The City of Howard Lake strives to build upon its good neighbor traditions –
A welcoming community for all, supported by vibrant and engaged businesses and community organizations, involved citizens, and diverse amenities that provide a well-rounded quality of life.

TENTATIVE AGENDA
June 17, 2024 – 7:00 pm

A. CALL TO ORDER
B. PLEDGE OF ALLEGIANCE
C. APPROVAL OF AGENDA
   Any additions, deletions, modifications to the agenda will be done at this time.
D. COUNCIL MEETING MINUTES
   a. Consider Approving Minutes from May 20, 2024 Regular Council Meeting.
E. PRESENTATIONS, PUBLIC HEARINGS & RELATED APPROVALS
F. CITIZEN INPUT
G. COUNCIL/COMMITTEE REPORT
H. DEPARTMENT REPORTS
I. CONSENT AGENDA
   a. Consider Accepting all Reports & Payment of Claims.
   b. Consider Approving Prosecution Legal Services through Berglund, Baumgartner & Glaser, LLC
J. NEW BUSINESS
   a. Discuss/Update: Grand 8 Market Development.
   b. Consider Special Use Permit for Event at Central Park.
   c. Consider Loan Resolution for Authorizing and Providing for Incurrence and Indebtedness for the USDA Street & Utility Project.
K. OLD BUSINESS
L. ADMINISTRATOR'S REPORT
M. ADJOURN

CITY OF HOWARD LAKE

Nicholas A. Haggenmiller, City Administrator
625 8TH Avenue - PO Box 736 - Howard Lake, MN 55349

Phone: 320-543-3670 | cityadmin@howard-lake.mn.us | www.howard-lake.mn.us

HOWARD LAKE CITY COUNCIL
Howard Lake City Hall -
May 20, 2024

MEETING MINUTES

COUNCIL PRESENT	**COUNCIL ABSENT**
Mayor Zimmerman	
Allan Munson	
Jason Deiter	
Gene Gilbert	
Tom Kutz	

STAFF PRESENT
Nick Haggenmiller, City Administrator

ALSO PRESENT

CALL TO ORDER
Mayor Zimmerman called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE
All present recited the Pledge of Allegiance.

APPROVAL OF AGENDA
Council Member Kutz moved to approve the Agenda. The motion was seconded by Council Member Deiter and passed unanimously.

APPROVAL OF MINUTES
Council Member Deiter moved to approve the minutes from the March 18, 2024 Council Meeting. The motion was seconded by Council Member Munson and passed unanimously.

PUBLIC HEARING/PRESENTATION
None.

CITIZEN INPUT
None.

COUNCIL/COMMITTEE REPORT
Councilor Deiter gave updates on the recent planning commission meeting in which Reeds and Rushes Event Center held a public hearing and received recommendation for approval of a site plan modification.

DEPARTMENT REPORTS
None.

CONSENT AGENDA

a. CONSIDER ACCEPTING ALL REPORTS AND PAYMENT OF CLAIMS

GENERAL FUND	62524-62691	$815,595.01
PAYROLL	27519-27537,503306-503391	$98,857.16
ELECTRONIC	1667-1681	$48,163.90
TOTAL		**$962,616.07**
AMBULANCE CLAIMS	6077-6084	$7,139.65
TOTAL		**$7,139.65**

Council Member Deiter moved to approve the Consent Agenda. The motion was seconded by Council Member Kutz and passed unanimously.

NEW BUSINESS

a. **Resolution 24-07 Modifying the Site Plan and CUP for Reeds and Rushes Event Center.**
Haggenmiller indicated the PPC held a public hearing earlier in the month and heard from several neighboring property owners who expressed support for the modification to include a floating dock onsite. The resolution was passed unanimously MSP Gilbert/Kutz.

b. **Consider Approving Bylaw Update for HLFD.**
Haggenmiller indicated that with the pending retirement of Chief Bobrowske, the HLFD has brought forward bylaw changes in advance of recruiting a new chief. The bylaw amendments ease the requirements for the chief to permit greater flexibility in minimum requirements thereby allowing membership to choose the overall best qualified candidate. Haggenmiller noted these were previously discussed and considered implicit without changing the bylaws. For this reason, he recommended approval. The changes were approved MSP Deiter/Kutz.

c. **Consider Various Good Neighbor Days 2024 Approvals.**
The proposed events and their respective locations and insurance requirements were presented by Haggenmiller. The matter was approved MSP Munson/Gilbert.

d. **Consider Approving License to Use Wright County Training Facility.**
Haggenmiller presented an agreement on behalf of Chief Thompson that would permit the HLPD to use the training facility located on CR35 in rural Maple Lake. Previously, access was difficult and required on site approval of WCSO. This agreement permits greater use and flexibility of the site. The agreement was approved unanimously MSP Deiter/Gilbert.

e. Consider Approving Easements Related to the US12 2025 Project.
Haggenmiller presented temporary and permanent easements brought forward from MNDOT as part of the 2025 Highway Project. He noted that with sidewalk replacement the temporary easements allow 60 months of access to properties and accounts for disturbances. The City owns and is party to several properties on Highway 12 that need approval.

Temporary Easements

- Park and Ride parking lot entrance	$3,000	MSP Deiter, Munson.
- Fire Hall alley entrance	$2,000	MSP Kutz, Gilbert
- Grocery Store alley entrance	$1,700	MSP Deiter, Munson
- American Legion parking lot stairs	$2,800	MSP Kutz, Gilbert
- Block 18 parking lot entrance	$2,300	MSP Deiter, Munson
- Dalbec Property	$1,500	MSP Kutz, Gilbert

Permanent Easements

Historic City Hall MSP Deiter/Kutz	Egress will be widened slightly into current sidewalk area	$4,700
Library Property MSP Gilbert/Munson	Egress will be widened slightly into current sidewalk area	$1,100

Quit Claim DEED – Munson Lakes

Munson Lakes has received a permanent easement agreement adjacent to their office. The City has various agreements in place related to their redevelopment project including a TIF and Development Agreement which are identified through title searches. The City is asked to approve a quit claim deed for the portion of property included in the MNDOT permanent easement. As such, this would relinquish any rights the City has including the TIF and Development Agreement provisions. That said, it is not clear what the city's interest is in this property. To that end, the city attorney has advised council to approve continent on final title review. MSP Gilbert, Kutz

Disclaimer of Interest - Joe's Sport Shop

Joe's Sport Shop has received a permanent easement agreement for a small slice of property on the east side of the hardware store building and adjacent to city owned property. The disclaimer of interest indicates that the state will not have to pay us for any damages the City may incur from acquiring the right of way. MSP Deiter, Munson

f. Consider Approving Seal Coating Bid for Block 18.
Haggenmiller presented a quote for$10,800 to sealcoat and stripe Block 18. The matter was approved unanimously MSP Munson, Deiter

OLD BUSINESS

None.

ADMINISTRATORS REPORT

None.

ADJOURN

Council Member Kutz moved to adjourn the meeting at 8:05 pm. The motion was seconded by Council Member Munson and passed unanimously.

