

**PROFESSIONAL SERVICES AGREEMENT
FOR
WASTEWATER TREATMENT FACILITY IMPROVEMENTS
MARSHALL, MINNESOTA**

This Agreement is made by and between the City of Marshall, Minnesota, hereinafter referred to as CITY, and Bolton & Menk, Inc., hereinafter referred to as CONSULTANT, for the Wastewater Treatment Facility Improvements Construction Services in Marshall, Minnesota.

I. PROJECT DESCRIPTION

Wastewater Treatment Facility Improvements:

1. The proposed wastewater treatment facility improvements as bid on April 16, 2019, include the following major components:
 - a. Replace primary and final clarifier sludge pumps
 - b. Refurbish trickling filter lift station
 - c. Refurbish west trickling filter
 - d. Refurbishment intermediate clarifier
 - e. Replace aeration basin blowers and diffusers
 - f. Add third final clarifier and new splitter structure
 - g. Additional Cast-in-Place Concrete Biosolids Storage Tank
 - h. Surface restoration/improvements
 - i. Demolition/modifications of existing structures

II. CONSTRUCTION SERVICES

Engineering Services will be provided for the construction engineering/observation services for the recommended Water System Improvements project bid on June 16, 2009. The specific services to be provided are as follows:

1. The CONSULTANT shall be the CLIENT'S representation during the construction of the wastewater treatment facility improvements. The following construction engineering services shall be provided: project administration and construction observation visits as necessary; attendance at preconstruction conference and monthly construction progress meetings and distribution of meeting notes; response to contractor's questions regarding interpretation of and clarification of contract drawings; timely issuance of field orders, work directive changes and request for proposals for changes to the construction contract; timely review of change order proposal requests; review of shop drawings and distribution of shop drawings; coordination of material testing requirements with a material testing company (currently estimated to cost \$28,000.00); review of contractor payment requests; conduct final inspection and recommendations for final acceptance to the CLIENT; preparation of record drawing at the completion of the project; conduct post-construction inspection and provide assurance that the plant operation is in accordance with design criteria intended and construction of the water treatment facility.
2. The CONSULTANT shall perform the construction staking and surveying for the water treatment facilities and Broadway Avenue project.
3. The CONSULTANT will provide part-time project construction observation. The following project construction observation services will be provided: act as the CLIENT'S liaison with Contractor; performance of on-site observations of the work for the water system improvements to determine if work is, in general, proceeding in accordance with the contract documents; reporting to the CLIENT'S

staff when clarifications or modifications to the contract documents are required; maintaining log of site conditions during on-site observation; and provisions of site/field staking and surveying services.

4. The CONSULTANT will prepare an Operation and Maintenance (O&M) Manual for the water treatment facility improvements. Included in the O & M Manual will be process operation procedures and maintenance procedures for equipment.
5. The CONSULTANT will provide up to 100 hours of start-up training to the CLIENT'S staff. The CONSULTANT will familiarize the CLIENT'S staff with the water treatment facility improvements operations and maintenance. The CONSULTANT will provide on-site training to include the following: provide instruction on maintenance management of equipment and provide operational training and assistance to optimize the performance of the water treatment facility improvements.
6. The CONSULTANT will retain a Material Testing Company to perform the necessary construction quality control testing for the water treatment facilities (estimated cost of \$28,000).

III. COMPENSATION

The CLIENT will compensate the CONSULTANT in accordance with the following schedule of fees for the time spent in performance of Agreement services.

Schedule of Fees

<u>Classification</u>	<u>Hourly Rates</u>
Sr. Principal Engineer/Surveyor	\$170-240/Hour
Sr. Project Manager - Principal Engineer/Surveyor	\$127-180
Project/Design Engineer/Planner/Landscape Architect	\$52-170
Licensed Surveyor	\$94-165
Project Surveyor	\$82-130
Specialist (Nat. Resources; GIS; Traffic Graphics; Other)	\$47-140
Senior Technician (Inc. Survey 1)	\$72-165
Technician (Inc. Survey 1)	\$33-140
Administrative Support & Clerical	\$29-110
Architect	\$120-215
Electrical Engineer	\$120-215
Mechanical Engineer	\$120-215
Structural Consultant	\$120-215
Expert Consultant (Other)	\$150-225

1. Cost for the Construction Services will be billed at the hourly rates as detailed in the Schedule of Fees and shall not exceed \$928,000.00.
2. In addition to the foregoing, CONSULTANT shall be reimbursed at cost plus an overhead fee (not-to-exceed 15%) for the following Direct Expenses when incurred in the performance of the work.
 - a. CLIENT approved outside (facilities not owned by CONSULTANT) computer services.
 - b. CLIENT approved outside professional and technical services including material testing.
 - c. Identifiable reproduction and reprographic charges.
 - d. Expendable field supplies and special field equipment rental.

