

AGREEMENT FOR PROFESSIONAL SERVICES
WASTEWATER CHLORIDE REDUCTION PROJECT
CITY OF MARSHALL, MN and BOLTON & MENK, INC.

This Agreement, made this 25th day of March 2022, by and between the City of Marshall, 344 West Main Street, Marshall, MN 56258, (“CLIENT”), and BOLTON & MENK, INC., 1960 Premier Drive, Mankato, MN 56001, (“CONSULTANT”).

WITNESS, whereas the CLIENT requires professional services in conjunction with the reduction of chloride in their wastewater effluent as described in the Minnesota Pollution Control Agency (MPCA) Chloride Reduction Grant Work Plan (“Project”) and whereas the CONSULTANT agrees to furnish the various professional services required by the CLIENT.

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

SECTION 1 - CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to perform the various Basic Services in connection with the proposed project as described in Exhibit A – “Chloride Reduction Grant – Water Softening Work Plan”.
- B. Upon mutual agreement of the parties, Additional Services may be authorized as described in Paragraph 4.B and this Agreement will be revised accordingly in writing.

SECTION 2 - THE CLIENT'S RESPONSIBILITIES

- A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section 3 of this Agreement.
- B. The CLIENT shall place any and all previously acquired information in its custody at the disposal of the CONSULTANT for its use. Such information shall include, but is not limited to: boundary surveys, topographic surveys, preliminary sketch plan layouts, building plans, soil surveys, abstracts, deed descriptions, tile maps and layouts, aerial photos, utility agreements, environmental reviews, and zoning limitations. The CONSULTANT may rely upon the accuracy and sufficiency of all such information in performing services unless otherwise instructed, in writing, by CLIENT.
- C. The CLIENT will guarantee access to and make all provisions for entry upon public portions of the project and reasonable efforts to provide access to private portions and pertinent adjoining properties.
- D. The CLIENT will give prompt notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the proposed project.
- E. The CLIENT shall designate a liaison person to act as the CLIENT'S representative with respect to services to be rendered under this Agreement. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret, and define the CLIENT'S policies with respect to the project and CONSULTANT'S services.

- F. The CONSULTANT’S services do not include legal, insurance counseling, accounting, independent cost estimating, financial advisory or “municipal advisor” (as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 and the municipal advisor registration rules issued by the SEC) professional services and the CLIENT shall provide such services as may be required for completion of the Project described in this Agreement.
- G. The CLIENT will obtain any and all regulatory permits required for the proper and legal execution of the Project. CONSULTANT will assist CLIENT with permit preparation and documentation to the extent described in Exhibit A.
- H. The CLIENT may hire, at its discretion, when requested by the CONSULTANT, an independent test company to perform laboratory and material testing services, and soil investigation that can be justified for the proper design and construction of the Project. The CONSULTANT shall assist the CLIENT in selecting a testing company. Payment for testing services shall be made directly to the testing company by the CLIENT and is not part of this Agreement. If CLIENT elects not to hire an independent test company, CLIENT shall provide CONSULTANT with guidance and direction on completing those aspects of design and construction that require additional testing data.
- I. The CLIENT agrees to abide by and follow the intent of the CONSULTANT’S agreement with the MPCA, Exhibit C – Grant Agreement.

SECTION 3 - COMPENSATION FOR SERVICES

A. FEES

1. The CLIENT will compensate the CONSULTANT in accordance with the attached Exhibit B Schedule of Fees (“Schedule of Fees”) for the time spent in performance of Agreement services. Total cost of CONSULTANT services shall not exceed \$56,250 without the prior consent of CLIENT.
2. This Fee represents only a portion of the total project cost to be paid to the CONSULTANT. The total project cost is being split equally between the City of Marshall (CLIENT) and Worthington Public Utilities and is estimated to be \$312,500. Of this project cost, \$156,250 is assigned to the CLIENT of which up to \$125,000 will be reimbursed to the CLIENT upon receipt of funds from the MPCA. The reimbursement and fund payment process will be as follows:
 - a. Service Fees for time expended by the CONSULTANT shall be paid by the CLIENT upon regular invoices.
 - b. CLIENT shall invoice back to the CONSULTANT all costs associated with the project including: CONSULTANT fees, Rebates Issued (with documentation of rebate), and other acceptable incurred costs as described in the MPCA Work Plan and Budget (Exhibit A) and MPCA Grant Agreement (Exhibit C).
 - c. Upon receiving 80% Grant funds from the MPCA, the CONSULTANT shall reimburse the CLIENT 80% of the costs incurred, all reimbursements must be completed by June 30, 2023 per MPCA Grant Agreement.