Attest – City Administrator/Clerk

Mayor

CITY OF HOWARD LAKE
CLAIMS & DONATIONS APPROVED
DATE - May 20, 2024 - June 17, 2024

GENERAL FUND	CHECKS: 62692-62819	$559,319.69
PAYROLL	27519-27537, 503392-503414	31,994.19
ELECTRONIC	1682-1697	36,398.39
TOTAL		$627,712.27

AMBULANCE CLAIMS	CHECKS: 6085-6097	$8,004.48
ELECTRONIC		
TOTAL		$8,004.48

Approved:

____

____

____

CITY OF HOWARD LAKE

*Check Summary Register©

Checks 5/20/24-6/17/24

	Name	Check Date	Check Amt	
1010 CITIZEN ALLIANCE				
1682e	LS WEEKEND CASH	5/20/2024	$1,900.00	
1683e	WEX HEALTH INC	5/20/2024	$27.50	
1684e	U.S. POSTAL SERVICE	5/20/2024	$464.81	UB Billing
1685e	PSN	5/20/2024	$1,020.97	
1686e	AUTHNET GATEWAY BILLING	5/20/2024	$25.00	
1687e	AETNA HEALTH	5/20/2024	$13,625.46	April Premiums 2024
1688e	CITIZENS ALLIANCE BANK	5/20/2024	$30.00	ACH Origination Batch Fee
1693e	INTERNAL REVENUE SERVICE	6/10/2024	$8,897.11	
1694e	MN DEPT OF REVENUE	6/10/2024	$1,846.60	
1695e	PERA	6/10/2024	$7,723.82	
1696e	MN DEPT OF LABOR AND INDUS	6/13/2024	$777.12	Surcharge
1697e	CITY OF BUFFALO	6/14/2024	$60.00	ACCT# 26-022950-00
27538	GOEPFERT, THOMAS	5/31/2024	$691.46	
27539	MILLER, EDWARD M	5/31/2024	$289.01	
27540	BONNICK, STEVEN	5/31/2024	$352.04	
27541	CHAFFINS, GORDON	5/31/2024	$241.18	
27542	HARTNECK, BEAU P.	5/31/2024	$273.54	
27543	HARTNECK, SEAN M.	5/31/2024	$315.84	
62692	JOHNSON BROTHERS LIQUOR C	5/20/2024	$4,034.82	Liquor
62693	PHILLIPS WINE & SPIRITS	5/20/2024	$1,241.47	Liquor
62694	JK LANDSCAPE CONSTRUCTIO	5/20/2024	$97,168.00	Lions Park Project
62695	AMAZON CAPITAL SERVICES	5/22/2024	$719.00	Supplies
62696	B & E RECYCLING	5/22/2024	$583.60	Recycling
62697	BREAKTHRU BEVERAGE	5/22/2024	$3,666.94	Liquor
62698	CINTAS	5/22/2024	$81.14	Mats/Trash can lid
62699	COURI, & RUPPE, P.L.L.P.	5/22/2024	$2,357.50	General
62700	DAHLHEIMER BEVERAGE GREE	5/22/2024	$9,473.55	Beer
62701	EARTHLINK INC	5/22/2024	$18.26	Acct 14116613
62702	FLASHING THUNDER FIREWOR	5/22/2024	$6,584.00	Fireworks
62703	HOWARD LAKE ROYALTY	5/22/2024	$1,000.00	Donation from oward Lake Legion
62704	JOE'S SPORT SHOP	5/22/2024	$1,105.47	Slip 951707 & 957109
62705	JOHNSON BROTHERS LIQUOR C	5/22/2024	$1,332.40	Liquor
62706	MYRA LAWAY	5/22/2024	$42.61	Pops
62707	LEAGUE OF MN CITIES INS TRU	5/22/2024	$212.78	Claim 00502709
62708	MADDEN GALANTER HANSEN	5/22/2024	$645.00	April services
62709	MARCO	5/22/2024	$435.99	Copiers
62710	MIDWEST MACHINERY CO	5/22/2024	$215.55	Parts
62711	MINN DEPARTMENT OF HEALTH	5/22/2024	$1,793.00	Water Connection Fee
62712	MN VALLEY TESTING LAB, INC	5/22/2024	$52.75	Water Testing
62713	NCPERS GROUP LIFE INS	5/22/2024	$48.00	June Premium
62714	PAUMEN COMPUTER SERVICES	5/22/2024	$1,125.00	Ticket 21215 and 21371
62715	PHILLIPS WINE & SPIRITS	5/22/2024	$1,115.60	Liquor
62716	PLUNKETT'S PEST CONTROL	5/22/2024	$123.83	Pest Control
62717	PRECISION UTILITIES	5/22/2024	$37,818.00	Catch Basin & Gate Valve Repair
62718	SOUTHERN GLAZER WINE & SPI	5/22/2024	$1,663.72	Liquor
62719	VERIZON CONNECT NWF, INC	5/22/2024	$97.14	Customer ID HOWA005
62720	VICTOR TOWNSHIP	5/22/2024	$1,500.00	70th Street Maintenance Cost Share
62721	WASTEWATER COMMISSION	5/22/2024	$55,772.07	March 2024
62722	WRIGHT COUNTY HIGHWAY DE	5/22/2024	$23,133.66	Oct Salt
62723	WRIGHT HENNEPIN ELECTRIC	5/22/2024	$1,371.00	Acct 15016943569
62724	AMAZON CAPITAL SERVICES	5/30/2024	$47.99	55 gallon aluminum drum pump
62725	BREAKTHRU BEVERAGE	5/30/2024	$625.80	Liquor
62726	CAPITOL BEVERAGE SALES	5/30/2024	$2,137.70	Beer
62727	CENTERPOINT ENERGY	5/30/2024	$1,455.13	Acct 8000016347-9

CITY OF HOWARD LAKE

*Check Summary Register©

Checks 5/20/24-6/17/24

	Name	Check Date	Check Amt	
62728	CINTAS	5/30/2024	$81.14	
62729	DAHLHEIMER BEVERAGE GREE	5/30/2024	$8,195.07	Beer
62730	HAWKINS, INC	5/30/2024	$20.00	Chlorine Cylinder
62731	JOHNSON BROTHERS LIQUOR C	5/30/2024	$1,808.68	Liquor
62732	KING OF PORTABLES CORPORA	5/30/2024	$410.00	
62733	MEDIACOM LLC	5/30/2024	$156.90	
62734	MENARDS-BUFFALO	5/30/2024	$312.03	Supplies
62735	PHILLIPS WINE & SPIRITS	5/30/2024	$1,980.77	Pop/Mixes
62736	PRECISION UTILITIES	5/30/2024	$4,953.00	Repair Damaged Pipe
62737	SECURITY BANK & TRUST	5/30/2024	$11,071.36	Interest
62738	STREICHER'S	5/30/2024	$80.00	Uniform Pants
62739	THE HOME CITY ICE COMPANY	5/30/2024	$525.40	Ice
62740	THE LINCOLN NATIONAL LIFE IN	5/30/2024	$2,625.52	May 2024 Premiums
62741	VERIZON	5/30/2024	$120.03	Acct 342365904-00001
62742	VIKING COCA-COLA	5/30/2024	$387.60	Pop/Mixes
62743	VITAL SIGNS	5/30/2024	$1,840.00	Industrial Park Sign
62744	WRIGHT COUNTY FINANCE DEP	5/30/2024	$19,990.00	
62745	XCEL ENERGY	5/30/2024	$34.97	Acct 51-0014748109-1
62746	A PLUS PERFORMANCE	6/5/2024	$1,233.00	Uniform/Shirts
62747	AMAZON CAPITAL SERVICES	6/5/2024	$156.89	Cutlery Set
62748	AR ENGH HEATING & AIR	6/5/2024	$187.50	Service call at Reeds n Rushes
62749	BELLBOY CORPORATION	6/5/2024	$2,145.40	Liquor
62750	BOBBING BOBBER BREWING C	6/5/2024	$62.96	Beer
62751	C & C EMBROIDERY	6/5/2024	$50.00	R&R Dress Shirts
62752	CAPITOL BEVERAGE SALES	6/5/2024	$6,780.95	Beer
62753	CARLSON WHOLESALE GREEN	6/5/2024	$507.60	Mixed Combo
62754	CENTERPOINT ENERGY	6/5/2024	$347.94	Acct 11901907-3
62755	CENTURYLINK	6/5/2024	$634.11	Acct 313077688
62756	CINTAS	6/5/2024	$190.47	Traffic Mat
62757	CORE & MAIN	6/5/2024	$244.17	Paint
62758	CROW RIVER WINERY	6/5/2024	$591.60	Wine
62759	DAHLHEIMER BEVERAGE GREE	6/5/2024	$4,870.60	Credit
62760	DAVID DROWN ASSOCIATES	6/5/2024	$4,000.00	Classification/Compensation Maintenance
62761	HERALD JOURNAL PUBLISHING	6/5/2024	$128.25	3x5 spring city wide clean up
62762	HOWARD LAKE CEMETERY ASS	6/5/2024	$10,000.00	Annual Payment
62763	IUOE LOCAL 49 FRINGE BENEFI	6/5/2024	$48.00	May 2024
62764	JOE'S SPORT SHOP	6/5/2024	$1,054.27	
62765	JOHNSON BROTHERS LIQUOR C	6/5/2024	$409.90	Liquor
62766	Kahani Events & Design, LLC	6/5/2024	$320.00	
62767	MARCO	6/5/2024	$1,154.62	
62768	MENARDS-BUFFALO	6/5/2024	$521.70	Acct 32030264
62769	METRO WEST INSPECTION SER	6/5/2024	$8,115.40	Inspection and email/report at 721 7th Ave
62770	MUMFORD SANITATION	6/5/2024	$14,502.43	COMPOST LEASE
62771	PHILLIPS WINE & SPIRITS	6/5/2024	$299.14	Liquor
62772	REEDS AND RUSHES	6/5/2024	$752.51	Gratuity Payment
62773	SOUTHERN GLAZER WINE & SPI	6/5/2024	$1,421.26	Liquor
62774	STREICHER'S	6/5/2024	$138.95	
62775	T-MOBILE	6/5/2024	$342.41	Acct 973683744
62776	TRI-COUNTY TREE SERVICE	6/5/2024	$6,128.59	
62777	USA BLUEBOOK	6/5/2024	$895.52	Chemicals
62778	VIKING COCA-COLA	6/5/2024	$748.75	Pop/Mixes
62779	VISA	6/5/2024	$1,718.71	Staybridge suites
62780	WASTEWATER COMMISSION	6/5/2024	$88,338.27	Total City WWTP Discharge
62781	WSB	6/5/2024	$2,650.50	April professional services
62782	XCEL ENERGY	6/5/2024	$8.18	Acct 51-0014482556-8

