funding participation.
- e. As required by the 2 CFR 200.501 "Audit Requirements," a non-Federal entity expending \$750,000 or more in Federal awards in a year shall have a single or program-specific audit conducted for that year in accordance with the provision of that part. Auditee responsibilities are addressed in Subpart F of 2 CFR 200. The Federal funds provided by this agreement shall be reported on the appropriate Schedule of Expenditures of Federal Awards (SEFA) using the Catalog of Federal Domestic Assistance (CFDA) number and title as shown on the first page of this agreement. If the RECIPIENT will pay initial project costs and request reimbursement from the DEPARTMENT, the RECIPIENT shall report this project on its SEFA. If the DEPARTMENT will pay initial project costs and then credit those accounts from which initial costs were paid, the DEPARTMENT will report this project on its SEFA. In this case, the RECIPIENT shall not report this project on its SEFA.
- f. The RECIPIENT shall supply the DEPARTMENT with all information required by the Federal Funding Accountability and Transparency Act of 2006 and 2 CFR Part 170.
- g. The RECIPIENT shall comply with the following Disadvantaged Business Enterprise (DBE) requirements:
  - i. The RECIPIENT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The RECIPIENT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.
  - ii. The RECIPIENT shall comply with the requirements of [I.M. 5.010](#), DBE Guidelines.

- iii. The DEPARTMENT's DBE program, as required by 49 CFR Part 26 and as approved by the Federal Highway Administration (FHWA), is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the RECIPIENT of its failure to carry out its approved program, the DEPARTMENT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- h. Termination of funds. Notwithstanding anything in this agreement to the contrary, and subject to the limitations set forth below, the DEPARTMENT shall have the right to terminate this agreement without penalty and without any advance notice as a result of any of the following: 1) The Federal government, legislature or governor fail in the sole opinion of the DEPARTMENT to appropriate funds sufficient to allow the DEPARTMENT to either meet its obligations under this agreement or to operate as required and to fulfill its obligations under this agreement; or 2) If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the DEPARTMENT to make any payment hereunder are insufficient or unavailable for any other reason as determined by the DEPARTMENT in its sole discretion; or 3) If the DEPARTMENT's authorization to conduct its business or engage in activities or operations related to the subject matter of this agreement is withdrawn or materially altered or modified. The DEPARTMENT shall provide the RECIPIENT with written notice of termination pursuant to this section.

## **2. Programming.**

- a. The RECIPIENT shall be responsible for including the project in the appropriate Regional Planning Affiliation (RPA) or Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP). The RECIPIENT shall also ensure that the appropriate RPA or MPO, through their TIP submittal to the DEPARTMENT, includes the project in the Statewide Transportation Improvement Program (STIP). If the project is not included in the appropriate fiscal year of the STIP, Federal funds cannot be authorized.
- b. Upon receipt of Federal Highway Administration (FHWA) authorization a Federal Award Identification Number (FAIN) will be assigned to this project by the FHWA based on a methodology that incorporates identifying information about the federal award such as the federal funding program code and the federal project number. This FAIN will be used to identify this project and award on the federal government's listing of financial assistance awards consistent with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) at [usaspending.gov](http://usaspending.gov).
- c. A period of performance for this federal funding award will be established at the time of FHWA authorization. The start date of the period of performance will be the FHWA authorization date. The project end date (PED) will be determined according to the methodology in I.M. 1.200, Federal Funds Management. Costs incurred before the start date or after the PED of the period of performance will not be eligible for reimbursement.

## **3. Design and Consultant Services**

- a. The RECIPIENT shall be responsible for the design of the project, including all necessary plans, specifications, and estimates (PS&E). The project shall be designed in accordance with the design guidelines provided or referenced by the DEPARTMENT in the Guide and applicable I.M.s.

