



## STAFF REPORT

TO: Mayor Fischer and Members of the City Council

FROM: Bill Dircks, Public Works Director  
Chris Heineman, City Administrator

DATE: March 8, 2023

RE: Engineering Services Contract Extension with Bolton & Menk

**ACTION TO BE CONSIDERED:**

Motion to approve extending the engineering services contract with Bolton & Menk.

**BACKGROUND:**

Bolton & Menk was chosen to provide engineering services to Little Canada in 2019. Since that time, they have proven to be very effective in all aspects of engineering. They were able to quickly get the City an upgraded GIS system that is used daily by various staff and they have provided essential support to staff on GPS collection and in selecting our work order software.

Bolton & Menk has also provided excellent service related to street projects, parks improvement projects, and other capital improvement projects. They have demonstrated the ability to assist with any infrastructure or planning issues staff has requested assistance on. At the direction of the City Administrator, Bolton & Menk has also been an integral part of numerous successful grant applications various projects which has allowed us to improve three parks/playgrounds, install two large sections of sidewalk/trail, line several sections of sanitary sewer main, and get started on improving the Little Canada Road/Country Drive/35E interchange.

Following the retirement of the original City Engineer, Mark Kasma, we experienced a seamless transition to our current City Engineer, Eric Seaburg. Eric has proven to be extremely effective at working with all of the different groups of people involved with the job. He has great rapport with residents and business owners and is able to deal effectively with various contractors, other municipalities, county personnel, and MnDOT. All of that effective communication has led to smooth projects that are completed on time with very few complaints from residents.

Another important part of having Bolton & Menk as the consulting engineering firm is the tremendous depth of support the company provides for its clients. Bolton & Menk has experts in all fields of civil engineering which the City has leveraged on projects like the Little Canada Road streetscape project and Phase I of the Pioneer Park upgrade where landscape architects played a significant role in the planning and design process. They have the foremost expert in trenchless sewer and water repair, and he has helped us on our sewer lining projects. And they have engineers who can help the City through all of the red tape involved in an interchange project involving the Federal Highway Administration and MnDOT.

City staff has developed a great working relationship with City Engineers Mark Kasma and Eric Seaburg since the transition to Bolton & Menk in 2019. Staff is recommending a continuation of the relationship by renewing the contract with a few minor changes from the original contract.

The contract is proposed to be extended for two additional years from its signing with two additional one-year options at the City's discretion. This will allow for a potential RFP for engineering services in March 2025, 2026, or 2027 if the Council wishes to do so.

**SOURCE OF FUNDS:**

Funds for engineering are paid from various sections of the operating budget and Capital Improvement Plan (CIP) budget depending on the scope of work performed.

**STAFF RECOMMENDATIONS:**

Staff recommends approving the extension of the contract with Bolton & Menk for two years with two one-year options for the City.

**ATTACHMENTS:**

Copy of Proposed Contract

**AGREEMENT FOR PROFESSIONAL SERVICES**

**CONSULTING CITY ENGINEERING SERVICES**  
**CITY OF LITTLE CANADA, MINNESOTA**

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This Agreement, made this the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Little Canada, Minnesota, 515 Little Canada Road East, Little Canada, MN 55117, hereinafter referred to as CLIENT, and Bolton & Menk, Inc., 3507 High Point Drive Bldg 1 Suite E130, Oakdale, MN 55128, hereinafter referred to as CONSULTANT.

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WITNESS, whereas the CLIENT requires professional engineering and surveying services in association with providing Consulting City Engineering Services 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 I - CONSULTANT'S SERVICES**

- A. The CONSULTANT agrees to perform professional engineering and surveying services as described in Exhibit I.
- B. Upon mutual agreement of the parties hereto, Additional Services may be authorized as described in Exhibit I or as described in Paragraph IV.B.

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

- A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section III 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 in possession of the client shall include but shall not be 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 CLIENT will assist the CONSULTANT in determining the extent to which the information provided may be relied upon to perform CONSULTANT'S services.
- C. The CLIENT will work with the CONSULTANT to obtain entry upon both public and private lands effected by and associated with CONSULTANT'S services.
- D. The CLIENT will give notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in CONSULTANT'S services.