CITY OF HOWARD LAKE

*Check Summary Register©

Checks 5/20/24-6/17/24

	Name	Check Date	Check Amt	
62783	ZIEGLER INC	6/5/2024	$1,778.07	
62784	Abdo Financial Solutions	6/14/2024	$28,954.19	Late Fee
62785	AMAZON CAPITAL SERVICES	6/14/2024	$1,004.86	
62786	KEITH BOBROWSKE	6/14/2024	$65.00	Cell Allowance
62787	BRANDEL ELECTRIC, LLC	6/14/2024	$192.65	
62788	BREAKTHRU BEVERAGE	6/14/2024	$1,852.47	Liquor
62789	CAPITOL BEVERAGE SALES	6/14/2024	$1,424.45	Beer
62790	CINTAS	6/14/2024	$81.14	
62791	COKATO MOTOR SALES, INC	6/14/2024	$726.72	
62792	CORE & MAIN	6/14/2024	$244.17	
62793	DAHLHEIMER BEVERAGE GREE	6/14/2024	$10,086.79	Beer
62794	EZ DOCK & LIFT LLC	6/14/2024	$172.00	Installation
62795	FINKEN WATER CENTERS	6/14/2024	$20.00	Hot & Cold Cooler
62796	GOPHER STATE ONE-CALL, INC	6/14/2024	$107.45	
62797	NICK HAGGENMILLER	6/14/2024	$365.00	Cell Allowance
62798	HAYES PUBLIC HOUSE LLC	6/14/2024	$28.00	Beer
62799	HL PIT STOP	6/14/2024	$662.49	
62800	JOHNSON BROTHERS LIQUOR C	6/14/2024	$3,190.04	Liquor
62801	KWIK TRIP INC.	6/14/2024	$235.57	Gas
62802	MYRA LAWAY	6/14/2024	$65.00	Cell Allowance
62803	MARCO	6/14/2024	$435.99	
62804	DEBRA MCALPINE	6/14/2024	$65.00	Car Allowance
62805	JARED MERGES	6/14/2024	$65.00	Cell Allowance
62806	JIM OTTENSTROER	6/14/2024	$65.00	Cell Allowance
62807	PHILLIPS WINE & SPIRITS	6/14/2024	$1,710.33	Liquor
62808	PLUNKETT'S PEST CONTROL	6/14/2024	$180.78	Bar & Tavern
62809	PREMIUM WATERS, INC	6/14/2024	$50.72	
62810	CLAYTON PRESTIDGE	6/14/2024	$65.00	Cell Allowance
62811	SILVERSMITH DATA	6/14/2024	$2,036.00	
62812	SOUTHERN GLAZER WINE & SPI	6/14/2024	$1,002.89	Liquor
62813	STREICHER'S	6/14/2024	$213.93	Gloves
62814	THE HOME CITY ICE COMPANY	6/14/2024	$420.09	Ice
62815	THEISEN, MEAGAN	6/14/2024	$215.00	Cell Allowance
62816	TK ELEVATOR	6/14/2024	$555.66	
62817	US BANK	6/14/2024	$23,118.75	
62818	VIKING COCA-COLA	6/14/2024	$622.00	HLWS
62819	WRIGHT COUNTY FINANCE DEP	6/14/2024	$150.00	
503392e	Bass-Haiven, Amanda	5/31/2024	$270.21	
503393e	HAGGENMILLER, NICHOLAS A	5/31/2024	$4,366.17	
503394e	MERGES, JARED M	5/31/2024	$2,390.67	
503395e	REMER, TANYA M	5/31/2024	$1,788.11	
503396e	THEISEN, MEAGAN	5/31/2024	$2,449.48	
503397e	DEITER, CHASE	5/31/2024	$674.25	
503398e	OTTENSTROER, JAMES D	5/31/2024	$1,774.79	
503399e	PRESTIDGE, CLAYTON P	5/31/2024	$1,807.68	
503400e	BORRELL, JENNIFER M	5/31/2024	$123.27	
503401e	BORRELL, JOSHUA K	5/31/2024	$115.02	
503402e	DE'ENGUARDE, ASPEN K.	5/31/2024	$539.51	
503403e	HORSTMANN, REBECCA A	5/31/2024	$164.28	
503404e	KOOSMAN, HOPE A	5/31/2024	$164.67	
503405e	LAWAY, MYRA	5/31/2024	$2,300.37	
503406e	MCALPINE, DEBRA-ANN	5/31/2024	$1,312.45	
503407e	MCALPINE, LEXI	5/31/2024	$286.23	
503408e	SOTHAN, LAURIN B	5/31/2024	$313.20	
503409e	VIRNALA, TASIA, R	5/31/2024	$482.91	

CITY OF HOWARD LAKE

*Check Summary Register©

Checks 5/20/24-6/17/24

	Name	Check Date	Check Amt
503410e	JOHNSON, JACOB D	5/31/2024	$2,046.34
503411e	PREUSSE, MITCHELL D	5/31/2024	$961.69
503412e	SZCZEPANIK, DARIUSZ J	5/31/2024	$2,437.67
503413e	THOMPSON, DAVID G	5/31/2024	$2,734.76
503414e	THOMPSON, KYLE	5/31/2024	$327.39
		Total Checks	$627,712.27

FILTER: [Check Date] between #5/20/24# and #6/17/24# and [Check Nbr]>0 and [Cash Act]='1010'

CITY OF HOWARD LAKE

*Check Summary Register©

Checks 5/20/24-6/17/24

	Name	Check Date	Check Amt	
1012	**CAB - AMBULANCE**			
6085	CENTRAL MCGOWAN, INC	5/22/2024	$231.57	Supplies
6086	EAC SUBMISSIONS	5/22/2024	$51.00	10/01/23-3/31/24
6087	EMERGENCY MEDICAL TRAININ	5/22/2024	$2,050.00	EMT/EMR Training
6088	GRANITE ELECTRONICS	5/22/2024	$181.50	
6089	JOE'S SPORT SHOP	5/22/2024	$345.36	101748 and 957106
6090	KEAVENY PHARMACY	5/22/2024	$689.28	April
6091	RIDGEVIEW MEDICAL CENTER	5/22/2024	$4,000.00	
6092	T-MOBILE	6/5/2024	$47.28	Acct 973663744
6093	VISA	6/5/2024	$21.46	Acct Ending 0802
6094	CENTRAL MCGOWAN, INC	6/14/2024	$42.12	
6095	JOE'S SPORT SHOP	6/14/2024	$250.57	
6096	KEAVENY PHARMACY	6/14/2024	$10.34	Finance Charges
6097	U.S. POSTAL SERVICE	6/14/2024	$84.00	Box #309
		Total Checks	$8,004.48	

