

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the 19 day of April, 2022, between the **CITY OF SHAKOPEE**, 485 Gorman Street, Shakopee, MN 55379("City") and **BOLTON & MENK, INC.** 2638 Shadow Lane, Ste. 200, Chaska, MN 55416 ("Consultant").

Preliminary Statement

The purpose of this Agreement is to set forth terms and conditions for the provision of professional services by the Consultant for the City for the following described Project:

Minnesota River Cultural Corridor & Bank Stabilization Study

The City and Consultant agree as follows:

1. **Consultant's Services.** The Consultant agrees to provide professional services as described in Exhibit A, Scope of Work and any addenda thereto. The Consultant shall serve as the City's professional consultant in the specified work and shall provide consultation and advice to the City during the performance of its services. The Consultant agrees to use the City's standard specifications in any bidding documents prepared under this Agreement. The requirements of this section may be waived by the City if the City Engineer determines that they are not necessary for the successful completion of the project. A Consultant requesting a requirement to be waived must have written authorization from the City Engineer and must be incorporated into this agreement.
2. **Time for Performance of Services.** The Consultant will endeavor to perform the services outlined in the work program within the prescribed days from the date of the contract award. Any changes in this schedule must be approved in writing by the City.
3. **Term.** The term of this Agreement will be from April 19, 2022, through April 19, 2023, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
4. **Compensation for Services.** City agrees to pay the Consultant for services as described in Exhibit A, attached and made a part of this Agreement, which may be amended from time to time by mutual agreement by City and Consultant. The Consultant's hourly rates must be based on the hourly rates approved by the City.

The Agreement amount shall include all services to be rendered by the Consultant as part of this Agreement (including all travel, living and overhead expenses incurred by the Consultant in connection with performing the services herein) except for special services authorized in writing by the City. The amount stipulated shall be considered a "Not to Exceed" cost to the City.

The Consultant must keep track of the costs billable under this contract at all times; any work in excess of the negotiated amount shall not be eligible for payment unless preapproved. The Consultant must notify the City if the Consultant anticipates that the negotiated amount might be exceeded, in order to determine whether or not the City is prepared to increase the compensation. This notification and approval must occur in advance of the work occurring to be considered for compensation.

5. **Payment of Fees.** The Consultant must submit itemized bills for services provided to the City on a monthly basis. The monthly billing must summarize the progress of the project as certified by the Consultant. For work reimbursed on an hourly basis, the Consultant must indicate for each employee, his or her classification, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, the total amount due, the original contracted amount, the current requested amount, and the total amount. Consultant must verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.931. For reimbursable expenses, the Consultant must provide such documentation as reasonably required by the City. Consultant bills submitted will be paid in the same manner as other claims made to the City.
6. **Audit Disclosure.** The Consultant must allow the City or its duly authorized agents reasonable access to such of the Consultant's books and records as are pertinent to all services provided under this Agreement.

Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential must not be made available to any individual or organization without the City's prior written approval. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant will become the property of the City upon termination of this Agreement, but Consultant may retain copies of such documents as records of the services provided and may reuse standard portions of such documents in the normal course of its business.

7. **Termination.** Termination for Cause. This Agreement may be terminated by City by seven day's written notice to Consultant delivered to the address written above. Upon termination under this provision, the Consultant will be paid for services rendered and reimbursable expenses until the effective date of termination.

If, through any cause (except those reasonably beyond Consultant's control), the Consultant shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulation of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of termination. In that event the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property, and the Consultant shall be entitled to receive just, equitable compensation for any satisfactory work completed on such documents and other materials prior to the effective date of termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

In the event this Contract is terminated for cause, then the City may take over and complete the work, by contract or otherwise, and the Consultant and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, any other rights which the City may have.

Termination Not For Cause. The City may terminate this Contract at any time, with or without cause, by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property. If the Contract is terminated by the City as provided in this paragraph, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Consultant covered by this Contract, less payments or compensation previously made.