3. The attached Schedule of Fees shall apply for services provided through December 31, 2022. 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.
4. Rates and charges do not include sales tax. If such taxes are imposed and become applicable after the date of this Agreement, CLIENT agrees to pay any applicable sales taxes.
5. The rates in the Schedule of Fees include labor, general business and other normal and customary expenses associated with operating a professional business. Unless otherwise agreed in writing, the above fees include vehicle and personal expenses, mileage, telephone, survey stakes and routine expendable supplies; and no separate charges will be made for these activities and materials.

B. PAYMENTS AND RECORDS

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

SECTION 4 - GENERAL

A. STANDARD OF CARE

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

B. CHANGE IN PROJECT SCOPE

In the event the CLIENT changes or is required to change the scope or duration of the project from that described in Exhibit A, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to additional compensation at the applicable hourly rates. To the fullest extent practical, the CONSULTANT shall give notice to the CLIENT of any Additional Services, prior to furnishing such Additional Services. Except for Additional Services required to address emergencies or acts of God that impact the Project, the CONSULTANT shall furnish an estimate of additional cost, prior to authorization of the changed scope of work.

C. LIMITATION OF LIABILITY

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

5. To the fullest extent permitted by law, CLIENT and CONSULTANT waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, from any cause or causes.
6. CLIENT waives all claims against individuals involved in the services provided by CONSULTANT under this Agreement and agrees that any claim, demand, or suit shall be directed/asserted only against the CONSULTANT'S corporate entity.

D. INSURANCE

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

7. Prior to commencement of this Agreement, CONSULTANT will provide the CLIENT with certificates of insurance, showing evidence of required coverages. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement for any reason except non-payment of premium, until at least 30 days prior written notice has been given to the Certificate Holder, and at least 10 days prior written notice in the case of non-payment of premium.

E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of Exhibit A or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since the CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of the CLIENT and the CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. The CLIENT acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.

F. CONSTRUCTION SERVICES

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

G. USE OF ELECTRONIC/DIGITAL DATA

1. Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a project deliverable for this Agreement or except as otherwise explicitly provided in this Agreement, all electronic/digital data developed by the CONSULTANT as part of the Project is acknowledged to be an internal working document for the CONSULTANT'S purposes solely and any such information provided to the CLIENT shall be on an "AS IS" basis strictly for the convenience of the CLIENT without any warranties of any kind. As such, the CLIENT is advised and acknowledges that use of such information may require substantial modification and independent verification by the CLIENT (or its designees).
2. Provision of electronic/digital data, whether required by this Agreement or provided as a convenience to the Client, does not include any license of software or other systems necessary to read, use or reproduce the information. It is the responsibility of the CLIENT to verify compatibility with its system and long-term stability of media. CLIENT shall indemnify and hold harmless CONSULTANT and its Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from third party use or any adaptation or distribution of electronic/digital data provided under this Agreement, unless such third-party use and adaptation or distribution is explicitly authorized by this Agreement.

H. REUSE OF DOCUMENTS

1. Drawings and Specifications and all other documents (including electronic and digital versions of any documents) prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of service in respect to the Project and CONSULTANT shall retain an ownership interest therein. Upon payment of all fees owed to the CONSULTANT, the CLIENT shall acquire a limited license in all identified deliverables (including Reports, Plans and Specifications) for any reasonable use relative to the Project and the general operations of the CLIENT. Such limited license to Owner shall not create any rights in third parties.
2. CLIENT may make and disseminate copies for information and reference in connection with the use and maintenance of the Project by the CLIENT. However, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any reuse by CLIENT or, any other entity acting under the request or direction of the CLIENT, without written verification or adaptation by CONSULTANT for such reuse will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT and CLIENT shall indemnify and hold harmless CONSULTANT from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting from such reuse.

I. CONFIDENTIALITY

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

J. PERIOD OF AGREEMENT

This Agreement will remain in effect for the longer of a period of two (2) years or until such other expressly identified completion date, after which time the Agreement may be extended upon mutual agreement of both parties.