FILTER: [Check Date] between #5/20/24# and #6/17/24# and [Check Nbr]>0 and [Cash Act]='1012'

HOWARD LAKE CITY COUNCIL MEETING

June 17, 2024

AGENDA ITEM: **Consider Approving Agreement for Prosecution Legal Services through Berglund, Baumgartner & Glaser, LLC**

SECTION: **New Business**

FROM: Chief Dave Thompson, Howard Lake Police Department

BACKGROUND: The City of Howard Lake has had prosecution legal services through Halvorson Legal in Howard Lake for several years with various attorneys assigned to manage Howard Lake cases, specifically. Most recently, the locally assigned attorney has accepted a different position and Halvorson Legal has opted to consolidate all operations out of their Buffalo Office. The local law office has been sold to the current tenant. The HLPD is left to replace its criminal prosecutor.

Chief Thompson and City Administrator discussed and considered several options including an RFP, contracting with Wright County and ultimately, proposing to select Berglund, Baumgartner & Glaser, LLC for prosecution. Baumgartner currently represents the cities of Annandale and Buffalo police departments. They are proposing a flat fee retainer that appears to a cost savings to our previous provider. These perceived cost savings are due to economies of scale presented by representing all three cities and coordinating court schedules.

DECISION MAKING METRICS:

FINANCIAL: Prosecution Services to the City will be based on a flat monthly rate of $1,666.67 per month, with an annual increase of 3%. Services outside the scope of prosecution services will be billed at an hourly rate of $120/hour.

Approving this agreement is a contract. Further, the City's designated prosecuting attorney will be updated to Berglund, Baumgartner & Glasser from Halvorson Legal.

COUNCIL ACTION REQUESTED:

ATTACHMENTS:

1. **Agreement for Prosecution Legal Services**

AGREEMENT FOR PROSECUTION LEGAL SERVICES
BETWEEN THE CITY OF HOWARD LAKE
AND BERGLUND, BAUMGARTNER & GLASER, LLC

THIS AGREEMENT is by and between the **CITY OF HOWARD LAKE,** a Minnesota municipal corporation ("City") and **BERGLUND, BAUMGARTNER & GLASER, LLC,** a Minnesota limited liability corporation ("BBG") and is effective as of the date last signed by the parties hereto.

NOW, THEREFORE, in consideration of the mutual undertakings herein, the parties hereto agree as follows:

1. SERVICES AND RELATIONSHIP. BBG shall furnish and perform municipal criminal prosecution legal services for the City, prosecuting petty misdemeanor, misdemeanor and traffic related gross misdemeanor offenses, and the handling of civil vehicle forfeiture actions, occurring within the City. Such work shall include attendance at arraignments, bail hearings, omnibus hearings, pre-trials, jury trials, court trials, restitution hearings, contested motion hearings, expungement hearings and civil vehicle forfeiture hearings. BBG's work shall further include charging decisions, drafting complaints and all other services typically associated with providing municipal prosecution services. The foregoing shall hereinafter collectively be referred to as "Prosecution Services."

2. INDEPENDENT CONTRACTOR STATUS. At all times and for all purposes hereunder, BBG and its employees shall be independent contractors and not employees of the City for any purpose. No statement contained in this Agreement shall be construed so as to find BBG or any of its employees to be an employee of the City, and BBG shall not be entitled to any of the rights, privileges, or benefits of employees of the City, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

3. TERM. The initial term of this Agreement shall be from July 1, 2024, to and including June 30, 2025 ("Term"), unless terminated earlier as provided in Section 7 herein. The Agreement shall automatically renew for subsequent one-year terms unless cancelled pursuant to Section 7.

4. FEES. BBG will provide the Prosecution Services to the City based on a flat monthly rate of $1, 666.67 per month, with annual increases of 3%, plus the reimbursable costs noted below. For services performed outside the scope of the Prosecution Services, including but not limited to the handling of City Code violations before criminal charges are filed, or the handling of any criminal case that may be appealed to any Minnesota or Federal Appeals Court, services will be billed at the rate of $120 per hour. Invoices for the Prosecution Services shall be submitted monthly to the City, which the City shall pay within thirty (30) days after receipt.

It is understood and agreed between the parties that the foregoing fees are based on an assumption that Wright County Court Administration will place City cases on current calendar days staffed by BBG and further modify the criminal calendars so as to allow for BBG's efficient handling of City cases, along with current BBG cases. In the event Wright County Court Administration is unable or unwilling to accommodate BBG's requests for calendar consolidations, the parties agree to revisit the terms and conditions of this Agreement to arrive at a mutually beneficial resolution.

5. EXPENSES. In addition to the fees in paragraph 4, the City shall reimburse BBG for expenses charged to BBG by third parties, such as filing fees, expert fees, process service fees and any other out-of-pocket costs that BBG incurs in handling Prosecution Services for the City.

6. INDEMNIFICATION & INSURANCE. BBG agrees it will defend, indemnify and hold harmless the City, their officers and employees against any and all liability, loss, costs, damages, expenses which the City, their officers or employees may hereafter sustain, incur or be required to pay, arising out of BBG's negligent actions, negligent omissions, or failure to adequately perform its obligations pursuant to this Agreement. BBG further agrees that in order to protect itself as well as the City under the indemnity provision set forth herein, it will at all times during the Term of this Agreement maintain legal malpractice insurance in the amount of at least $300,000.00 per claim with a $900,000.00 aggregate limit and Worker's Compensation Insurance to meet at least minimum Minnesota State Statutes.

7. TERMINATION. This Agreement may be terminated by either party, with or without cause, upon sixty (60) days written notice. Payment for services rendered shall be through the date of termination as identified in the written notification.

8. SUBCONTRACTING ASSIGMENT. BBG shall not subcontract for performance of any Prosecution Services contemplated under this Agreement without the prior written approval of the City and subject to such conditions, provisions, and approval as the City may deem necessary.

9. MISCELLANEOUS.

A. *Governing Law.* This Agreement shall be governed by the laws of the State of Minnesota.

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

C. *Conflicts.* BBG shall not accept representation of any new clients that will constitute a conflict of interest with the City.

D. *Full Agreement.* The Parties acknowledge that this Agreement represents the full and complete agreement of the Parties and any amendments or modifications to this Agreement must be in writing and executed by both Parties to be effective.

E. *Counterparts.* This Agreement and any amendments to this Agreement may be executed in counterparts, each of which shall be fully effective and all of which together shall constitute one and the same instrument.

IN WITNESS, the parties hereto have executed this Agreement the day and years appearing opposite their signatures.

CITY OF HOWARD LAKE, MINNESOTA

Date:______________________________ By:______________________________

Its:______________________________

BERGLUND, BAUMGARTNER & GLASER. LLC

Date:______________________________ By:______________________________

Its:______________________________

HOWARD LAKE CITY COUNCIL MEETING

June 17, 2024

AGENDA ITEM: **Discuss and Update for Grand 8 Market**

SECTION: **New Business**

FROM: City Administrator, City Administrator
Belinda Larson & Paul Bravinder (Grand 8 Market)

BACKGROUND: Following the closure of Howard Lake Foods in 2022, the City satisfied the contract for deed with the previous owner, and attempted to solicit interest from existing, independent grocers. In all over three dozen were contacted and declined interest. The City then completed an RFP for use of the building. In April of 2023, the city council considered two proposals and ultimately directed the city administrator to draft necessary leases/documents to select Belinda Larson and Paul Bravinder for their membership based grocery store concept.