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- 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 CONSULTANT'S services.
- F. The CLIENT shall provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for completion of CONSULTANT'S services.
- G. The CLIENT will work with the CONSULTANT as needed to apply for any and all regulatory permits required for the proper and legal execution of CONSULTANT'S services.

**SECTION III - COMPENSATION FOR SERVICES**

**A. COMPENSATION CHARGE METHODOLOGY**

Compensation for all services performed by the CONSULTANT on behalf of the CLIENT in accordance with Exhibit I will be on an hourly basis in accordance with the Consultant's Annual Fee Schedule described below.

**Deleted:** <#>The CLIENT will hire, when requested by the CONSULTANT, an independent testing company to perform laboratory and material testing services, and soil investigation that can be justified to complete a proper design and the CONSULTANT'S services. 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.¶

**Deleted:** 2019 Schedule of Fees

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**B. GENERAL ENGINEERING SERVICES**

The first twenty hours per month of general engineering services will be performed at the Special Rate, which is \$75/hour through May 2024 and will adjust to \$95/hour for the remaining duration of the contract. This applies to non-project related general city engineering services. Should general engineering services exceed twenty hours in a month, compensation will at that time be adjust for the remaining hours to the normal schedule with a not-to-exceed amount of \$2000 per month.

**Deleted:** The first twenty (20) hours per month of general engineering services will be performed at the Special Rate of \$75/hour. This applies to non-project related general, non-project related city engineering services. ¶

**C. ENGINEERING SERVICES FOR CITY PROJECTS**

Local street and utility projects will be completed on an hourly basis with a not-to-exceed 18% of construction cost.

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Municipal State Aid projects will be completed on an hourly basis with a not-to-exceed 20% of construction cost.

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Federal Aid projects will be completed on an hourly basis with a not-to-exceed 22% of construction costs.

However, both the Client and Consultant understand that not every project can meet the not-to-exceed percentage threshold for a variety of reasons. The Consultant shall notify the Client if a project is anticipated to be above the given percentage threshold as soon as it becomes apparent and provide documentation as described in Section IV – Change in Service Scope. The Consultant will only perform work beyond the percentage threshold after receiving written approval from the Client for additional services. Examples of additional services include but are not limited to:

**Deleted:** The 18% and 20% not to exceed amounts will be based on the awarded bid amount, but not greater than the estimated construction cost identified in the preliminary engineering report.

1. Grant Applications & Administration

2. Natural or Cultural Resources Permitting

3. Easement Acquisitions

4. Rebidding or Requoting

5. Significant Construction-Related Delays

For non-street and utility projects, the Consultant will develop a written scope and fee for review and approval by the Client.

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D. PRIVATE DEVELOPMENT ENGINEERING SERVICES

CONSULTANT will provide a fee estimate for individual development plan reviews. These "pass through" costs will be separate from the CLIENT'S normal monthly fees.

E. SCHEDULE OF FEES

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

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**2019 Schedule of Fees**  
*<sup>1</sup> No separate charges will be made for GPS or robotic total stations on Bolton & Menk, Inc. survey assignments; the cost of this equipment is included in the rates for Survey Technicians.*

The Consultant will deliver an updated Fee Schedule in January of the every year during the contract period. Rates are adjusted annually to account for changed labor costs, inflation, or changed overhead conditions.

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These rates include labor, general business and other normal and customary expenses associated with operating a professional business. **Unless otherwise agreed, the rates included in the fee schedule 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.** Expenses beyond the agreed scope of services and non-routine expenses, such as large quantities of prints, extra report copies, outsourced graphics and photographic reproductions, document recording fees, outside professional and technical assistance and other items of this general nature, will be invoiced separately. Rates and charges do not include sales tax, if applicable.

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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 methodology.

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Deleted: <#>TRANSITION RELATED DELIVERABLES  
<#>The following items were included in the proposal to assist the City in the transition process associated with changing engineering firms. The cost for completing these items will be exclusively borne by the CONSULTANT and are listed as follows:  
<#>Build and deploy a web-based GIS mapping system.  
<#>City staff training onsite.