8. **Subcontractor.** The Consultant must not enter into subcontracts for any of the services provided for in this Agreement without the express written consent of the City.
9. **Independent Contractor.** At all times and for all purposes hereunder, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
10. **Assignment.** Neither party will assign this Agreement, nor any interest arising herein, without the written consent of the other party.
11. **Services not Provided for.** No claim for services furnished by the Consultant not specifically provided for herein will be honored by the City.
12. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.
13. **Entire Agreement.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and duly signed by the parties unless otherwise provided herein.
14. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant must abide by all statutes, ordinances, rules and regulations pertaining to the provision of services to be provided. Any violation will constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
15. **Equal Opportunity.** During the performance of this contract, the Consultant must not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age. The Consultant must post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

16. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
17. **Liability and Indemnity.** The Consultant must indemnify and hold harmless the City, its employees and agents, for all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, which they may suffer or for which they may be held liable, as a result of, and to the extent of, the negligent or wrongful acts of the Consultant, his employees, or anyone else for whom he is legally responsible in the performance of this Agreement.

The Consultant assumes full responsibility for relations with its subcontractors, and must hold the City harmless and must defend and indemnify the City, its employees and agents, for any claims, damages, losses, and expenses in any manner caused by such subcontractors, arising out of or connected with this contract.

18. **Insurance.** During the term of this Agreement, Consultant must procure and maintain during the life of this Contract, and provide the City with a certificate of insurance showing, the following coverage for each occurrence and in aggregate:
 - A. Comprehensive General Liability Insurance, including Broad Form Property Damage, Completed Operations and Contractual Liability for limits not less than \$1,500,000 each occurrence for damages of bodily injury or death to one or more persons and \$1,500,000 each occurrence for damage to or destruction of property.
 - B. Insurance coverage for Special Hazards, including but not limited to explosion hazard, collapse hazard, underground property damage hazard, (commonly known as XCU).
 - C. Comprehensive Automobile Liability Insurance, in an amount not less than \$1,500,000 for each occurrence. Coverage shall include all owned autos, non-owned autos, and hired autos.
 - D. Errors and Omissions Insurance against errors and omissions resulting from the performance of Consultant's work under this Agreement. Said coverage shall be in an amount not less than \$2,000,000 per claim, \$2,000,000 annual aggregate.
 - E. Workmen's Compensation insurance for all its employees as required by the Minnesota Worker's Compensation Act.

F. The City of Shakopee must be named as "ADDITIONALLY INSURED" on the insurance described in paragraphs A, B, and C, and must receive 30 day written notice in the event of cancellation of any of the specified insurance. If the deductible provisions of the Consultant's coverage or any subcontractor's coverage is questioned by the City, the Consultant shall provide the City, upon request, "Proof of Assets".

This policy must provide, as between the City and the Consultant, that the Consultant's coverage shall be the primary coverage in the event of a loss. If the Consultant is providing either architectural or engineering services, the Consultant must also maintain during the term of this Agreement a professional liability insurance policy with the same limits as for general liability. A certificate of insurance on the City's approved form which verifies the existence of these insurance coverages must be provided to the City before work under this Agreement is begun.

19. **Governing Law.** This Agreement will be controlled by the laws of the State of Minnesota.
20. **Whole Agreement.** This Agreement embodies the entire agreement between the parties including all prior understanding and agreements, and may not be modified except in writing signed by all parties.

Executed as of the day and year first written above.

CITY OF SHAKOPEE

BOLTON & MENK, INC.

By: _____
William H. Reynolds, City Administrator

Date: _____

By: _____

Its: _____

Date: _____

By: _____
Bill Mars, Mayor

Date: _____



Real People. Real Solutions.