This agenda item is intended for the couple to provide an update to the city council on their efforts.

To date, there are not documents, leases, purchase agreement etc., stipulating any sort of terms or conditions. In preparation for this session in May, the city council discussed some of the following:

- Proposed timeline including trackable benchmarks.
- Draft terms of purchase/lease.
- Articulated role/ask of the city, if any.
- Consideration for a more formalized relationship (memorandum of understanding, purchase agreement etc).

Pending the outcome and direction provided by council, staff will work with Bravinder and Larson to draft any recommended materials and to keep the overall effort moving forward.

DECISION MAKING METRICS:

FINANCIAL: Open

LEGAL: Open

COUNCIL ACTION REQUESTED: Discuss

ATTACHMENTS: Open

HOWARD LAKE CITY COUNCIL MEETING

June 17, 2024

AGENDA ITEM: Consider Use of Central Park by the HLWW Theatre Arts Boosters (TAB)

SECTION: **New Business**

FROM: City Administrator, Nick Haggenmiller
Belinda Larson, TAB

BACKGROUND: The HLWW Tab is requesting use of Central Park for performances July 11-July 13 and July 19-21st. Performances at 7:30pm and a 4pm show on July 21st. Each performance is about 2 hours long. On site will be a 20'x40'. The group will require the use of the amphitheater, parking lot, and electricity.

Discussing this event, a special use permit issued through the city council was deemed appropriate to regulate and approve the logistics noted above including:

- Use of public property (Central Park)
- Storing of materials on public property (tent)
- Insurance requirements, if any
- Rental/use fees
- Others?

DECISION MAKING METRICS:

FINANCIAL: Central Park does not have a direct rental fee listed on the adopted fee schedule. Lions and Memorial park have fees of $75/half day or $150/day. The ordinance regulating special use permits indicate the fee is set by council. A proposed fee has NOT been discussed between TAB and the City. The City Council should consider covering costs associated with electric use and any additional staff time needed on site for the event.

LEGAL: The City should request proof of insurance listing the event and location as "additionally insured" under HLWW's policy and/or TULIP event insurance. Alternatively, the city council should make an explicit exception.

COUNCIL ACTION REQUESTED: Approve use of Central Park and related terms for use by TAB in July for a community theatre production.

ATTACHMENTS: TAB LETTER

HLWW
THEATRE ARTS
BOOSTERS

To whom it may concern:

The HLWW Theatre Arts Boosters would like permission to use the performance area at Central Park for our summer production of Leap or Faith. In past summers we have used HLWW high school but this year we thought we'd try something different and perform outdoors.

Performance dates are Thursday 7/11- Saturday 7/13 and Friday 7/19 - Sunday 7/21. Performance times are planned for a 7:30p start time - with the exception of our Sunday 7/21 performance which we plan to begin at 4:00p.

The performance is a "normal" stage musical - we have a tent to cover the space so that audience and performers will be under the tent. We also will rent sound and lighting to create a space that is similar to an auditorium. There are 25 cast/crew members and 7-9 pit band members/conductors.

The HLWW TAB has received a grant from the Central Minnesota Arts Board (CMAB) to perform this show. On our grant proposal we stated our evening performances to begin at 7:30 - but would be open to changing to a 7:00 start if the city council prefers. The show lasts about 2 hours - so the end time would be right around 9:30 - with a possibility of cast/crew/audience members milling about in the area until 10:00p or shortly thereafter.

We have rented a tent and chairs from MTM Event Rentals in Waverly - and they will pitch the tent on Monday July 8th and will leave it up until Sunday July 21st, when it will be removed. During performances the tent will have no sides so that the actors can move about freely throughout the center aisle and down the sides during the show. When the tent is not being used for the performance - we will attach the side walls to secure the contents inside.

We will also bring in raised platforms for our stage area - as well as items that will be needed for the pit band - such as music stands, chairs, and instruments.

Rehearsals are currently being held at St John 's Lutheran Church in Howard Lake.... and will continue until the Monday of Performance week - with the possibility of stopping out at the site momentarily to get a feel for performing outdoors.

Performers will be mic'd and a very basic lighting plot will be used - since the summer months allow for several hours of daylight in the evening. Aesthetic disturbances to the area should be minimal and mostly contained within the confines of the tent.

Thank you for your consideration.

Belinda J. Larson

Belinda Larson
Director, HLWW TAB

HOWARD LAKE CITY COUNCIL MEETING

June 17, 2024

AGENDA ITEM: Consider Loan Resolution 24-08 Authorizing and Providing the Incurrence of Indebtedness for the Purpose of Providing a Portion of the Cost of Acquiring, Enlarging, Improving the Water & Sewer Utility System.

SECTION: **New Business**

FROM: City Administrator, Nick Haggenmiller

BACKGROUND: The City has been actively planning and preparing for a large concurrence of street and utility related projects that will be financed primarily through USDA Rural Development. At the February 2024 Council Meeting, a series of actions and approvals were completed by council which included approving USDA's Letter of Conditions (LOC) which details overall terms of the financing package. The LOC is included for re-review.

The specific action proposed is a resolution that follows the previous council action of obligating the funds by council authorization of incurring debt for the project. Doing so is NOT the actual issuance of debt. It is, however, a necessary step in order for the city to receive approval to go out for bids. In the event that bids are not favorable or we simply do not proceed, there is no obligation of the city.

The debt is a bond payable by the City. However, as it is underwritten by USDA the approval process is different than a standard general obligation bond. The city does not need a bond rating or review as part of this process. We are eligible under different criteria.

The proposed bond is $9,090,000 listed as "agency loan" in the letter of conditions previously approved by council.

SUBJECT: Letter of Conditions
Recipient Name: City of Howard Lake
Project Name: Water Treatment Plant, Water Distribution., Sewer Collection and Storm Water Collection
CFDA NUMBER – 10.760

Agency Loan:	$9,090,000
Agency Grant:	$578,000
CF Loan:	$3,150,000
Other Funding:	$20,874,000

Overall Project Status
The last official council discussion on this indicated receipt of the letter of conditions which did not include the level of outside grant sources that we had anticipated. The City sought direct assistance by the State Legislature through two separate bonding bill requests. Ultimately, NO bonding bills were considered this session. The session concluded at the end of May. Staff is currently working with our financial advisor and newly appointed finance director consultant to ensure affordability before recommending moving forward. Concurrently, the city engineer and his team are finishing necessary USDA submittals and the full plans and specifications necessary to go out for bidding. We hope to bring forward a recommendation to/not to proceed in July or August.

DECISION MAKING METRICS:

FINANCIAL: This specific action does not have a cost consequence. However, it is part of a larger set of approvals in consideration of about $34Million in public improvements.

LEGAL: The City Attorney has provided a statement indicating he will be part of necessary legal conformance with this issuance. The City's financial advisor has additionally reviewed the materials and recommends approval.

COUNCIL ACTION REQUESTED: Approve the resolution as presented.

ATTACHMENTS:

1. Resolution 24-08

USDA

United States Department of Agriculture

February 22, 2024

City of Howard Lake
625 8th Avenue
Howard Lake, MN 56201

SUBJECT: Letter of Conditions
Recipient Name: City of Howard Lake
Project Name: Water Treatment Plant, Water Distribution., Sewer Collection and Storm Water Collection
CFDA NUMBER – 10.760

Agency Loan:	$9,090,000
Agency Grant:	$578,000
CF Loan:	$3,150,000
Other Funding:	$20,874,000

Dear Mayor and City Council:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development (RD), both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. This includes any significant changes in the Applicant's financial condition, operation, organizational structure or executive leadership. Any changes made without Agency concurrence shall be cause for discontinuing processing of the application.

This letter does not constitute loan and grant approval, nor does it ensure that funds are or will be available for the project. The funding is being processed on the basis of a loan not to exceed $9,090,000 and a grant not to exceed $578,000. The loan and grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds" is signed by the Agency approval official.