K. HAZARDOUS MATERIALS

1. Except as expressly stated in Exhibit A, the parties acknowledge that CONSULTANT'S Services do not include any services related to Constituents of Concern. If CONSULTANT or any other party encounters, uncovers, or reveals a Constituent of Concern at the Project site or should it become known in any way that such materials may be present at the site or any adjacent areas that may affect the performance of the CONSULTANT'S services, then CONSULTANT may, at its option and without liability for consequential or any other damages: 1) suspend performance of Services on the portion of the Project affected thereby until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove such materials, and warrant that the site is in full compliance with applicable laws and regulations; or, 2) terminate this Agreement for cause if it is not practical to continue providing Services.

- a. Constituent of Concern is defined as asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

L. TERMINATION

1. For Cause: This Agreement may be terminated by either party upon 7 days' written notice in the event of substantial failure by other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.
 - a. For termination by CONSULTANT, Cause includes, but is not limited to, failure by CLIENT to pay undisputed amounts owed to CONSULTANT within 120 days of invoice and delay or suspension of CONSULTANT'S services for more than 120 days for reasons beyond CONSULTANT'S cause or control.
 - b. Notwithstanding the foregoing and with consent of terminating party, this Agreement will not terminate under paragraph 4.L.1 if the party receiving such notice immediately commences correction of any substantial failure and cures the same within 10 days of receipt of the notice.
2. For Convenience: This Agreement may be terminated for convenience by CLIENT upon 7 days written notice to CONSULTANT.
3. In the event of termination by CLIENT for convenience or by CONSULTANT for cause, the CLIENT shall be obligated to the CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section 3 of this Agreement. Upon receipt of payment, CONSULTANT shall deliver, and CLIENT shall have, at its sole risk, right of use of any completed or partially completed deliverables, subject to provisions of Paragraph 4.H.
4. In event of termination by CLIENT for cause, CLIENT shall compensate CONSULTANT for all undisputed amounts owed CONSULTANT as of date of termination and, upon receipt of payment, CONSULTANT shall deliver to CLIENT and CLIENT shall have, at its sole risk, right of use of any completed or partially completed deliverables, subject to the provisions of Section 4.H. All other matters will be resolved in accordance with the Dispute Resolution clause of this Agreement.

M. INDEPENDENT CONTRACTOR

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

N. CONTINGENT FEE

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

O. NON-DISCRIMINATION

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

P. ASSIGNMENT

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

Q. SURVIVAL

All obligations, representations and provisions made in or given in Section 4 and Documents Retention clause of this Agreement will survive the completion of all services of the CONSULTANT under this Agreement or the termination of this Agreement for any reason.

R. SEVERABILITY

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

S. CONTROLLING LAW

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

T. DISPUTE RESOLUTION

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

dispute, then either party may seek to have the dispute resolved by bringing an action in a court of competent jurisdiction.

U. MINNESOTA GOVERNMENT DATA PRACTICES ACT (MGDPA)

All data collected, created, received, maintained, or disseminated, or used for any purposes in the course of the CONSULTANT'S performance of the Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Section 13.01, et seq. or any other applicable state statutes and state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy. The Consultant agrees to abide by these statutes, rules and regulations and as they may be amended. In the event the CONSULTANT receives a request to release data, it shall notify CLIENT as soon as practical. The CLIENT will give instructions to CONSULTANT concerning release of data to the requesting party and CONSULTANT will be reimbursed as additional services for its reasonable labor and other direct expenses in complying with any MGDPA request, but only to the extent that the request is not due to a negligent, intentional, or willful act or omission by the CONSULTANT or other failure to comply with its obligations under this contract.

V. ETHICAL STANDARDS

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

SECTION 5 - SIGNATURES

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

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

CLIENT: City of Marshall

CONSULTANT: Bolton & Menk, Inc.

Signature

Signature

Printed Name

Kristopher J. Swanson
Printed Name

Date

March 25, 2022
Date

Address for giving notice:

Address for giving notice:

344 West Main Street

1960 Premier Drive

Marshall, MN 56258

Mankato, MN 56001

CLIENT’S Representative with authority for ordering engineering services and transmitting instructions:

Attachments:

Exhibit A – Chloride Reduction Grant – Water Softening Work Plan and Budget

Exhibit B – Schedule of Fees

Exhibit C – MPCA Grant Agreement

Exhibit A

Basic Services

MPCA Chloride Reduction Grant – Water
Softening Work Plan and Budget found on the following pages.