## **4. Environmental Requirements and other Agreements or Permits.**

- a. The RECIPIENT shall take the appropriate actions and prepare the necessary documents to fulfill the FHWA requirements for project environmental studies including historical/cultural reviews and location approval. The RECIPIENT shall complete any mitigation agreed upon in the FHWA approval document. These procedures are set forth in [I.M. 3.020](#), Concept Statement Instructions; [4.020](#), NEPA Process; [4.110](#) Threatened and Endangered Species; and [4.120](#), Cultural Resource Regulations.
- b. If farmland is to be acquired, whether for use as project right-of-way or permanent easement, the RECIPIENT shall follow the procedures in I.M. [4.170](#), Farmland Protection Policy Act.

- c. The RECIPIENT shall obtain project permits and approvals, when necessary, from the Iowa DEPARTMENT of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers, the DEPARTMENT, or other agencies as required. The RECIPIENT shall follow the procedures in I.M. [4.130](#), 404 Permit Process; [4.140](#), Storm Water Permits; [4.150](#) Iowa DNR Floodplain Permits and Regulations; [4.190](#), Highway Improvements in the Vicinity of Airports or Heliports; and [4.160](#), Asbestos Inspection, Removal, and Notification Requirements.
- d. In all contracts entered into by the RECIPIENT, and all subcontracts, in connection with this project that exceed \$100,000, the RECIPIENT shall comply with the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all their regulations and guidelines. In such contracts, the RECIPIENT shall stipulate that any facility to be utilized in performance of or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities or is under consideration to be listed.

## 5. Right-of-Way, Railroads and Utilities.

- a. The RECIPIENT shall acquire the project right-of-way, whether by lease, easement, or fee title, and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in [I.M. 3.600](#), Right-of-Way Acquisition, and the DEPARTMENT's Right of Way Bureau Local Public Agency Manual. The RECIPIENT shall contact the DEPARTMENT for assistance, as necessary, to ensure compliance with the required procedures, even though no Federal funds are used for right-of-way activities. If Federal-aid will not be used in the cost of acquiring right-of-way, acquisition activities may begin prior to FHWA Environmental Concurrence. However, such acquisitions cannot affect the National Environmental Policy Act (NEPA) decision making process.
- b. If a railroad crossing or railroad tracks are within or adjacent to the project limits, the RECIPIENT shall obtain agreements, easements, or permits as needed from the railroad. The RECIPIENT shall follow the procedures in [I.M. 3.670](#), Work on Railroad Right-of-Way and [I.M. 3.680](#), Federal-aid Projects Involving Railroads.
- c. The RECIPIENT shall comply with the Policy for Accommodating Utilities on City and County Federal-aid Highway Right of Way for projects on non-primary Federal-aid highways. For projects connecting to or involving some work inside the right-of-way for a primary highway, the RECIPIENT shall follow the DEPARTMENT's Policy for Accommodating Utilities on Primary Road System. The RECIPIENT should also use the procedures outlined in [I.M. 3.640](#), Utility Accommodation and Coordination, as a guide to coordinating with utilities.

## 6. Contract Procurement.

The following provisions apply only to projects involving physical construction or improvements to transportation facilities:

- a. The project plans, specifications, and cost estimate (PS&E) shall be prepared and certified by a professional engineer, architect, or landscape architect, as applicable, licensed in the State of Iowa.
- b. For projects let through the DEPARTMENT, the RECIPIENT shall be responsible for the following:
  - i. Prepare and submit the PS&E and other contract documents to the DEPARTMENT for review and approval in accordance with [I.M. 3.700](#), Check and Final Plans and [I.M. 3.500](#), Bridge or Culvert Plans, as applicable.
  - ii. The contract documents shall use the DEPARTMENT's Standard Specifications for Highway and Bridge Construction. Prior to their use in the PS&E, specifications developed by the RECIPIENT for individual construction items shall be approved by the DEPARTMENT.
  - iii. Follow the procedures in [I.M. 5.030](#), Iowa DOT Letting Process, to analyze the bids received, make a decision to either award a contract to the lowest responsive bidder or reject all bids, and if a contract is awarded, and execute the contract documents in Doc Express.