The applicant will ensure projects are completed in a timely, efficient, and economical manner. You must meet all conditions set forth under Section III – Requirements Prior to Advertising for Bids within 1 year of this letter.

If you do not meet the conditions of this letter, the Agency reserves the right to withdraw Agency funding.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 7 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"

All parties may access information and regulations referenced in this letter at our website located at: Water and Environmental Programs | Rural Development (usda.gov)

The conditions are as follows:

SECTION I - PROJECT SCOPE

1. Project Description – Funds will be used for the replacement of the water distribution, storm water and sanitary sewer mains, construction of a new water treatment plant and construction of a new well adjacent to the plant.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) Version 2, prepared by Bolton & Menk, Inc. dated August 8, 2023, as concurred with by the Agency.

2. Project Funding – The Agency is offering the following funding for your project:

Agency Loan -	$ 9,090,000
Agency Grant -	$ 578,000
Agency CF Loan (streets) -	$ 3,150,000

This offer is based upon the following additional funding to be obtained.

Proposed PFA SRF Loan -	$ 17,874,000
Proposed Emerging Contaminants Grant -	$ 3,000,000
TOTAL PROJECT COST -	$ 33,692,000

The proposed funding package will be allocated to the various project costs as outlined:

The water project is $25,741,000. a RD Loan of $4,289,000 loan and RD Grant of $578,000 on the water system was determined feasible. The proposed state SRF loan of $17,874,000 and proposed Emerging Contaminants grant of $3,000,000 will be used for the water treatment plant portion of the project only.

The wastewater project is $3,298,000. A RD Loan of $3,298,000 loan on the wastewater system was determined feasible.

The stormwater project is $1,503,000. A RD Loan of $1,503,000 on the stormwater system was determined feasible.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

If, after obligation of Agency funds, other funding becomes available, the Agency reserves the right to deobligate any and all funding for this project and to re-underwrite. This may result in the offering of a different funding package to for this project.

Prior to advertisement for construction bids, you must provide evidence of applicant contributions and other funding sources. This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. Project Budget – Funding from all sources has been budgeted for the estimated expenditures as follows:

Item	Water	Wastewater	Storm Water	Streets	Total
Construction Costs	$18,652,059	$2,511,886	$1,189,315	$2,030,000	$24,383,260
Project Contingency	1,867,381	252,179	119,709	204,813	$2,444,082
Engineering	3,671,702	375,193	130,244	628,348	$4,805,487
Interim Interest	384,409	37,710	12,615	63,404	$498,138
Other	1,165,449	121,572	51,117	223,435	$1,561,573
Total	$25,741,000	$3,298,000	$1,503,000	$3,150,00	$33,692,000

Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. Obligated loan and/or grant funds not needed to complete the proposed project will be deobligated. Any reduction will be applied to Agency grant funds first. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. An "Amended Letter of Conditions" will be issued for any changes to the total project budget.

4. Project Timeline – To ensure that the project proceeds in a timely manner, key processing milestones have been established in accordance with the PER or other Agency approved documentation. **Projects should be completed and Agency funds fully disbursed within three years of obligation.** By agreeing to the terms herein, you agree to comply with the milestones identified below. If, for any reason, one or more of the milestones cannot be met, you must notify the Agency in writing at least 30 days prior to the referenced date. Should your final completion date become more than three years after obligation the written request will follow the procedures outlined in Section VI of this letter, including the submission of not less than 90 days prior to the benchmark. The correspondence must contain a valid explanation as to why the milestone cannot be met and include a proposed revised project completion schedule. If the Agency agrees to the modification, a written confirmation will be issued. The Agency reserves the right to de-obligate loan and/or grant funds, or take other appropriate action, if the established or amended deadlines are not met.

Milestone	Date
Land & Easement Acquisition	August 2024
Plans & Specifications, and Design Complete	August 2024
Permits Acquisition Complete	January 2025
Initial Advertisement for Bids	March 2025
Award Contract(s)/Initiate Construction	April 2025
Substantial Completion	October 2026
Final Completion	April 2027

SECTION II – RATES & TERMS

5. Interest Rates and Loan Terms – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount. The payment due date will be established as the day that the loan closes.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal annual amortized installments, beginning one year after closing. For planning purposes, use a 2.25% interest which provides for an annual payment of $347,057. The precise payment amount will be based on the interest rate at which the loan is closed and may be different than the one above.

6. Security – The loan will be secured by a General Obligation bond with first lien position in the amount of $9,090,000. The bond will be fully registered as to both principal and interest in the name of the "United States of America, Acting through the United States Department of Agriculture." Bond Counsel will be utilized in preparation of these documents.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or associated laws. There must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

Additional security requirements are contained in RUS Bulletin 1780-27, "Loan Resolution (Public Bodies) and RUS Bulletin 1780-12, "Water and Waste System Grant Agreement". A draft of all security instruments, including draft bond resolution, must be reviewed and concurred in by the Agency prior to advertising for bids. Bond/loan resolutions must be duly adopted and executed prior to loan closing.

The Grant Agreement will be executed prior to the first disbursement of grant funds. The grantee understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 2 CFR part 200 in effect at this time and as may be subsequently modified. The grantee understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation the project.

7. Reserves – Reserves must be properly budgeted and set aside to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency repairs, to assist with debt service should the need arise, and for the replacement of assets which have a useful life less than the repayment period of the loan. The following reserves are required to be established as a condition of this loan:

a. **Short-Lived Asset Reserve** –You must establish a short-lived asset reserve fund. Based on the PER, you must deposit at least $57,200 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

SECTION III –REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

8.Organization – The Bond Counsel transcripts of proceedings must show that your organization is a duly incorporated public body and has continued legal existence. Your organization must have the authority to own, construct, operate, and maintain the proposed facility, as well as for borrowing money, pledging security and raising revenues.

9. Suspension and Debarment Screening – You will be asked to provide information on the principals of your organization. Agency staff must conduct screening for suspension and debarment of the entity, as well as its principals through the Do Not Pay Portal.

Principal –

- i. An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- ii. A consultant or other person, whether or not employed by the participant or paid with federal funds, who –
  1. Is in a position to handle federal funds;
  2. Is in a position to influence or control the use of those funds; or,
  3. Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (2 CFR §180.995)

10. Environmental Requirements –At the conclusion of the proposal's environmental review process, no specific action(s) were determined necessary to avoid or minimize adverse environmental impacts as outlined in the Environmental Report (ER) dated July 2023.

11. <u>Engineering Services</u> – You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance," or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids and must approve any modifications to this agreement.

12. <u>Contract Documents, Final Plans, and Specifications-</u> All development will be completed by contract in accordance with applicable provisions of RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, (copy available upon request), and in compliance with all statutory requirements. You are responsible to share this with your engineer before pre-design.

a. The plans and specifications and all proposals required by law must be approved by MN Department of Health and the MN Environmental Protection Agency.

b. In preparing final design and providing service to the planned project area, you and your engineer will comply with all zoning and planning requirements of the appropriate governing bodies where service is to be provided.

c. The Agency will need to concur in the plans and specifications prior to advertising for bids. The Agency may require an updated cost estimate if a significant amount of time has elapsed between the original project cost estimate and advertising for bids.

d. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.

e. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.

13. <u>Build America, Buy America (BABAA) Requirements</u>- Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

a. all iron and steel permanently installed in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

b. all manufactured products permanently installed in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

c. all construction materials permanently installed are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The BABAA requirement applies to the entirety of an infrastructure project even if only a portion of the project is funded by Federal funds.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers
When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

a. applying the domestic content procurement preference would be inconsistent with the public interest;

b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

Definitions

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Domestic content procurement preference’’ means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

‘‘Project’’ means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Owners are ultimately responsible for compliance with the evidence standards as outlined in the Build America Buy America (BABAA) appendix to this Letter. Owners are required to maintain records as specified in their loan or grant agreement, but in all cases, they should maintain records for a minimum of three years after the final expenditure report. Minimum records include certifications from manufacturers, the architect/engineer, and the prime contractor. Supporting documentation includes purchasing records and notes and photos taken by the Resident Project Representative (RPR). Further guidance regarding certifications will be provided by the Agency.