- e. Other costs for such additional items and services that the CLIENT may require the CONSULTANT to provide to fulfill the terms of this Agreement.
- 4. The preceding Schedule of Fees shall apply for services provided through December 31, 2019. Hourly rates may be adjusted by CONSULTANT on an annual basis thereafter to reflect reasonable changes in its operating costs. Adjusted rates will become effective on January 1st of each subsequent year.
- B. The payment to the CONSULTANT will be made by the CLIENT upon billing at intervals not more often than monthly at the herein rates.

IV. TIMELINES

The CONSULTANT shall provide Construction Services for a minimum of 24 months after the Notice to Proceed is signed or as long as said project is under construction. Start-up Training Services will be provided for 12 months after Initiation of Operation is certified.

V. DISPUTE RESOLUTION

The CITY and CONSULTANT agree to mediate claims or disputes arising out of or relating to this Agreement as a condition precedent to litigation. The mediation shall be conducted by a mediation service acceptable to the parties. A demand for mediation shall be made within a reasonable time after a claim or dispute arises and the parties agree to participate in mediation in good faith. Mediation fees shall be shared equally. In no event shall any demand for mediation be made after such claim or dispute is barred by the applicable law. Any mediation shall be held in the City of Marshall, Lyon County, Minnesota.

VI. OWNERSHIP OF DOCUMENTS

All instruments of professional service prepared by CONSULTANT, including, but not limited to, drawings and specifications, are the property of the CITY, and these documents shall not be reused on other projects without CONSULTANT'S written permission. CONSULTANT retains all rights, including the copyright in its documents; CONSULTANT reserves the right to include representations of the Project in its promotional and professional materials.

VII. GOVERNING LAW

This Agreement is governed by the laws in the State of Minnesota and any disputes concerning this contract must be decided by the courts of Lyon County, Minnesota.

VIII. ABANDONMENT OF IMPROVEMENT

If the CITY finds it necessary to abandon the project, CONSULTANT shall be compensated for all work completed as calculated on a time and materials basis per the CONSULTANT rate schedule provided at the time of the execution of this Agreement, limited to the maximum of the total cost of Basic Services.

IX. ENGINEERING

Any engineering (i.e. electrical, structural, etc.) services or fees for work performed by consulting engineers will be provided by the CONSULTANT and included in the prices shown for Basic Services.

X. INDEMNIFICATION

The CITY agrees to indemnify, defend and hold CONSULTANT harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injury or death, or economic losses, arising out of the Project and/or the performance or nonperformance of obligations under this Agreement, except to the extent such damages or losses are found by a court or forum of competent jurisdiction to be caused by CONSULTANT'S negligent errors or omissions.

XI. WAIVERS OF CONSEQUENTIAL DAMAGES AND SUBROGATION

The CITY and CONSULTANT waive all claims to consequential damages for any claims or disputes arising out of or relating to this agreement.

In addition, the CITY and CONSULTANT waive all claims against each other to the extent covered by any applicable insurance during design or construction, including but not limited to claims for subrogation.

XII. EQUAL EMPLOYMENT OPPORTUNITY

Equal Opportunity: The CONSULTANT agrees to comply with all applicable laws, rules and regulations relating to nondiscrimination and affirmative action in public purchase, involvement and use. In particular, the CONSULTANT agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, marital status, disability, status in regard to public assistance, or age, and to take affirmative action to insure that applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

XIII. OTHER PARTIES

It is mutually agreed that this agreement is not transferable by either signatory to a third party without the consent of the other principal party.

Original plans are instruments of service and remain the property of the CITY.

XIV. TERMINATION

This agreement, unless previously terminated by written notice, shall be terminated by the final payment for the finished work.

XV. PAYMENT

The payment to the CONSULTANT will be made by the CITY upon billing at intervals not more often than monthly at the rates outlined herein. The CITY will be billed for actual hours plus expenses to the maximum amount of the fee. A 1.0% (12% per annum) interest charge may be applied to all accounts overdue by 30 or more days. Any disputed amounts will not accrue interest.

XVI. APPROVAL

This agreement accepted and approved by:

Bolton & Menk, Inc.
CONSULTANT

City of Marshall
CITY

By: 
Signature

By: _____
Signature

Robert Brown, P.E., Vice President
Printed Name

Robert J. Byrnes, Mayor
Printed Name

April 23, 2019
Date

Date

ATTEST:

Kyle Box, City Clerk