- c. For projects that are let locally by the RECIPIENT, the RECIPIENT shall follow the procedures in [I.M. 5.120](#), Local Letting Process- Federal-aid.
- d. The RECIPIENT shall forward a completed Project Development Certification (Form 730002) to the DEPARTMENT in accordance with [I.M. 5.050](#), Project Development Certification Instructions. The project shall not receive FHWA Authorization for construction or be advertised for bids until after the DEPARTMENT has reviewed and approved the Project Development Certification.
- e. If the RECIPIENT is a city, the RECIPIENT shall comply with the public hearing requirements of the Iowa Code section 26.12.
- f. The RECIPIENT shall not provide the contractor with notice to proceed until after receiving notice in Doc Express that the Iowa DOT has concurred in the contract award.

## 7. Construction.

- a. A full-time employee of the RECIPIENT shall serve as the person in responsible charge of the construction project. For cities that do not have any full-time employees, the mayor or city clerk will serve as the person in responsible charge, with assistance from the DEPARTMENT.
- b. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 761 IAC Chapter 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.
- c. For projects let through the DEPARTMENT, the project shall be constructed under the DEPARTMENT's Standard Specifications for Highway and Bridge Construction and the RECIPIENT shall comply with the procedures and responsibilities for materials testing according to the DEPARTMENT's Materials I.M.s. Available on-line at: <http://www.iowadot.gov/erl/current/IM/navigation/nav.htm>.
- d. For projects let locally, the RECIPIENT shall provide materials testing and certifications as required by the approved specifications.
- e. If the DEPARTMENT provides any materials testing services to the RECIPIENT, the DEPARTMENT will bill the RECIPIENT for such testing services according to its normal policy as per [Materials I.M. 103](#), Inspection Services Provided to Counties, Cities, and Other State Agencies.
- f. The RECIPIENT shall follow the procedures in [I.M. 6.000](#), Construction Inspection, and the DEPARTMENT's Construction Manual, as applicable, for conducting construction inspection activities.

## 8. Reimbursements.

- a. After costs have been incurred, the RECIPIENT shall submit to the DEPARTMENT periodic itemized claims for reimbursement for eligible project costs. Requests for reimbursement shall be made at least once every six months, but not more than bi-weekly.
- b. To ensure proper accounting of costs, reimbursement requests for costs incurred prior to June 30 shall be submitted to the DEPARTMENT by August 1.
- c. Reimbursement claims shall include a certification that all eligible project costs, for which reimbursement is requested, have been reviewed by an official or governing board of the RECIPIENT, are reasonable and proper, have been paid in full, and were completed in substantial compliance with the terms of this agreement.
- d. Reimbursement claims shall be submitted on forms identified by the Department along with all required supporting documentation. The DEPARTMENT will reimburse the RECIPIENT for properly documented and certified claims for eligible project costs. The DEPARTMENT may withhold up to 5% of the Federal share of construction costs or 5% of the total Federal funds available for the project, whichever is less. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final audit or review, the DEPARTMENT determines the RECIPIENT has been

overpaid, the RECIPIENT shall reimburse the overpaid amount to the DEPARTMENT. After the final audit or review is complete and after the RECIPIENT has provided all required paperwork, the DEPARTMENT will release the Federal funds withheld.

- e. The total funds collected by the RECIPIENT for this project shall not exceed the total project costs. The total funds collected shall include any Federal or State funds received, any special assessments made by the RECIPIENT (exclusive of any associated interest or penalties) pursuant to Iowa Code Chapter 384 (cities) or Chapter 311 (counties), proceeds from the sale of excess right-of-way, and any other revenues generated by the project. The total project costs shall include all costs that can be directly attributed to the project. In the event that the total funds collected by the RECIPIENT do exceed the total project costs, the RECIPIENT shall either:
  - i. In the case of special assessments, refund to the assessed property owners the excess special assessments collected (including interest and penalties associated with the amount of the excess), or
  - ii. Refund to the DEPARTMENT all funds collected in excess of the total project costs (including interest and penalties associated with the amount of the excess) within 60 days of the receipt of any excess funds. In return, the DEPARTMENT will either credit reimbursement billings to the FHWA or credit the appropriate State fund account in the amount of refunds received from the RECIPIENT.