## **SECTION IV - 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. Professional services shall be to the standards of licensed engineers.

### **B. CHANGE IN SERVICE SCOPE**

In the event the CLIENT changes or is required to change the scope of the CONSULTANT'S services as described in Section I and/or the applicable addendum, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to compensation at the applicable hourly rates. The CONSULTANT shall give notice to the CLIENT of any Additional Services, prior to furnishing such additional services. The CLIENT may request an estimate of additional cost from the CONSULTANT, and upon receipt of the request, the CONSULTANT shall furnish such, prior to authorization of the changed scope of work. In the event of changes to the scope of the Consultant's services the Consultant shall advise the Client as to the amount or change in compensation within two weeks of notice of change.

### **C. LIMITATION OF LIABILITY**

CONSULTANT shall indemnify, defend, and hold harmless CLIENT and its officials, agents and employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligence act or omission by CONSULTANT'S employees, agents, or subconsultants. In no event shall CLIENT be liable to CONSULTANT for consequential, incidental, indirect, special, or punitive damages.

CLIENT shall indemnify, defend, and hold harmless CONSULTANT and its employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligence act or omission by CLIENT'S employees, agents, or consultants. In no event shall CONSULTANT be liable to CLIENT for consequential, incidental, indirect, special, or punitive damages.

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 hereunder. The CLIENT agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of the paragraph.

Nothing in this Section shall be construed as a waiver of any liability limits or immunities contained in Minnesota Statutes, Chapter 466.

### **D. INSURANCE**

The CONSULTANT agrees to maintain, at the CONSULTANT'S expense, statutory worker's

compensation coverage.

The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, general liability insurance coverage insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT'S general business activities (including automobile use). The liability insurance policy shall provide coverage for each occurrence in the minimum amount of \$1,500,000.

During the period of service provision, the CONSULTANT also agrees to maintain, at CONSULTANT'S expense, Professional Liability Insurance coverage insuring CONSULTANT against damages for legal liability arising from an error, omission or negligent act in the performance of professional services required by this Agreement, providing that such coverage is reasonably available at commercially affordable premiums. For purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half of the design professionals practicing in this state in CONSULTANT'S discipline are able to obtain coverage. The professional liability insurance policy shall provide coverage for each occurrence in the amount of \$1,500,000 and annual aggregate of \$1,500,000 on a claims-made basis. In addition, the consultant shall name the CLIENT an additional insured and maintain this status during the term of this Agreement.

The CONSULTANT shall provide CLIENT with certificates of insurance, showing evidence of required coverages.

#### E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of Exhibit I 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 be responsible for the means, methods, techniques, schedules or procedures of construction selected by the contractor or the safety precautions or programs incidental to the work of the contractor.

#### G. USE OF ELECTRONIC/DIGITAL DATA

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 by this AGREEMENT or except as otherwise explicitly provided in this AGREEMENT, all electronic/digital data developed by the CONSULTANT as part of the CONSULTANTS services are 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). 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 or subsequent agreement(s).

#### H. REUSE OF DOCUMENTS

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 an ownership interest in all identified deliverables, including Plans and Specifications, for any reasonable use relative to the Project and the general operations of the CLIENT. 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 and any reuse other than that specifically intended by this AGREEMENT will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT.

#### I. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT'S employees and subconsultants any information obtained from CLIENT not previously in the public domain or not otherwise previously known to or generated by CONSULTANT. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of CONSULTANT; or is furnished to CONSULTANT by a third party who is under no obligation to keep such information confidential; or is information for which the CONSULTANT is required to provide by law or authority with proper jurisdiction; or is information upon which the CONSULTANT must rely for defense of any claim or legal action. Consultant and Client will process data pursuant to Minnesota Data Practices Act MSA 13.01 et al.

#### J. PERIOD OF AGREEMENT

This Agreement will remain in effect for a period of two (2) years from the date of signing with a City option to extend the contract for one year each of the following two years. after which time the Agreement may be extended upon mutual agreement of both parties.