520 Lafayette Road North
St. Paul, MN 55155-4194

Chloride Reduction Grant – Water Softening Workplan and Budget

FY2022

SWIFT Contract No.: 205530

AI: 228948

Activity ID: PRO20210005

Project title:

Residential and commercial ion exchange salt discharge reduction in Marshall and Worthington

1. Project information

Organization: Bolton & Menk, Inc.

Contractor contact name: Kristopher J. Swanson

Address: 1960 Premier Drive
Mankato, MN 56001

Phone: 507-380-3206

E-mail: Kristopher.Swanson@bolton-menk.com

Minnesota Pollution Control Agency (MPCA) contact:

MPCA project manager: Brooke Asleson

Address: 520 Lafayette Road North
St. Paul, MN 55155

Phone: 651-757-2205

E-mail: Brooke.Asleson@state.mn.us

Start date: March 4, 2022

End date: June 30, 2023

Total cost: \$250,000.00

2. Statement of project details

Bolton & Menk will work with the cities of Marshall and Worthington to develop and issue rebates to residents and businesses for devices that can reduce salt including: reverse osmosis units, alternative water conditioners, new demand based recharging ion exchange softeners (to replace time-based recharge softeners) and blending valves on softeners to utilize less hard water throughout home or business. Removal of softeners could be incentivized if desired by the owner. Also, the program could include free resident/business visits by qualified staff to adjust water conditioners for proper settings. In addition, educational materials will be developed in English and Spanish to help provide additional reduction of salt from all homes and businesses.

These two communities have recently obtained new water quality, making them ideal candidates for more efficient water softeners and other water conditioning devices, modifications to the settings of existing units, education on how to adjust water softeners, and the addition of blending valves to further reduce the salt usage. Marshall's water quality has become softer through upgrades of their water treatment plant, allowing them to reduce community water hardness to below 10 mg/L. In Worthington, their connection to the Lewis and Clark water system has allowed them to blend the community water to a lower hardness coming from the Missouri River. This program will equally split the grant money (and the matching funds) to provide a pilot

rebate program in both communities to implement a number of visits to users in order to replace softeners, change to alternative solutions, or make adjustments to existing equipment. This will provide residents and businesses with \$100,000 of potential rebates to install alternative water conditioners, make adjustments, install new demand based softener (to replace time based softeners) and/or blending valves to allow users to blend softened water from zero hardness coming off the ion exchange unit to water in the 3-7 grains of hardness, thus reducing salt further.

Through the rebate program, public educational materials, and media campaign, each community hopes to have 200+ users (at each community) participate in the program, potentially reducing salt discharge by 120,000 lbs/year (200 users x 50 lbs/month x 12 months). On two Million Gallon per Day (MGD) of wastewater flow this could reduce chloride by 20mg/L, on one MGD of wastewater flow, this could reduce chloride concentrations by as much as 40 mg/L. It is each communities hope that the multifaceted approach of looking at multiple solutions in homes and businesses, making free adjustments, and educating the communities will help them reach their National Pollutant Discharge Elimination System (NPDES) permit limits.

3. Goal statement, project evaluation plan, tasks, and subtasks

Goal statement: Reduce chloride discharge in Marshall and Worthington, Minnesota to ultimately meet NPDES Permit limits by providing rebates for softener inspections/adjustments, reverse osmosis (RO), alternative water conditioners, and more efficient softeners to replace old time-based softeners recharged on a regular basis regardless of water usage or condition of the resin bed. By providing rebates to residents and businesses to remove these softeners and replace them with properly set and calibrated units, significant salt savings for these users can be realized. This program, coupled with exploration of possible blending valves (valves added prior to softeners to allow the user to blend hard raw water with their ion exchange water to create a custom blended water quality, would be evaluated in each community on an individual basis for only the larger water users as they won't save enough salt for residents to promote a rebate program), will allow users in each community to use less salt. The goal is to provide 200 rebates on softeners in each community totaling \$200,000.