## 9. Project Close-out.

- a. Within 30 days of completion of construction or other activities authorized by this agreement, the RECIPIENT shall provide written notification to the DEPARTMENT. The RECIPIENT shall follow and request a final audit, in accordance with the procedures in [I.M. 6.110](#), Final Review, Audit, and Close-out Procedures for Federal-aid, Federal-aid Swap, and Farm-to-Market Projects. Failure to comply with the procedures will result in loss of federal funds remaining to be reimbursed and the repayment of funds already reimbursed. The RECIPIENT may be suspended from receiving federal funds on future projects.
- b. For construction projects, the RECIPIENT shall provide a certification by a professional engineer, architect, or landscape architect as applicable, licensed in the State of Iowa, indicating the construction was completed in substantial compliance with the project plans and specifications.
- c. Final reimbursement of Federal funds shall be made only after the DEPARTMENT accepts the project as complete.
- d. The RECIPIENT shall maintain all books, documents, papers, accounting records, reports, and other evidence pertaining to costs incurred for the project. The RECIPIENT shall also make these materials available at all reasonable times for inspection by the DEPARTMENT, FHWA, or any authorized representatives of the Federal Government. Copies of these materials shall be furnished by the RECIPIENT if requested. Such documents shall be retained for at least 3 years from the date of FHWA approval of the final closure document. Upon receipt of FHWA approval of the final closure document, the DEPARTMENT will notify the RECIPIENT of the record retention date.
- e. The RECIPIENT shall maintain, or cause to be maintained, the completed improvement in a manner acceptable to the DEPARTMENT and the FHWA.



Real People. Real Solutions.

300 W McKinley Street  
PO Box 68  
Jefferson, IA 50129

Ph: (515) 386-4101  
Bolton-Menk.com

**ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT**  
**RUSSELL STREET WATERMAIN IMPROVEMENT - 2022**

**DATED January 24, 2022**

by and between

**Bolton & Menk, Inc. (hereinafter referred to as BMI)**

**300 W McKinley Street**

**PO Box 68**

**Jefferson, IA 50129**

and

Client	
Name: <u>City of Jefferson, IA</u>	Phone No.:515-386-3111
Address: <u>220 N. Chestnut St.</u>	Fax No.:
City: <u>Jefferson</u> State: <u>IA</u> Zip: <u>50129</u>	
(hereinafter referred to as Client)	

Changes to Fee Arrangement
Addition of Hourly, Not to Exceed amount of \$4,800.00 to the total fees provided in the contract. Revised Total Not to Exceed fee of \$73,000.

Changes to Scope / Additional Services
Bolton & Menk, Inc. agrees to complete the Construction Contract Administration and Construction Phase Services tasks of the original agreement required for the work being completed by the contractor. Original timeline and effort have been exceeded due to the addition of the watermain replacement along Oak St from Russell St to Park St to replace small lines with multiple services. This is an estimate of the effort to complete the remaining work and project closeout.

**BMI and Client agree to the Terms and Conditions as stated on the original Agreement (first mentioned above) unless otherwise stated above. The below signed represents that he or she has been authorized to order and accept changes to Scope / Additional Services on behalf of the Client.**

Offered by: Bolton & Menk, Inc.