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#### K. PAYMENTS

If CLIENT fails to make any payment due CONSULTANT for services and expenses within thirty 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. In addition after giving seven days' written notice to CLIENT, CONSULTANT may, without waiving any claim or right against the CLIENT and without incurring liability whatsoever to the CLIENT, suspend services and withhold project deliverables due under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

#### L. TERMINATION



In addition to the right of termination granted client in paragraph T.4. this Agreement may be terminated by either party for any reason, which reason shall be deemed legally sufficient, or for convenience by either party upon thirty (30) days written notice.

In the event of termination, 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 III of this Agreement. Upon payment the Consultant shall furnish all materials and data that client has paid for.

#### M. 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.

#### N. 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.

#### O. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Minnesota.

#### P. DISPUTE RESOLUTION

CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of thirty (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 first be submitted to mediation by a mediator mutually agreeable to the parties. CONSULTANT and the CLIENT agree to require an equivalent mediation process governing all contractors, sub-contractors, suppliers, consultants, and fabricators concerned with this Agreement. The parties reserve all rights and remedies available to them at law or in equity in the event the dispute is not resolved by mediation. In the event of mediation, mediation shall occur thirty days after any claims or disputes unresolved. The cost of mediation shall be the responsibility of the Consultant fifty percent and the Client fifty percent.

#### Q. SURVIVAL

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

#### RECORD KEEPING

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Pursuant to Minnesota Statutes, Section 16C.05, Subdivision 5, CONSULTANT agrees that the books, records, documents, and accounting procedures and practices of CONSULTANT, that are relevant to the contract or transaction, are subject to examination by the CLIENT and either legislative auditor or the state auditor for a minimum of six years. CONSULTANT shall maintain such records for a minimum of six years after final payment.

Pursuant to Minnesota Statutes, Section 13.05, Subdivision 11, all of the data created, collected, received, stored, used, maintained, or disseminated by CONSULTANT in performing this Agreement is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and CONSULTANT must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08, apply to CONSULTANT. CONSULTANT does not have a duty to provide access to public data to the public if the public data are available from the CLIENT.

#### T. ADDITIONAL TERMS AND CONDITIONS

1. The CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of the CLIENT.
2. For the purposes of this Agreement, the CONSULTANT shall be deemed to be an independent contractor and not an employee of the CLIENT. Any and all agents, servants or employees of the CONSULTANT or other person, while engaged in the performance of any work or services required to be performed by the CLIENT under this Agreement, shall not be considered employees of the CLIENT and any and all actions which arise as a consequence of any act or omission on the part of the CONSULTANT, its agents, servants, employees or other persons shall in no way be the obligation or responsibility of the CLIENT. The CONSULTANT, its agents, servants or employees shall be entitled to none of the rights, privileges or benefits of the CLIENT employees, except as otherwise may be stated herein.
3. The CONSULTANT further agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the CONSULTANT'S performance of the provisions of this Agreement.
4. If, for any reason, the CONSULTANT shall fail to fulfill in timely and proper manner the obligations under this Agreement, the CLIENT shall reserve the right to terminate this Agreement by specifying the date of termination in a written notice to the CONSULTANT at least thirty (30) calendar days before the termination date. In this event, the CONSULTANT shall be entitled to just and equitable compensation for any satisfactory work completed.
5. No official or employee of the CLIENT who exercises any responsibilities in the review, approval or carrying out of this Agreement shall participate in any decision which affects his or her direct or indirect personal or financial interest.
6. All communications in writing between the parties shall be deemed to have been received by the addressee if delivered to the other party, or if sent by post or by facsimile addressed as noted above in this Agreement.