In addition to the physical change out of softeners and consideration for blending valves on larger users, Bolton & Menk will develop English and Spanish based educational materials to ensure that softeners throughout each community are set properly for their new water quality. Mailers, video, and web based educational materials are planned for each community, and this information could also be used in other communities in the future. Inspections and adjustments of softeners may also be provided as applicable in each community to allow further reduction of salt.

Project evaluation plan:

Bolton & Menk will utilize a multi-step approach for the project. To start off, the rebate program will be developed with a detailed application required that would include:

- Current softener information
- Salt used per month by resident or business
- Water used by resident or business
- If water usage is high enough, consideration for blending valve addition
- List of applicable water conditioners (RO and alternative methods), ion softeners, blending valves, and softener adjustments eligible for rebates (or free visits from qualified staff)

Bolton & Menk will also contact area retailers in both communities to quantify the amount of salt that was sold in Marshall and Worthington in 2018, 2019, and 2020 to get a baseline (if available) of previous salt usage in each community.

Bolton & Menk will provide regular communication to the project team (including MPCA), partners and any other experts brought in to support the project.

After completion of the rebate program (up to 200 users in each community) and development of educational materials, the team will evaluate the following:

- Survey results of salt reduction from users of the rebate
- Waste water treatment facility discharge parameter changes for chlorides and comparison to NPDES discharge limit
- 2022 and 2023 salt sales in each community (if available)
- Provide a detailed technical memo of findings, successes or failures of the rebate program, and estimates of total salt reductions.

Task 1 of 4: Develop Rebate program with project team, local experts and MPCA support.

Develop documents and criteria for rebate programs including

- Advertising
- Criteria and paperwork to collect information
- Information on eligible units and installers in each community
- Develop estimates for chloride reduction potential for various water softening and conditioning systems that will be part of the rebate program
- Documents to ensure salt savings is present
- Provide each community with documents and plan using the [MPCA's Water Softening Rebate Guidance](#) on how to implement the rebates
- Summarize the plan each community plans to take

Timeframe: March 2022 – June 30, 2022

Task 1 Total: Grant: \$40,000, Match: \$10,000 (\$5,000 from each community), Total: \$50,000

Task 2 of 4: Rebates for qualifying residents and businesses

Proposing up to \$500 rebates for new, efficient water softening units, RO, or alternative water conditioners. Up to 200 in each community for a total of \$100,000 for Marshall and Worthington, \$200,000 total in rebates on this grant. Additionally, these funds could be used for free inspections/adjustments of softening units to reduce salt in the communities.

Timeframe: May 2022 – June 30, 2023

Task 2 Total: Grant: \$160,000, Match: \$40,000 (\$20,000 from each community), Total: \$200,000

Task 3 of 4: Preparation of Educational Material – Mailers, Video, Newsletter Articles, Press Releases, Social Media, and Website for properly adjusting and reducing softening. Will coordinate this effort with the project team and MPCA. Provide MPCA the opportunity to review all developed educational content.

Timeframe: May 2022 – December 31, 2022

Task 3 Total: Grant: \$40,000, Match: \$10,000 (\$5,000 from each community), Total: \$50,000

Task 4 of 4: Preparation of progress reports using an approved MPCA format and a Final Report to communities and MPCA – will provide a draft of the final report to MPCA for review and comment.

Timeframe: April 2023 – May 2023, Final Reporting provided by June 15, 2023

Task 4 Total: Grant: \$10,000, Match: \$2,500 (\$1,250 from each community), Total: \$12,500

4. Anticipated measurable environmental outcomes

Environmental Outcome	Estimated reduction in pollution (lbs/yr)	Estimated number of people educated	Other estimation
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Rebate Program for reduction of softener salt discharged through the WWTF	240,000 lbs/year	400 connections (at 2.5 people per connection = 1,000 people)	50 lbs bag of salt per month for each rebate recipient
Education/Inspections/Adjustments to allow users to properly set up existing water softeners for new community water quality.	100,000 lbs/year	500+ connections (at 2.5 people per connection = 1,250 people)	WWTF discharge data indicates that not all users have properly adjust their softeners. This would be a savings of 200 lbs/year for each user that adjusts their softener properly (or four 50lbs bags per year)
Conducting Research on Salt sales in each community and survey of rebate recipients to quantify salt reduction.			