James D. Leiding, Project Manager

print name/title

Ordered and Accepted by:

print name/title

signature and date

signature and date

# PROFESSIONAL SERVICES AGREEMENT

by and between  
**BOLTON & MENK, INC.**  
300 West McKinley St., PO Box 68  
Jefferson, IA 50129  
Ph. (515) 386-4101  
(hereinafter referred to as BMI)  
and

Date of Agreement: January 13, 2023
Agreement Number: 0M2.123801
Project Location: Jefferson, Iowa

Client	
Name: <u>City of Jefferson, Iowa</u> Address: <u>220 N. Chestnut St.</u> Address: _____ City: <u>Jefferson</u> State <u>IA</u> Zip <u>50129</u> (hereinafter referred to as Client)	Phone No.: (515) 386-3111 Fax No.: (515) 386-4671

<input type="checkbox"/> Agent or Person Ordering Services and/or <input type="checkbox"/> Billing Address (if different)	
Agent or Person Ordering Services: <u>Michael Palmer, City Administrator</u> Address: <u>220 N. Chestnut St</u> City: <u>Jefferson</u> State <u>IA</u> Zip <u>50129</u>	Phone No.: (515) 386-3111 Fax No.: (515) 386-4671

Fee Arrangement
Preliminary Design Phase Services: Hourly, Not to Exceed: \$127,500 (included in January 29, 2021 PSA and not included here) Final Design Phase Services: Not to Exceed Fixed Fee: \$730,000 (included in April 19, 2022 PSA and not included here) <b>Construction Phase Services: Estimated Hourly: \$1,340,000</b>

Scope/Intent and Extent of Services
See attached scope of services (Exhibit I) for the Wastewater Treatment Facility Improvements project.

Special Conditions
The services described in the Work Order will be consistent with the terms and conditions described in the Agreement for Professional Services between Bolton & Menk, Inc. and the City of Jefferson, dated August 27, 2019 and approved by the Jefferson City Council on August 27, 2019 unless modified by this Work Order.

BMI and Client agree to the Terms and Conditions as stated above and on the reverse side of this Agreement. The below signed represents that he or she has been authorized to accept this agreement on behalf of the Client and assumes financial responsibility for all services in the event of default by the Client.

Offered by: Bolton & Menk, Inc.

Accepted by:

Seth A. Peterson, Senior Principal Engineer  
print name/title

\_\_\_\_\_  
print name/title



\_\_\_\_\_  
signature and date

\_\_\_\_\_  
signature and date

**EXHIBIT I**

**CONSULTANT'S SERVICES**

**WASTEWATER TREATMENT FACILITY IMPROVEMENTS**

**JEFFERSON, IOWA**

January 13, 2023

**DESCRIPTION OF PROJECT AND SCOPE OF IMPROVEMENTS**

The CONSULTANT agrees to provide final design engineering and bidding services required for wastewater treatment facility improvements to:

Jefferson Wastewater Treatment Facility, 605 West Russel Street

This includes construction phase services for Wastewater Treatment Facility Improvements.

The basic improvements anticipated as part of this Agreement include construction phase civil engineering services required for construction of the Wastewater Treatment Facility Improvements project. The basic services anticipated as part of this Amendment include construction contract administration and construction project representation.

**I.A. BASIC SERVICES**

For purposes of this Project, Basic Services to be provided by the CONSULTANT are as follows:

**TASK 1: PRELIMINARY DESIGN**

Task 1 services were agreed upon and completed as part of the original Professional Services Agreement and are not included in this Amendment.

**TASK 2: FINAL DESIGN AND BIDDING PHASE SERVICES**

Task 2 services were agreed upon and completed as part of the April 29, 2021 Amendment to the PSA and are not included in this Amendment.

**TASK 3: CONSTRUCTION SERVICES**

**Subtask 3.1: Construction Contract Administration**

Description: CONSULTANT will perform construction administration services throughout the construction phase. Services to be provided include:

- With the assistance of City staff and the City Attorney, prepare contracts for execution by the City and the contractor.
- Provide supervision and support to onsite construction observer and perform regular on-site reviews.
- Prepare change orders and written directives.

- Review and approve partial pay requests.
- Obtain additional information from City staff, when required for proper execution of the work.
- Coordinate with the DNR and funding agencies, when required.