EXHIBIT A

2638 Shadow Lane
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Chaska, MN 55318-1172

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Fax: (952) 448-8805
Bolton-Menk.com

December 9, 2021

Steve Lillehaug, PE, PTOE
Public Works Director/City Engineer City of Shakopee
485 Gorman St
Shakopee, MN 55379

RE: Proposal for Shakopee; Minnesota River Cultural Corridor & Bank Stabilization Study

Dear Mr. Lillehaug,

The City of Shakopee faces potential impacts to critical resources from a rapidly eroding riverbank along its northern municipal boundary. The Minnesota River is an important resource for Shakopee but has recently transitioned into a more frequently occurring hazard impacting city infrastructure, historic properties, and important cultural resources. We understand what needs to be accomplished in this important Riverbank Stabilization Study to identify locations and methods for riverbank stabilization and parkland protection, strategies for protecting trunk sanitary sewer facilities, and saving cultural resources. We anticipate utilizing the following strategies.

Realistic Solutions - We approach each project from a fresh perspective, leveraging past ideas to find the solution that is right for you and your stakeholders. While drawing on our experience, we work to provide a solution scaled to the problem. We believe this project will require cost effective strategies to protect public safety first and careful attention to construction methods correlated to the infrastructure being protected.

Comprehensive Teams – We anticipate this project will require input from numerous subject matter experts. Our team is comprised of civil and water resources engineers, structural engineers, river modeling experts, parks and trails planners, landscape architects, archeologists, and public communications experts.

Stakeholder Coordination – Effective teams begin with an understanding of stakeholders and their role in the planning level phase. We will leverage the extensive coordination already completed by the City of Shakopee to complete a feasibility study that will provide a framework for future stakeholder support and funding strategies.

Project Management – We believe projects succeed or fail based on leadership. We will be proactive, set clear expectations, and guide the process with technical understanding and thoughtful consideration of the City's needs for this effort.

Sincerely,

Bolton & Menk, Inc.

Timothy J. Olson, PE, CFM
Principal Water Resources Engineer

Project Understanding

The Minnesota River is an important resource for the City of Shakopee. The river corridor includes tremendous fish and wildlife habitat, local and regional recreational opportunities, critical municipal utilities, historic buildings, and significant human cultural resources. Over the last several decades streambank erosion has increased because of increases in depth and intensity of rainstorms, increases in runoff volumes and peak flow rates. While all alluvial channels move as a product of stream evolution and associated erosion and deposition, the magnitude and pace at which the bank has moved is impacting important City infrastructure, public spaces, and cultural resources. In fact, the City and Lower Minnesota River Watershed District (LMRWD) estimate that the riverbank has shifted nearly 100 feet near the historic Holmes Street Bridge piers and 40 to 50 feet in the downtown Shakopee. Much of this movement has been documented in the last 10 to 20 years. If the rate of erosion is not mitigated, it is estimated that an additional 50 feet of riverbank could be lost by 2060.

The City completed a Parks, Trails, and Recreation Master Plan in 2019 that developed a needs assessment, defined a vision for the ultimate parks system, planned for parks and trails improvements and connectivity, and established an implementation strategy. Numerous critical protection areas were defined starting at the Historic Holmes Street Bridge; extending east along Huber Park, the Historic Schroeder Brickyard, and old Marina; continuing through the historic downtown adjacent to the Minnesota Valley State Trail; ending at Memorial Park near a significant river meander, the river flats, and known Dakota burial mound sites.

The City has begun developing funding strategies and has requested funds through the State bonding bill. The anticipated overall project cost is \$24 million and is a joint Riverbank Stabilization and Cultural Corridor project. This initial study will target the following goals.