5. Project Budget

Cost category	Cost (\$/unit) *Not to exceed rates	Quantity (Qty/Unit)	Grant funds	Total match	Total budget
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Task 1 of 4: Development of Rebate Program for multiple solution alternatives

Engineering & Staff Time	\$200	HR		\$40,000	\$10,000	\$50,000
Task 1 - Total	\$200	HR		\$40,000	\$10,000	\$50,000

Task 2 of 4: Water Softener Rebates

	\$500		400	\$160,000	\$40,000	\$200,000
Task 2 - Total	\$500		400	\$160,000	\$40,000	\$200,000

Task 3 of 4: Development of Educational Material

Engineering, Graphics, Video & Staff Time	\$200	HR		\$40,000	\$10,000	\$50,000
Task 3 - Total	\$200	HR		\$40,000	\$10,000	\$50,000

Task 4 of 4: Final Report

Engineering and Staff Time	\$200	HR		\$10,000	\$2,500	\$12,500
Task 4 - Total	\$200	HR		\$10,000	\$2,500	\$12,500
Project Totals				\$250,000	\$62,500	\$312,500

Exhibit B

Schedule of Fees

Employee Classification	Hourly Billing Rates
Senior Principal	\$220-295/Hour
Principal Engineer/Surveyor/Planner/GIS/Landscape Architect	\$150-235
Senior Engineer/Surveyor/Planner/GIS/Landscape Architect	\$140-225
Project Manager (Inc. Survey, GIS, Landscape Architect)	\$130-250
Project Engineer/Surveyor/Planner/Landscape Architect	\$100-195
Design Engineer/Landscape Designer/Graduate Engineer/Surveyor	\$85-195
Specialist (Nat. Resources; GIS; Traffic; Graphics; Other)	\$90-180
Senior Technician (Inc. Construction, GIS, Survey ¹)	\$100-190
Technician (Inc. Construction, GIS, Survey ¹)	\$80-165
Administrative/Corporate Specialists	\$60-140
Structural/Electrical/Mechanical/Architect	\$120-295
GPS/Robotic Survey Equipment	NO CHARGE
CAD/Computer Usage	NO CHARGE
Routine Office Supplies	NO CHARGE
Routine Photo Copying/Reproduction	NO CHARGE
Field Supplies/Survey Stakes & Equipment	NO CHARGE
Mileage	NO CHARGE

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

Exhibit C

MPCA Grant Agreement found on the following pages.



520 Lafayette Road North
St. Paul, MN 55155-4194

Grant Agreement

State of Minnesota

Doc Type: Contract/Grant

SWIFT Contract Number: 205530

AI: 228948

Activity ID: PRO20210005

This Grant Agreement is between the state of Minnesota, acting through its Commissioner of the **Minnesota Pollution Control Agency**, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194 ("MPCA" or "State"), and **Bolton & Menk, Inc.**, 1960 Premier Drive, Mankato, MN 56001 ("Grantee").

Recitals

1. Under Minn. Stat. § 116.03, subd. 2, the State is empowered to enter into this grant contract agreement.
2. The State is in need of the **Residential and commercial ion exchange salt discharge reduction in Marshall and Worthington** (project).
3. The Grantee, who is not a state employee, will comply with required grants management policies and procedures set forth through [Minn.Stat.§16B.97](#), Subd. 4 (a) (1).
4. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract agreement to the satisfaction of the State. Pursuant to [Minn.Stat.§16B.98](#), Subd.1, the Grantee agrees to minimize administrative costs as a condition of this grant contract agreement.

Grant Contract Agreement

1. Term of Grant Contract Agreement

1.1. Effective date: **March 4, 2022**, Per [Minn. Stat.§16B.98](#), Subd. 5, the Grantee must not begin work until this grant contract agreement is fully executed and the State's Authorized Representative has notified the Grantee that work may commence. Per [Minn.Stat.§16B.98](#) Subd. 7, no payments will be made to the Grantee until this grant contract agreement is fully executed.

1.2. Expiration date: **June 30, 2023**, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3. Survival of Terms.

The following clauses survive the expiration or cancellation of this grant contract agreement: Liability; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure.

2. Grantee's Duties

The Grantee will perform the duties specified in **Attachment A** which is attached and incorporated into this grant contract.

3. Time

The Grantee must comply with all the time requirements described in this grant contract agreement. In the performance of this grant contract agreement, time is of the essence.