### **Subtask 3.2: Shop Drawing Review and Project Coordination**

Description: CONSULTANT will review all shop drawings and other submittals from the contractor and will provide other project coordination services. Services to be provided include:

- Convene and preside over a preconstruction conference.
  - Preconstruction conference attendees will include:
    - City Staff
    - Representatives from the contractor, subcontractors, and suppliers
    - Representatives from affected utility companies
    - Bolton & Menk staff
- Review and approve shop drawings, materials lists, suppliers lists, and other required submittals by Contractor.
- Convene and preside over monthly construction progress meetings and prepare minutes.

#### **Deliverables:**

- Reviewed shop drawings in a digital format
- Preconstruction and Progress meeting agendas and minutes

### **Subtask 3.3: Onsite Construction Observation**

Description: CONSULTANT will provide onsite construction observation or resident project representative (RPR) services during construction of the project as requested by the CLIENT. The construction period is identified in the Contract Documents as 710 calendar days and it is assumed that there will be an average of 20 hours per week of construction observation for the duration of the project. Onsite construction observation services consist of observation of the work of the Contractor, coordination of testing services and documentation of the work progress. Onsite construction observation services do not constitute acceptance or approval of the Contractor's work nor do they relieve any part of the Contractor's responsibility under the Contract Documents. Scope and limitations of Onsite Construction Observation services are further defined in Section 00801 of the Contract Documents.

### **Subtask 3.4: Project Closeout and Record Drawings**

Description: CONSULTANT will use the documentation compiled throughout the construction of the project to prepare all necessary proceedings to finalize the project. Documentation to be compiled will include:

- Operation and maintenance instructions
- Schedules
- Bonds
- Guarantees
- Certificates of inspection, tests, and approvals

#### **Deliverables:**

- Record Drawings

### **Subtask 3.5: NPDES General Permit No. 1 and SWPPP**

Description: CONSULTANT will gather background data necessary for permit application completion.. CONSULTANT will review data and complete preparation of Stormwater Pollution Prevention Plan (SWPPP) and any necessary plans or drawings needed for SWPPP. CONSULTANT will prepare information required to enter into online application for General Permit No. 1. CONSULTANT will review and respond to any communications or comments regarding the application from the DNR.

#### **Deliverables:**

- SWPPP
- Information required for online submittal of General Permit No. 1 application

#### **BASIS OF FEE ASSUMPTIONS**

For this proposal assumptions were made as to the nature of how or why certain situations will be handled. These assumptions are as follows:

- Any changes to the scope of work that are not specifically included in this proposal will be considered additional work and a negotiated amendment to the agreement will be completed

#### **ITEMS PROVIDED BY CLIENT**

The following items are to be provided by CLIENT:

- Payment of Permit Fees
- Meeting location

#### **I.B. ADDITIONAL SERVICES**

Consulting services performed other than those authorized under Section I.A shall be considered not part of the Basic Services and may be authorized by the CLIENT as Additional Services. Additional Services consist of those services that are not generally considered to be Basic Services; or exceed the requirements of the Basic Services; or are not definable prior to the bidding of the project; or vary depending on the technique, procedures or schedule of the project contractor.

Additional services may include:

1. Additional property or right-of-way acquisition services: Includes additional property or right-of-way acquisition services beyond those included in the Basic Services, including: Preparation of Easement agreements, preparation of right-of-way plats, assistance with eminent domain proceedings, court preparation and testimony.
2. All other services not specifically identified in the PSA or Sections I.A or I.B of this Exhibit I.

ORDINANCE NO. \_\_\_\_\_  
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY  
OF JEFFERSON, IOWA, 2017, BY CREATING A NEW CHAPTER 30 – ANIMAL SHELTER  
BOARD

Be it enacted by the City Council of Jefferson, Iowa:

SECTION 1. Chapter Added. Chapter 30 of the Code of Ordinances of the City of Jefferson, Iowa, 2017, be created and therefore be enacted in the following chapter:

**CHAPTER 30  
ANIMAL SHELTER BOARD**

**30.01 DEFINITIONS.** The following terms are defined for use in this chapter.

1. “Animal Shelter” shall refer to the structure owned and operated by the City located at [ADDRESS].
2. “Board” shall refer to the Animal Shelter Board established in this chapter.