7. Neither the CLIENT nor CONSULTANT shall assign this Agreement without the prior consent in writing of the other.

**SECTION V - 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 Little Canada, Minnesota

CONSULTANT: Bolton & Menk, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

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## EXHIBIT I

### CONSULTING CITY ENGINEERING SERVICES

#### CITY OF LITTLE CANADA, MINNESOTA

CONSULTANT will furnish the following Consulting City Engineering Services, as requested and authorized by the CLIENT:

**Deleted:** In accordance with the Request for Proposals dated March 19, 2019, the

#### A. General Engineering Services

- Assist with coordinating, supervising and evaluating programs, plans, services, equipment, infrastructure, and assists with finding potential funding solutions.
- Assist with development and implementation of Capital Improvement Plan (CIP).
- Assist with management of City infrastructure issues through proactive planning, monitoring, and operations and maintenance management.
- Develop and recommend policies and procedures for effective operation of the City consistent with City policies and relevant regulations.
- Formulate short and long-range plans for design and constructing public works improvements; including streets, water, sanitary, storm sewer, parks and buildings.
- Obtain proper approval and documentation from local, state, and deferral authorities prior to implementing projects.
- Work with the Public Works Director to implement the Pavement Management Program including annual street condition rating inspections, as well as mapping of those ratings.
- Office hours as needed.
- Attend City staff meetings.
- Act as the City's liaison with other agencies.
- Respond/meet with property owners.
- Administration of municipal state aid system and certification.
- Assist with funding solutions for infrastructure projects, such as grants and loan programs.
- Review/evaluate suggested revisions to existing fees schedules, assessment policies, and utility rates.
- Advise City of current trends and policy formulation.
- Update and maintain engineering standards.

## **B. Project-Specific Engineering Services**

For project-specific engineering service, we propose that a project scope and fee proposal be developed to define the scope of services and the associated fees for project-specific work. A listing of the typical scope of services associated with a public improvement project is as follows:

- Design surveys
- Preliminary engineering/feasibility reports
- Public hearing presentations
- Plan and specification development
- Project bidding and award administration
- Construction engineering
- Construction administration
- Construction observation and staking
- Preparation of preliminary and final assessment rolls
- Project close-out
- Record drawings (as-builts)
- Project specific communication and correspondence
- Project specific meeting attendance
- GIS and UAV work on various projects

## **C. Miscellaneous Engineering Services**

- Capital Improvement Projects will be completed on an hourly basis per our Schedule of Fees.
- Assist in implementing all water resource functions, including implementation of the Storm Water Management Plan and erosion and sediment control as it relates to the City's MS4 NPDES requirements. The MS4 work will be completed on an hourly basis per our Schedule of Fees.
- Review land use applications and construction plans for private developments for consistency with City adopted engineering specifications, City policies, and relevant laws, rules, and regulation, and ensures Council actions are implemented. This pass thru work will be completed on an hourly basis per our Schedule of Fees.
- Update City maps and utility records, including maintaining a GIS/database. Specific project improvements made by the City will be added to the City's GIS system on an hourly basis per our Schedule of Fees.

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **CONSULTING CITY ENGINEERING SERVICES** **CITY OF LITTLE CANADA, MINNESOTA**

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WITNESS, whereas the CLIENT requires professional engineering and surveying services in association with providing Consulting City Engineering Services 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:

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### **SECTION III - COMPENSATION FOR SERVICES**

#### A. COMPENSATION CHARGE METHODOLOGY

Compensation for all services performed by the CONSULTANT on behalf of the CLIENT in accordance with Exhibit I will be on an hourly basis in accordance with the Consultant's Annual Fee Schedule described below.

#### B. GENERAL ENGINEERING SERVICES

The first twenty hours per month of general engineering services will be performed at the Special Rate, which is \$75/hour through May 2024 and will adjust to \$95/hour for the remaining duration of the contract. This applies to non-project related general city engineering services. Should general engineering services exceed twenty hours in a month, compensation will at that time be adjust for the remaining hours to the normal schedule with a not-to-exceed amount of \$2000 per month.

#### C. ENGINEERING SERVICES FOR CITY PROJECTS

Local street and utility projects will be completed on an hourly basis with a not-to-exceed 18% of construction cost.

Municipal State Aid projects will be completed on an hourly basis with a not-to-exceed 20% of construction cost.

Federal Aid projects will be completed on an hourly basis with a not-to-exceed 22% of construction costs.