- **Protect the riverbank near the Historic Holmes Street Bridge from rapid erosion.** This section of riverbank is the start of a rapidly eroding section that has already impacted bridge piers, trunk sanitary sewer, and park land. Given the critical infrastructure at risk, this section is likely best suited for hard armoring, or other structural stabilization, for long term protection.
- **Assess trunk sanitary sewer elevations nearest the riverbank and propose strategies to raise, relocate, or flood-proof critical infrastructure to the 100-year (1% probability of return) flood event.** Riverbank erosion poses a risk to approximately 8,800 feet of trunk sanitary sewer. Furthermore, approximately 40 sanitary sewer manholes are underwater during critical floods, making it nearly impossible to access for emergency repairs. This flood inundation may last days to months with some inundation expected nearly every year.
- **Assess and protect critical human cultural resources.** This area holds great significance for the Shakopee Mdewakanton Sioux Community, the Dakota, and many other indigenous tribal nations. This includes dozens of burial mounds near areas of original Dakota settlements. Protection of these areas is imperative to the protection of cultures that define Shakopee, its natural resources, and its people.
- **Develop project planning and effective riverbank stabilization strategies that are integral to the City's Parks, Trails, and Recreation Master Plan.** The City's investment in its parks, trails, and recreation is evident and has prioritized protection of cultural human resources and established new connectivity to its river resources. This Riverbank Stabilization Study must be integral to the Master Plan including protection of land resources, stabilization techniques related to proposed parks improvements, and project implementation schedules. The City anticipates starting the planning, engineering and design now, with construction phases extending through the end of 2024.

Study Significance and Need

The need to proactively study these issues, and, more so, the risk of reactivity, is highly significant to irreplaceable cultural and historic resources, the environment, and the public welfare. If uncontrolled erosion and inadequate flood management continues to occur, federally protected sites including burial mounds and historic structures may be lost. A proactive approach to preserve these areas during flood conditions is necessary to maintain their place in the region's history.

The risk to the environment is a looming and highly pressing issue for Shakopee. The sanitary sewer system along the bank of the river is nearly exposed in some areas and this study must evaluate options to preserve the system to ensure a future flood will not breach the main and result in a sanitary sewer discharge into the river. The resulting failure would limit sanitary service to a sizable portion of the City and result in an environmental disaster. This study is proactively seeking to address this potential and prevent it from taking place with the right mitigation solutions done before the risk becomes a reality.

Scope of Services

Task 1 – Project Management and Data Collection

- Facilitate project kickoff meeting (assumed 1 meeting), interim progress meetings (assumed 2 meetings), and regular project communication protocol (assumed weekly).
- Collect local and state GIS data including critical infrastructure locations, light detection and ranging (LiDAR) surface topography, historic aerial photos, etc. to establish base mapping and sensitive project corridor features.
- It is assumed that the City will share any critical GIS information pertinent to the project corridor, if not already shared.
- Establish issues map for City review and concurrence.

Deliverables: Meeting notes, regular project updates, request for GIS data, project corridor mapping.

Task 2 – Desktop Assessment of Riverbank Erosion and Stabilization Strategies

- Utilize base mapping to identify critical erosion areas and unstable banks and plan the locations and techniques for stabilization.
 - Establish areas and techniques needing hard armoring, bioengineering, walls, reinforced slopes and bendway weirs within the 2.2 mile reach from the Holmes Street Bridge to near Murphy's Landing.
 - Hard armoring strategies will likely be needed near the Holmes Street Bridge through Huber Park to the Schroeder Brickyard.
 - Identify areas to protect and restore the Minnesota River Valley State Trail.
 - Understand the river's interaction with cultural human resource protection sites.
- Consider hard armoring techniques including, but not limited to, stone armoring, structural wall solutions, and riverbank grading.
- Consider bioengineered techniques including vegetative plantings and toe wood solutions.
- Develop strategies and practices that are integral to parks master planning.
- Consider river access, boat landing areas, kayak/canoe launch areas, adjacent trails, and park land protection.

Deliverables: Report section identifying high priority stabilization areas and recommended bank stabilization strategies including a mix of hard armoring, bioengineering, walls, reinforced slopes, and bendway weirs for redirection of river currents.