**30.02 BOARD ESTABLISHED.** There is established an Animal Shelter Board consisting of seven (7) members. The members shall be determined as follows:

1. Two members shall be residents of the City, appointed by the Mayor with the approval of the Council. These members shall serve two-year terms, with one member appointed or reappointed each year for a two-year term.
2. One member shall be a licensed veterinarian, appointed by the Mayor with the approval of the Council. This member shall serve a one-year term.
3. One member shall be a member of the Council and shall be appointed annually by the Mayor with the approval of the Council.
4. One member shall be a representative nominated by the People for Animal Welfare Society (PAWS) and confirmed by the Council. This member shall serve a one-year term.
5. One member shall be a representative from the Jefferson Police Department, nominated by the Mayor, and confirmed by the Council. This member shall serve a one-year term.
6. One member shall be representative appointed annually by the Greene County Board of Supervisors. This member shall serve a one-year term.

**30.03 OFFICERS.** At the first meeting of the Board after January 1 each year, the members thereof shall elect a Chairperson and a Secretary for the ensuing year.



#### **30.04 POWERS AND DUTIES.**

1. The Board shall be in charge of overseeing the plans and operations of the City Animal Shelter.
2. The Board shall recommend to the Council the hiring of appropriate employees to provide services at the animal shelter. The Board shall also recommend to the Council the nature of these individuals' employment and duties. The Board shall recommend a salary schedule to the Council for its approval. The Board may also recommend to the Council the termination of any of the above employees.
3. The Board shall have the power to develop policies regarding Animal Shelter fees and recommend a fee schedule for Council approval.
4. The Board shall from time-to-time survey and review the Animal Shelter facilities and make recommendations for repairs, improvements, and maintenance of physical facilities. The Council shall be responsible for repairs, improvements, and maintenance of all these facilities. Board may not undertake any improvements to the Animal Shelter absent Council approval.
5. The Board shall coordinate and direct all volunteers at the Animal Shelter. The Board or a designated employee shall obtain all volunteer waivers and other required documentation from volunteers and deliver the same to the City Clerk. The Board or a designated employee shall be responsible for scheduling its volunteers for activities performed at the Animal Shelter.
6. The Board shall present activities, physical plant and financial updates at regularly scheduled Council meetings on a quarterly basis. The Council may direct the format in which the Board is to provide its reports.
7. The Board shall meet regularly at least once every two months. If additional meetings of the Board are necessary, the Chairperson shall notify Board members at least three (3) days prior to the proposed meeting date. A majority of the Board members must be present in order to establish a quorum at meetings. All meetings shall be held at Jefferson City Hall.

**30.05 ADDITIONAL POWERS AND DUTIES.** The Council may by resolution delegate to the Board additional obligations, powers and duties.

**30.06 COOPERATION WITH PAWS, COUNTY GOVERNMENT, LAW ENFORCEMENT, AND CITIZENS.** The Board shall cooperate with PAWS, the Greene County Board of Supervisors, City and County law enforcement, or other citizens interested in the Animal Shelter and its operations. In the event that the Board becomes aware of complaints made regarding the Animal Shelter or any of its employees or volunteers, it shall communicate those complaints to the Council.

**30.07 BUDGET AND REPORTS.** The Board shall prepare and file a budget of estimated receipts and expenditures for the next fiscal year with the City Administrator, at such time and

in such form as required by the Council. The Board shall present additional reports and information as requested by the Council.

**30.08 REVIEW OF EXPENSES.** All bills incurred by the Board in connection with the use and operation of the Animal Shelter shall first be reviewed by the Board which shall by suitable notation thereon approve or disapprove of the bills. If approved, the bills shall be presented to the Council for payments from those Animal Shelter use funds as noted by the Board.

SECTION 2. Severability. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. When effective. This ordinance shall be in effect after its final passage, approval and publication as provided by law.