14. Legal Services –A legal services agreement is required with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a “not to exceed” amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, “Legal Services Agreement,” or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

15. Property Rights - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property

Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
b. **Form RD 442-20, "Right-of-Way Easement"** – This form, or similar format, may be used to obtain any necessary easements for the proposed project.
c. **Form RD 442-21, "Right-of-Way Certificate"** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
d. **Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way"** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.
e. Preliminary Title Opinion – When applicable, your attorney or title company will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, "Preliminary Title Opinion," may be used.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

16. <u>System Policies, Procedures, Contracts, and Agreements</u> – The facility must be operated on a sound business plan which involves adopting policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

a. Conflict of Interest Policy – Prior to obligation of funds, you must certify in writing that your organization has in place up-to-date written standards of conduct covering conflict of interest. The standards of conduct must include disciplinary actions in the event of a violation by officers, employees, or agents of the borrower. The standards identified herein apply to any parent, affiliate or subsidiary organization of the borrower that is not a state or local government, or Indian Tribe. Policies and accompanying documents shall be furnished to Rural Development upon request.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure in the same format is required if no conflicts are anticipated.

Sample conflict of interest policies may be found at the National Council of Nonprofits website, https://www.councilofnonprofits.org/tools-resources/conflict-of-interest, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at http://www.irs.gov/pub/irs-pdf/i1023.pdf. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements above must be submitted prior to loan closing, with the exception of the conflict of interest policy, which must be in place prior to obligation of funds.

17. Closing Instructions – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Both your bond and legal counsel must comply with these instructions when closing the Agency loan/grant.

18. System Users – This letter of conditions is based upon your indication at application that there will be at least 737 residential users and 78 non-residential users on the existing system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

19. Construction Account – A separate construction account is not required for project funds. However, the recipient must be able to separately identify, report and account for all Federal funds, including the receipt, obligation and expenditure of funds, in accordance with 2 CFR 200.305. These funds must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. **If the balances at the financial institution where federal funds will be deposited exceeds the FDIC insurance coverage, the excess amount must be collaterally secured up to 100 percent of the highest amount of funds expected to be deposited in the account at any one time, per the Department of Treasury regulations and requirements.**

20. Interim Financing – The Agency's policy is to utilize interim financing for all loans exceeding $500,000. Prepayment penalties on interim financing are not allowed. Borrowers are required to seek interim financing initially from private or cooperative lenders if funds can be borrowed at reasonable interest rates on an interim basis from those sources for the construction period. The fact that a commercial lender's rates are higher than current Agency interest rates does not necessarily mean that the commercial rate is not reasonable.

21. Proposed Operating Budget – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance (O and M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, "Operating Budget," or similar format may be utilized for this purpose. It is expected that O and M expenses will change over each successive year and user rates will need to be adjusted on a regular basis.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested, please contact our office for information.

22. Permits –The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

23. Risk and Resilience Assessment/Emergency Response Plan (RRA/ERP) –The Agency requires all financed water and wastewater systems to have a RRA/ERP in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operation, and a certification that an RRA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that an RRA/ERP has been completed prior to advertising for bids. Technical assistance is available in preparing these documents at no cost to you.

Before funds are drawn, you should have in place a cybersecurity plan, a supply chain plan, and a plan to comply with cybersecurity requirements of the National Institute of Science and

Technology and the Cybersecurity and Infrastructure Security Administration. These items should be addressed in the RRA/ERP.

The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. It should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every five years at a minimum.

24. Bid Authorization - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. Disbursement of Agency Funds - Agency funds will be disbursed electronically into the construction account as they are needed. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to commencement of construction.

The order of disbursement is as follows: 1) Applicant contribution, 2) other funding sources, 3) interim financing or Agency loan funds, and 4) Agency grant funds. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior the first disbursement. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. Agency Grant funds must not be disbursed prior to loan funds except as authorized in 7 CFR 1780.45(d).

Grant funds are to be deposited in an interest-bearing account (exception provided below) in accordance with 2 CFR Part 200 and interest in excess of $500 per year remitted to the Agency. The funds should be disbursed by the recipient immediately upon receipt, and there should be little interest accrual on the Federal funds. Recipients shall maintain advances of Federal funds in interest-bearing accounts, unless:

- The recipient receives less than $120,000 in Federal awards per year.
- The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.
- The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
- A foreign government or banking system prohibits or precludes interest-bearing accounts.

26. Bid Tabulation – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer's evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

a. **Cost Overruns –** If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20 percent of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.
b. **Excess Funds** - If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and Letter of Conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

27. Suspension and Debarment Screening – In accordance with 2 CFR Part 180, Subpart C, as a condition of the transaction and the responsibilities to persons at the next lower tier with whom you enter into transactions, you must conduct screening for suspension and debarment of lower tier recipients (e.g., vendors, contractors, etc.).

28. Contract Review – Your attorney will certify that the executed contract documents, including performance and payment bonds, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with 7 CFR 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for concurrence. Construction cannot commence until the Agency has concurred in the construction contracts.

29. Final Rights of Way – Your attorney or title company must furnish a separate final title opinion on all real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, "Final Title Opinion" may be used.

If any of the right-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed.

30. Insurance and Bonding Requirements - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the borrower shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity bond coverage is maintained.

a. **General Liability Insurance** – Include vehicular coverage.
b. **Workers' Compensation** – In accordance with appropriate State laws.
c. **Guaranty or Fidelity Insurance**–Coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees. Each position is to be insured in an amount equal to the maximum amount of funds expected to be under the control of that position at any one time. The minimum coverage allowed will be an amount equal to the total annual debt service payment on the Agency loans. The coverage may be increased during construction based on the anticipated monthly advances.
d. **National Flood Insurance** - If the project involves acquisition or construction in a designated special flood area, the community in which the acquisition or construction is situated must be currently participating in the national flood insurance program. Additionally, if the project involves acquisition or constriction in designated special flood or mudslide prone areas, a flood insurance policy must be in place at the time of loan closing.
e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

The Agency is to be listed as "Other Insured" so as to receive notifications on all insurance, regardless of security. Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

31. Initial Civil Rights Compliance Review – The Agency will conduct an initial civil rights compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E. You are expected to comply with the completion of the review, including the furnishing of any documents, records, or other applicable material.

SECTION V – REQUIREMENTS PRIOR TO CLOSING

32. Interim Financing. Interim financing is being used. Generally, loan closing will occur near the end of construction when interim funds are fully disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing.

33. Electronic Payments – Payments will be made through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, "Authorization Agreement for Preauthorized Payments," for all new and existing indebtedness to the Agency prior to loan closing.

34. Other Requirements – All requirements contained in the Agency's closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

a. System for Award Management. You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Renewal can be completed online at: http://sam.gov. This registration must be renewed and revalidated every 12 months for as long as there is an active loan, grant, or guaranteed loan with the Agency.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the activation date, commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the "Help" section at http://sam.gov).

b. Litigation. You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.

c. Certified Operator. Evidence must be provided that your system has or will have a certified operator, as defined by applicable State or Federal requirements, available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

35. Construction Completion Timeframe – Following the benchmarks established in Section I, Item 4, Project Timeline, all projects should be completed and Agency funds fully disbursed within three years of the date of obligation. If funds are not disbursed within three years of obligation and you have not already done so per Section I, Item 4, you must submit a written request for extension of time to the Agency with adequate justification of the circumstances, including any beyond your control. The request must be submitted at least 90 days prior to the end of the three-year timeframe and include a revised estimated date of completion. The Agency will typically only allow one extension. Subsequent requests for waivers beyond the initial extension or requests that exceed five years from the initial date of obligation will be submitted to the RUS, Water and Environmental Programs for consideration. The Agency retains the right to de-obligate any loan and/or grant monies, or take other appropriate action, related to unliquidated funds that exceed the timeframes above and are not under an active extension.