4. Consideration and Payment

4.1. Consideration.

The State will pay for all services performed by the Grantee under this grant contract agreement as follows:

(a) Compensation

The Grantee will be paid according to the breakdown of costs contained in **Attachment A**, which is attached and incorporated into this grant contract. Grantee certifies they will provide no less than 25% (twenty-five percent) of the total project cost as cash match or in-kind services.

(b) Travel Expenses. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will not exceed the total amount set forth in the travel expense section of the detailed budget section of **Attachment A**, which is attached and incorporated into this grant contract; provided that the Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the Commissioner of Minnesota Management and Budget (MMB). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

(c) Total Obligation. The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed **\$250,000.00 (Two Hundred Fifty Thousand Dollars and Zero Cents)**.

4.2 Payment.

(a) Invoices. The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule: **Monthly or at least quarterly.**

Invoices must be emailed to mpca.ap@state.mn.us, and contain the following information:

- Name of Grantee
- Grantee project manager
- Grant amount
- Grant amount available to date
- Invoice number
- Invoice date
- MPCA project manager
- SWIFT Contract No.
- Invoicing period (actual working period)
- Subcontractor costs; invoices may be requested
- Time and material breakdown of invoice. Amount billed to date for work, including itemization of actual hourly rates
- Receipts for supplies, shipping, lab fees, and any other itemized costs
- Itemized per diem expenses; receipts may be requested to be submitted with invoice
- Matching fund summary
- Other items as requested

If there is a problem with submitting an invoice electronically, please contact the Accounts Payable Unit at 651-757-2491.

The Grantee shall submit an invoice for the final payment within 15 (fifteen) days of the original or amended end date of this grant contract. The State reserves the right to review submitted invoices after 15 (fifteen) days and make a determination as to payment.

(b) Unexpended Funds. The Grantee must promptly return to the State any unexpended funds that have not been accounted for annually in a financial report to the State due at grant closeout.

4.3 Contracting and Bidding Requirements

- (a) Any services and/or materials that are expected to cost \$100,000 or more must undergo a formal notice and bidding process.
- (b) Services and/or materials that are expected to cost between \$25,000 and \$99,999 must be competitively awarded based on a minimum of three (3) verbal quotes or bids.
- (c) Services and/or materials that are expected to cost between \$10,000 and \$24,999 must be competitively awarded based on a minimum of two (2) verbal quotes or bids or awarded to a targeted vendor.
- (d) The grantee must take all necessary affirmative steps to assure that targeted vendors from businesses with active certifications through these entities are used when possible:
 - a. [State Department of Administration's Certified Targeted Group, Economically Disadvantaged and Veteran-Owned Vendor List](#)
 - b. Metropolitan Council Underutilized Business Program: MCUB: [Metropolitan Council Underutilized Business Program](#)
 - c. Small Business Certification Program through Hennepin County, Ramsey County, and City of St. Paul: [Central Certification Directory](#)
- (e) The grantee must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
- (f) The grantee must maintain support documentation of the purchasing or bidding process used to contract services in their financial records, including support documentation justifying a single/sole source bid, if applicable.
- (g) Notwithstanding (a) - (d) above, the State may waive bidding process requirements when:
 - Vendors included in response to competitive grant request for proposal process were approved and incorporated as an approved work plan for the grant
 - It is determined there is only one legitimate or practical source for such materials or services and that grantee has established a fair and reasonable price.
- (h) For projects that include construction work of \$25,000 or more, prevailing wage rules apply per [Minn. Stat. §§177.41](#) through [177.44](#). These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole.
- (i) The grantee must not contract with vendors who are suspended or debarred in MN: <http://www.mmd.admin.state.mn.us/debarredreport.asp>

5 Conditions of Payment

All services provided by the Grantee under this grant contract agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 Authorized Representative

The State's Authorized Representative is **Brooke Asleson**, 520 Lafayette Road N, St. Paul, MN 55155, 651-757-2205, brooke.asleson@state.mn.us, or successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract agreement. If the

services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is **Kristopher Swanson**, 1960 Premier Drive, Mankato, MN 56001, 507-380-3206, Kristopher.swanson@bolton-menk.com. If the Grantee's Authorized Representative changes at any time during this grant contract agreement, the Grantee must immediately notify the State.