Task 3 – Desktop Assessment of Trunk Sanitary Sewer Facilities

- Utilize City GIS to establish sanitary manholes rim elevations.
- Utilize flood insurance studies to correlate flood elevations to current rim elevations and establish proposed structure elevations for flood protection. The Minnesota River has flood insurance study elevations for the 10-year (10%), 50-year (2%), 100-year (1%), and 0.2% (500-year) floods.
- Assess protection to sanitary manholes by elevating and filling and/or floodproofing.
- Assess manhole protection via potential realignment of sewer in areas where piping encroaches sensitive riverbank erosion areas including cultural, wetland and floodway impact.
- Correlate hard armoring or structural solutions to pipe and structure locations and summarize any special considerations to construction means, methods and costs.

Deliverables: Report section identifying at risk manholes, methods of protection and cost. Profile plot of manhole rim elevations and critical flood elevations, proposed rim elevations, preliminary alignment considerations (as applicable).

Task 4 – Desktop Cultural Resources Evaluation, Natural Resources Assessment, and Parks Master Plan Considerations

- Utilize archaeologist and cultural resources specialists to evaluate critical cultural human resources. Summarize process for resource evaluation, specific field work and permitting needs, and anticipate regulatory coordination timelines.
- Identify potential sensitive environmental resources and wetland areas. Summarize project permitting needs and regulator coordination timelines.
- Understand the City's parks master plan and its correlation to riverbank stabilization solutions. Ensure that river access and parks planning remain a high priority in all solutions and that park and open space plans align with feasible riverbank stabilization solutions.
- NOTE – we do not anticipate any additional field work as part of this planning study. Rather, we will summarize a process for field work and permitting.

Deliverables: Report Section Summary of archeological, cultural resources, natural resources, and parks, trails and public use considerations. Mapping of critical assessment areas, summary of stakeholder coordination and regulatory needs. Static visualization of park area w/ solution recommended.

Task 5 – Develop Study Report and Planning-Level Cost Estimates

- Develop preliminary summary of findings and study document.
- Establish preliminary cost estimates for riverbank stabilization, sanitary sewer protection improvements, and cultural/natural resources/public use assessments. Work with City staff to establish preliminary engineering costs and project contingencies.
- Submit preliminary study to City for review and incorporate comments.
- Prepare final study document. Report will include tables, exhibits, figures, and other pertinent appendices.

Deliverables: Preliminary study and cost estimates, final study and cost estimates.

Schedule

Project kickoff meeting will be within one month of notice to proceed. Preliminary report will be delivered to city for comment within four months of notice to proceed. Final report will be delivered to city 1 month following receipt of city comments on preliminary report.

Project Fees

The following is a summary of the anticipated fees to complete the Shakopee Riverbank Stabilization Study. The total project fee is an estimated **\$68,300** (hourly, not to exceed without authorization).

CLIENT: City of Shakopee PROJECT: Minnesota River Cultural Corridor & Bank Stabilization Study												
TASK NO.	WORK TASK DESCRIPTION	Principal Engineer	Technical Resource & QA/QC Lead	Senior Project Manager	Structural Engineer	Water Resources Hydraulics Specialist	Natural Resources Specialist	Cultural Resources/ Archeologist	Landscape Architect/Planner	Design Engineer	Total Hours	Total Cost
1.0	Project Management and Data Collection	4	4	20	0	0	0	0	0	8	36	\$5,600
2.0	Assessment of Riverbank Erosion and Stabilization Strategies	1	4	42	38	38	0	0	10	78	211	\$32,100
3.0	Assessment of Trunk Sanitary Sewer Facilities	0	2	2	20	2	0	0	0	24	50	\$7,800
4.0	Cultural Resources Evaluation, Natural Resources Assessment, and Parks Master Plan Considerations	1	1	7	0	0	20	20	24	0	73	\$9,500
5.0	Develop Study Report and Planning-Level Cost Estimates	5	7	34	2	2	2	2	2	36	92	\$13,300
TOTAL HOURS		11	18	105	60	42	22	22	36	146	462	
SUBTOTAL		\$2,178	\$2,826	\$17,010	\$12,000	\$7,140	\$3,014	\$2,420	\$4,608	\$17,082		
TOTAL FEE												\$68,300