However, both the Client and Consultant understand that not every project can meet the not-to-exceed percentage threshold for a variety of reasons. The Consultant shall notify the Client if a project is anticipated to be above the given percentage threshold as soon as it becomes apparent and provide documentation as described in Section IV – Change in Service Scope. The Consultant will only perform work beyond the percentage threshold after receiving written approval from the Client for additional services. Examples of additional services include but are not limited to:

1. Grant Applications & Administration
2. Natural or Cultural Resources Permitting
3. Easement Acquisitions
4. Rebidding or Requoting
5. Significant Construction-Related Delays

For non-street and utility projects, the Consultant will develop a written scope and fee for review and approval by the Client.

#### D. PRIVATE DEVELOPMENT ENGINEERING SERVICES

CONSULTANT will provide a fee estimate for individual development plan reviews. These “pass through” costs will be separate from the CLIENT’S normal monthly fees.

#### E. SCHEDULE OF FEES

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

The Consultant will deliver an updated Fee Schedule in January of the every year during the contract period. Rates are adjusted annually to account for changed labor costs, inflation, or changed overhead conditions.

These rates include labor, general business and other normal and customary expenses associated with operating a professional business. **Unless otherwise agreed, the rates included in the fee schedule 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.** Expenses beyond the agreed scope of services and non-routine expenses, such as large quantities of prints, extra report copies, outsourced graphics and photographic reproductions, document recording fees, outside professional and technical assistance and other items of this general nature, will be invoiced separately. Rates and charges do not include sales tax, if applicable.

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 methodology.



## **SECTION IV - 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. Professional services shall be to the standards of licensed engineers.

### **B. CHANGE IN SERVICE SCOPE**

In the event the CLIENT changes or is required to change the scope of the CONSULTANT'S services as described in Section I and/or the applicable addendum, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to compensation at the applicable hourly rates. The CONSULTANT shall give notice to the CLIENT of any Additional Services, prior to furnishing such additional services. The CLIENT may request an estimate of additional cost from the CONSULTANT, and upon receipt of the request, the CONSULTANT shall furnish such, prior to authorization of the changed scope of work. In the event of changes to the scope of the Consultant's services the Consultant shall advise the Client as to the amount or change in compensation within two weeks of notice of change.

### **C. LIMITATION OF LIABILITY**

CONSULTANT shall indemnify, defend, and hold harmless CLIENT and its officials, agents and employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligence act or omission by CONSULTANT'S employees, agents, or subconsultants. In no event shall CLIENT be liable to CONSULTANT for consequential, incidental, indirect, special, or punitive damages.

CLIENT shall indemnify, defend, and hold harmless CONSULTANT and its employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligence act or omission by CLIENT'S employees, agents, or consultants. In no event shall CONSULTANT be liable to CLIENT for consequential, incidental, indirect, special, or punitive damages.

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 hereunder. The CLIENT agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of the paragraph.

Nothing in this Section shall be construed as a waiver of any liability limits or immunities contained in Minnesota Statutes, Chapter 466.

### **D. INSURANCE**

The CONSULTANT agrees to maintain, at the CONSULTANT'S expense, statutory worker's compensation coverage.

The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, general liability insurance

coverage insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT'S general business activities (including automobile use). The liability insurance policy shall provide coverage for each occurrence in the minimum amount of \$1,500,000.

During the period of service provision, the CONSULTANT also agrees to maintain, at CONSULTANT'S expense, Professional Liability Insurance coverage insuring CONSULTANT against damages for legal liability arising from an error, omission or negligent act in the performance of professional services required by this Agreement, providing that such coverage is reasonably available at commercially affordable premiums. For purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half of the design professionals practicing in this state in CONSULTANT'S discipline are able to obtain coverage. The professional liability insurance policy shall provide coverage for each occurrence in the amount of \$1,500,000 and annual aggregate of \$1,500,000 on a claims-made basis. In addition, the consultant shall name the CLIENT an additional insured and maintain this status during the term of this Agreement.

The CONSULTANT shall provide CLIENT with certificates of insurance, showing evidence of required coverages.