7 Assignment, Change Order, Amendments, Waiver, and Grant Contract Agreement Complete

7.1 Assignment

The Grantee shall neither assign nor transfer any rights or obligations under this grant contract agreement without the prior written consent of the State, approved by the same parties who executed and approved this grant contract agreement, or their successors in office.

7.2 Change Order

If the State's Project Manager or the Grantee's Authorized Representative identifies a change needed in the workplan and/or budget, either party may initiate a Change Order using the Change Order Form provided by the MPCA. Change Orders may not delay or jeopardize the success of the Project, alter the overall scope of the Project, increase or decrease the overall amount of the Contract/Agreement, or cause an extension of the term of this Agreement. Major changes require an Amendment rather than a Change Order.

The Change Order Form must be approved and signed by the State's Project Manager and the Grantee's Authorized Representative in advance of doing the work. Documented changes will then become an integral and enforceable part of the Agreement. The MPCA has the sole discretion on the determination of whether a requested change is a Change Order or an Amendment. The state reserves the right to refuse any Change Order requests.

7.3 Amendments

Any amendments to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

7.4 Waiver

If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

7.5 Grant Contract Complete

This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 Liability

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

9 State Audits

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant contract agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

10 Government Data Practices and Intellectual Property Rights

10.1 Government Data Practices

The Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either the Grantee or the State. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law

10.2 Intellectual property rights

(a) Intellectual property rights. The State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this grant agreement. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant agreement. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or subcontractors, in the performance of this grant agreement. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee, at the Grantee's expense, upon the written request of the State, or upon completion, termination, or cancellation of this grant agreement. To the extent possible, those Works eligible for copyright protection under the United States' Copyright Act will be deemed to be "works made for hire." The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

(b) Obligations.

- (1) Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Grantee, including its employees and subcontractors, in the performance of this grant agreement, the Grantee shall immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure therein.
- (2) Representation.** The Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Grantee nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause Liability, the Grantee shall indemnify, defend, to the extent permitted by the Attorney General, and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including, but not limited to, attorney fees. If such a claim or action arises or in Grantee's or the State's opinion is likely to

arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

- (3) **License.** The State hereby grants a limited, no-fee, noncommercial license to the Grantee to enable the Grantee's employees engaged in research and scholarly pursuits to make, have made, reproduce, modify, distribute, perform, and otherwise use the Works, including Documents, for research activities or to publish in scholarly or professional journals, provided that any existing or future intellectual property rights in the Works or Documents (including patents, licenses, trade or service marks, trade secrets, or copyrights) are not prejudiced or infringed upon, that the Minnesota Data Practices Act is complied with, and that individual rights to privacy are not violated. The Grantee shall indemnify and hold harmless the State for any claim or action based on the Grantee's use of the Works or Documents under the provisions of Clause 10.2(b)(2). Said license is subject to the State's publicity and acknowledgement requirements set forth in this grant agreement. The Grantee may reproduce and retain a copy of the Documents for research and academic use. The Grantee is responsible for security of the Grantee's copy of the Documents. A copy of any articles, materials or documents produced by the Grantee's employees, in any form, using or derived from the subject matter of this license, shall be promptly delivered without cost to the State.

11 Workers Compensation

The Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12 Publicity and Endorsement

12.1 Publicity

Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract. All projects primarily funded by state grant appropriations must publicly credit the State of Minnesota, including on the grantee's website when practicable.

12.2 Endorsement

The Grantee must not claim that the State endorses its products or services.

13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract agreement. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

14.1 Termination by the State

The State may immediately terminate this grant contract with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 Termination for Cause

The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 Termination for Insufficient Funding

The State may immediately terminate this grant contract if:

- (a)** It does not obtain funding from the Minnesota Legislature.
- (b)** Or, if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15 Data Disclosure

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

Signatures

Title	Name	Signature	Date
Encumbrance Verification	Katie Shea	<p>DocuSigned by: <i>Katie Shea</i> 1C7A9AE6E72C42D...</p>	March 4, 2022
Principal Engineer	Kristopher J. Swanson	<p>DocuSigned by: <i>Kristopher J. Swanson</i> 97B9C63CCEE94BB...</p>	March 4, 2022
Asst Division Director	Pamela MS Anderson	<p>DocuSigned by: <i>Pamela MS Anderson</i> B5E45911CF864DC...</p>	March 7, 2022

Admin ID