36. Resident Inspector(s) – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must provide written concurrence. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the preconstruction conference.

37. Preconstruction Conference – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.

38. Inspections - The Agency requires a preconstruction conference, pre-final, final, and warranty inspections. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any outstanding warranty issues. The Agency will conduct an inspection with you of your records management system at the same time and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

39. Change Orders – A Change Order must be submitted for all modifications to the approved scope of work, including existing contracts. This includes non-physical modifications such as any time extension requests. Prior written Agency concurrence is required for all Change Orders.

40. Payments – Prior Agency concurrence is required for all invoices and requests for payment before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner’s written concurrence.

41. Use of Remaining Funds – As stated above, applicant contribution and connection or tap fees will be the first funds expended in the project. Funds remaining after all costs incident to the basic project have been paid or provided will be handled as follows:

a. Funds remaining after the applicant contribution and connection fees may be considered in direct proportion to the amounts of funding obtained from each source. The use of

Agency funding will be limited to eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.

b. Any reductions in the Agency funding will be first applied to the grant funds.
c. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 60 days of final completion of project. Prior to actual cancellation, you, your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
d. Under no circumstances is it appropriate to use remaining funds as contributions to a new project outside the scope of the funded project.
e. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

42. Technical, Managerial and Financial Capacity - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for additional information.

43. Reporting Requirements Related to Expenditure of Funds -- An annual audit under 2 CFR 200 is required if you expend $750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end. Both the audit and accompanying management report must be submitted for review.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy of that agreement to the Agency prior to the advertisement of construction bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

44. Prepayment and Extra Payments - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

> *Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.*

45. Annual Financial Reporting/Audit Requirements – You are required to submit an annual financial report at the end of each fiscal year. The annual report will be certified by the appropriate organization official, and will consist of financial information, a current rate schedule, and listing of board members with their terms. Financial statements must be prepared on an accrual basis of accounting in accordance with generally accepted accounting principles (GAAP). The annual report will include separate reporting for each water and waste disposal facility, and itemized cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available, at no cost, with preparing financial reports.

The type of financial information that must be submitted is specified below:

a. **Audits** – An audit under the Single Audit Act is required if you expend $750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

   See Section VI for additional information regarding audits.

b. **Financial Statements** – If you expend less than $750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include, at a minimum, a balance sheet and an income and expense statement. You may use Form RD 442-2, "Statement of Budget, Income and Equity," and 442-3, "Balance Sheet," or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end.

46. Annual Budget and Projected Cash Flow - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. The budget must be signed by the appropriate borrower official. Form RD 442-2, "Statement of Budget, Income and Equity," or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget.

47. Graduation - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you can obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

48. Security/Operational Inspections – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

49. System for Award Management. You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Further information can be found at paragraph 33 of this letter.

50. Risk and Resiliency Assessment/Emergency Response Plan (RRA/ERP) – The RRA/ERP is further outlined under Section III of this letter. You will be required to submit a certification to the servicing office every five years that the RRA/ERP is current and covers all sites related to the facility. The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. It should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. Technical assistance is available in preparing these documents at no cost to you.

51. Insurance. – Insurance requirements are further outlined in Section IV of this letter. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

52. Statutory and National Policy Requirements – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.

b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.

c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.

d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, "Improving Access to Services by Persons with Limited English Proficiency" and further affirmed in the USDA Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA."

f. **Controlled Substances Act** - Even though state law may allow some activities, as a recipient of Federal funding, you are subject to the Controlled Substances Act. Specific questions about the Controlled Substances Act should be directed to the Servicing Official who will contact the Office of General Counsel, as appropriate.

53. Compliance Reviews and Data Collection – Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter.

If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not

Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of Agency regulations, statutes, and other applicable policies.

We look forward to working with you to complete this project. If you have any questions, please contact Michelle Wickliff at 651-602-7795 or by e-mail at michelle.wickliff@usda.gov .

Sincerely,
Michelle Wickliff
Michelle Wickliff
Area Specialist

Attachments

cc: Community Programs Director
Accountant
Attorney
Bond Counsel
Engineer

FORMS and BULLETINS:

Form RD 442-2, "Statement of Budget, Income and Equity" – Items 45 and 46
Form RD 442-3, "Balance Sheet" – Item 45
Form RD 442-7, "Operating Budget" – Item 20
Form RD 442-20, "Right-of-Way Easement" – Item 14
Form RD 442-21, "Right-of-Way Certificate" – Item 14
Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way" – Item 14
Form RD 1927-9, "Preliminary Title Opinion" – Item 14
Form RD 1927-10, "Final Title Opinion" – Item 28
Form RD 1940-1, "Request for Obligation of Funds" – Pages 1 and 2
Form RD 1942-46, "Letter of Intent to Meet Conditions" – Page 2
Form RD 3550-28, "Authorization Agreement for Preauthorized Payments" – Items 32 and 33
SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" – Item 24
RUS Bulletin 1780-7, "Legal Services Agreement" – Item 13
RUS Bulletin 1780-12, "Water and Waste System Grant Agreement" – Item 6
RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance" – Items 11 and 12
RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)" – Item 6

Appendix B
Build America, Buy America Evidence Standards

Manufacturers
For each item to which BABAA applies (every item permanently installed on the project, except for aggregate and aggregate binding materials), a manufacturer's certification letter or other document demonstrating compliance is required. It must, at a minimum, identify the item being certified (short written description as well as part number, if applicable) and affirm that the item complies with BABAA. This document must be signed by an authorized company representative.

Architects and Engineers
Compliance with BABAA will be spelled out in agreements for services, construction contracts, and procurement contracts. Generally, the A/E contract should include, as a basic service, obtaining and maintaining all BABAA documentation (particularly manufacturers' certifications) during construction, which shall be transferred to the Owner upon completion of the project. The architect or engineer will need to certify to this action at the project's end.

Resident Project Representative / Resident Inspector
As part of their duties, Resident Project Representative/Resident Inspector should be instructed to verify items delivered to the site and installed are accompanied by documentation of compliance with BABAA. They should photograph items as appropriate. RPR/RI daily logs and photographs will become part of the construction record and can be used as supporting information during audits, providing evidence for items that are buried or otherwise inaccessible.

Contractors
Construction contract(s) must include a requirement to procure and install only items that comply with BABAA or are subject to an approved waiver. Contractors must provide manufacturers' certifications for all BABAA compliant items to the responsible party before a request for reimbursement to the Agency is made. At completion, the contractor will be required to certify that all items used on the contract complied with BABAA and that all manufacturers' certifications were provided.

Position 5

RUS BULLETIN 1780-27

(Automated 8-97)

LOAN
RESOLUTION 24-08
(Public Bodies)

APPROVED
OMB. No. 0575-0015

A RESOLUTION OF THE City Council

OF THE City of Howard Lake

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

Water and Sewer Utility System

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of Howard Lake
(Public Body)
(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

Nine Million Ninety Thousand Dollars ($9,090,000.00)

pursuant to the provisions of MN Statutes, Chapter 475 Sections 444.075 & 475.61; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning. financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of $10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed $ 578,000

    under the terms offered by the Government; that the Mayor

    and City Administrator of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was: Yeas ______ Nays ______ Absent ______

IN WITNESS WHEREOF, the City Council of the

City of Howard Lake has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this ______ , ______ day of ______

____

(SEAL) By ______________________

Peter Zimmerman

Attest: Title Mayor

____

Title City Administrator

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as ______________________________ of the City of Howard Lake ______________________________

hereby certify that the City Council ______________________________ of such Association is composed of

________________ members, of whom , ________________ constituting a quorum, were present at a meeting thereof duly called and

held on the ____________________ day of ____________________ ; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of ____ ,
the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been rescinded or amended in any way.

Dated, this______________________ day of ______________________

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Title ______________________________