#### E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of Exhibit I 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 be responsible for the means, methods, techniques, schedules or procedures of construction selected by the contractor or the safety precautions or programs incidental to the work of the contractor.

#### G. USE OF ELECTRONIC/DIGITAL DATA

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 by this AGREEMENT or except as otherwise explicitly provided in this AGREEMENT, all electronic/digital data developed by the CONSULTANT as part of the CONSULTANTS services are 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). 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 or subsequent agreement(s).

#### H. REUSE OF DOCUMENTS

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 an ownership interest in all identified deliverables, including Plans and Specifications, for any reasonable use relative to the Project and the general operations of the CLIENT. 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 and any reuse other than that specifically intended by this AGREEMENT will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT.

#### I. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT'S employees and subconsultants any information obtained from CLIENT not previously in the public domain or not otherwise previously known to or generated by CONSULTANT. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of CONSULTANT; or is furnished to CONSULTANT by a third party who is under no obligation to keep such information confidential; or is information for which the CONSULTANT is required to provide by law or authority with proper jurisdiction; or is information upon which the CONSULTANT must rely for defense of any claim or legal action. Consultant and Client will process data pursuant to Minnesota Data Practices Act MSA 13.01 et al.

#### J. PERIOD OF AGREEMENT

This Agreement will remain in effect for a period of two (2) years from the date of signing with a City option to extend the contract for one year each of the following two years, after which time the Agreement may be extended upon mutual agreement of both parties.

#### K. PAYMENTS

If CLIENT fails to make any payment due CONSULTANT for services and expenses within thirty 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. In addition after giving seven days' written notice to CLIENT, CONSULTANT may, without waiving any claim or right against the CLIENT and without incurring liability whatsoever to the CLIENT, suspend services and withhold project deliverables due under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

#### L. TERMINATION

In addition to the right of termination granted client in paragraph T.4. this Agreement may be terminated by either party for any reason, which reason shall be deemed legally sufficient, or for convenience by either party upon thirty (30) days written notice.

In the event of termination, 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 III of this Agreement. Upon payment the Consultant shall furnish all materials and data that client has paid for.

#### M. 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.

#### N. 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.

#### O. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Minnesota.

#### P. DISPUTE RESOLUTION

CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of thirty (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 first be submitted to mediation by a mediator mutually agreeable to the parties. CONSULTANT and the CLIENT agree to require an equivalent mediation process governing all contractors, sub-contractors, suppliers, consultants, and fabricators concerned with this Agreement. The parties reserve all rights and remedies available to them at law or in equity in the event the dispute is not resolved by mediation. In the event of mediation, mediation shall occur thirty days after any claims or disputes unresolved. The cost of mediation shall be the responsibility of the Consultant fifty percent and the Client fifty percent.

#### Q. SURVIVAL

All obligations, representations and provisions made in or given in Section IV 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. RECORD KEEPING

Pursuant to Minnesota Statutes, Section 16C.05, Subdivision 5, CONSULTANT agrees that the books, records, documents, and accounting procedures and practices of CONSULTANT, that are relevant to the contract or transaction, are subject to examination by the CLIENT and either legislative auditor or the state auditor for a minimum of six years. CONSULTANT shall maintain such records for a minimum of six years after final payment.

Pursuant to Minnesota Statutes, Section 13.05, Subdivision 11, all of the data created, collected, received, stored, used, maintained, or disseminated by CONSULTANT in performing this Agreement is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and CONSULTANT must comply with those requirements as if it were a government entity. The remedies in Minnesota Statutes, Section 13.08, apply to CONSULTANT. CONSULTANT does not have a duty to provide access to public data to the public if the public data are available from the CLIENT.