Finally passed by the Council and approved on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Matt Gordon, Mayor

Attest:

\_\_\_\_\_  
Roxanne Gorsuch, City Clerk

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I hereby certify that the foregoing ordinance was published in The Jefferson Herald on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Roxanne Gorsuch, City Clerk

# MINUTES

**WATER/SEWER, STREET/SANITATION COMMITTEES  
TUESDAY, JANUARY 17, 2023, 12:00 NOON  
JEFFERSON CITY HALL**

**ATTENDEES: Dave Morlan, Jim Leiding, Mark Clouse, Harry Ahrenholtz, Dave Sloan, Mike Palmer, Joyce Richardson, Wade Weiss**

*Meeting called to order 12:00 noon*

## **I. SEWER**

- A. Amendment to Engineering Agreement for the Construction Phase Services on Wastewater Treatment Facility Improvements Project – construction phase is \$1.34 million total, they will get started with demo and tank removal the week of February 20<sup>th</sup>. Temporary holding will be used until this new section is up and running, this new tank is the priority to be finished first. Goes to council for approval.**
- B. Engineering Service Agreement for Russell Street Project - moved to Water A**

## **II. WATER**

- A. Engineering Service Agreement for Russell Street Project – Underground has been completed, This spring will be the finishing of pavement patching and cleanup, additional work on Oak Street, \$4800 for this amendment. Goes to council for approval.**
- B. Dave M updated on wells and piping – Marty has been working on repairs and some parts replacement.**

### **III. STREETS/PUBLIC IMPROVEMENTS**

- A. Sidewalk removal request at 810 W South Street – moved to be combined with item D**
- B. Jackson Bridge Replacement – Wade updated and said right of way issue has been cleared up, Greene County will take the lead then City to follow. A year from July is the approximate start date, possibly after harvest. No money will be spent on repairs since it will be getting torn out. Project will be 2024/2025 year. Current width of bridge is 22 feet and it will be increased to 30 feet. There will possibly be some shared costs and administration costs, Wade to let Mike know. To be placed on agenda for council on the 24<sup>th</sup>.**
- C. West Lincoln Way Reconstruction – Dave M received an estimate from Blacktop Services and he is still waiting for the estimate from Fort Dodge Asphalt. The area will need closed down for a few days to through traffic. Mike said this could be funded out of local option sales tax. This to be added to water/sewer committee agenda for next meeting.**
- D. Sidewalk Replacement/Shared Path/ Removal – 810 W South has requested to remove the sidewalk. There are only portions of sidewalk in that area. Committee to review this and look at the area to see if needs removed or if it will be replaced. Another resident in that area has made a past request to remove a portion that is in their area as well. To be placed on agenda for next water/sewer committee meeting for an update.**
- E. Engine Brake Enforcement Signs – Mark said Roger with DOT said it's a city issue. Signs are already on highway 30 east and west and one north of town. The sign south of town appears to be missing. Mark to follow up to see if DOT will replace the one south of town. Mark to update next water/sewer meeting.**
- F. School Traffic on North Elm and West Central – Roger said no to streetlight. Further options are the following: take a lane each direction on Elm and make permanent turning lanes, four way stop sign to be out during school traffic times, or do nothing at this time and see if more accidents. A concern was raised about stopped traffic near the overpass as people coming over the overpass will not know traffic is stopped on other side. This issue could be a cause for more accidents. To be placed on water/sewer agenda for more discussion after committee reports.**
- G. Jim asked about the ATV discussion and Mike informed the committee that it was on the next agenda for city council meeting on the 24<sup>th</sup>.**

#### **IV. SANITATION/RECYCLING**

- A. Waste collection report for November 2022 was 235.9 tons  
Waste collection report for December 2022 was 185.42 tons**
- B. Recycling collection report for November 2022 was 21.6 tons  
Recycling collection report for December 2022 was 21.7 tons**
- C. Dave M said he received a resignation from a sanitation employee who wants to retire at the end of February 2023. He has also received a transfer request from a street employee to take the newly opened sanitation position. Dave would like the newly opened street position filled by end of February 2023.**

**Meeting adjourned at 12:55pm**