#### T. ADDITIONAL TERMS AND CONDITIONS

1. The CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of the CLIENT.
2. For the purposes of this Agreement, the CONSULTANT shall be deemed to be an independent contractor and not an employee of the CLIENT. Any and all agents, servants or employees of the CONSULTANT or other person, while engaged in the performance of any work or services required to be performed by the CLIENT under this Agreement, shall not be considered employees of the CLIENT and any and all actions which arise as a consequence of any act or omission on the part of the CONSULTANT, its agents, servants, employees or other persons shall in no way be the obligation or responsibility of the CLIENT. The CONSULTANT, its agents, servants or employees shall be entitled to none of the rights, privileges or benefits of the CLIENT employees, except as otherwise may be stated herein.
3. The CONSULTANT further agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the CONSULTANT'S performance of the provisions of this Agreement.
4. If, for any reason, the CONSULTANT shall fail to fulfill in timely and proper manner the obligations under this Agreement, the CLIENT shall reserve the right to terminate this Agreement by specifying the date of termination in a written notice to the CONSULTANT at least thirty (30) calendar days before the termination date. In this event, the CONSULTANT shall be entitled to just and equitable compensation for any satisfactory work completed.
5. No official or employee of the CLIENT who exercises any responsibilities in the review, approval or carrying out of this Agreement shall participate in any decision which affects his or her direct or indirect personal or financial interest.
6. All communications in writing between the parties shall be deemed to have been received by the addressee if delivered to the other party, or if sent by post or by facsimile addressed as noted above in this Agreement.
7. Neither the CLIENT nor CONSULTANT shall assign this Agreement without the prior consent in writing of the other.

**SECTION V - 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 Little Canada, Minnesota

CONSULTANT: Bolton & Menk, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# **EXHIBIT I**

## **CONSULTING CITY ENGINEERING SERVICES**

### **CITY OF LITTLE CANADA, MINNESOTA**

CONSULTANT will furnish the following Consulting City Engineering Services, as requested and authorized by the CLIENT:

#### **A. General Engineering Services**

- Assist with coordinating, supervising and evaluating programs, plans, services, equipment, infrastructure, and assists with finding potential funding solutions.
- Assist with development and implementation of Capital Improvement Plan (CIP).
- Assist with management of City infrastructure issues through proactive planning, monitoring, and operations and maintenance management.
- Develop and recommend policies and procedures for effective operation of the City consistent with City policies and relevant regulations.
- Formulate short and long-range plans for design and constructing public works improvements; including streets, water, sanitary, storm sewer, parks and buildings.
- Obtain proper approval and documentation from local, state, and deferral authorities prior to implementing projects.
- Work with the Public Works Director to implement the Pavement Management Program including annual street condition rating inspections, as well as mapping of those ratings.
- Office hours as needed.
- Attend City staff meetings.
- Act as the City's liaison with other agencies.
- Respond/meet with property owners.
- Administration of municipal state aid system and certification.
- Assist with funding solutions for infrastructure projects, such as grants and loan programs.
- Review/evaluate suggested revisions to existing fees schedules, assessment policies, and utility rates.
- Advise City of current trends and policy formulation.
- Update and maintain engineering standards.

## **B. Project-Specific Engineering Services**

For project-specific engineering service, we propose that a project scope and fee proposal be developed to define the scope of services and the associated fees for project-specific work. A listing of the typical scope of services associated with a public improvement project is as follows:

- Design surveys
- Preliminary engineering/feasibility reports
- Public hearing presentations
- Plan and specification development
- Project bidding and award administration
- Construction engineering
- Construction administration
- Construction observation and staking
- Preparation of preliminary and final assessment rolls
- Project close-out
- Record drawings (as-builts)
- Project specific communication and correspondence
- Project specific meeting attendance
- GIS and UAV work on various projects

## **C. Miscellaneous Engineering Services**

- Capital Improvement Projects will be completed on an hourly basis per our Schedule of Fees.
- Assist in implementing all water resource functions, including implementation of the Storm Water Management Plan and erosion and sediment control as it relates to the City's MS4 NPDES requirements. The MS4 work will be completed on an hourly basis per our Schedule of Fees.
- Review land use applications and construction plans for private developments for consistency with City adopted engineering specifications, City policies, and relevant laws, rules, and regulation, and ensures Council actions are implemented. This pass thru work will be completed on an hourly basis per our Schedule of Fees.
- Update City maps and utility records, including maintaining a GIS/database. Specific project improvements made by the City will be added to the City's GIS system on an hourly basis per our Schedule of Fees.