



Board of County Commissioners Agenda Request

5A

Agenda Item #

Requested Meeting Date: August 14, 2018

Title of Item: Engineering Services - Proposed Wawina Wetland Bank

<input checked="" type="checkbox"/> REGULAR AGENDA <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <small>*provide copy of hearing notice that was published</small>
Submitted by: Rich Courtemanche		Department: Land Dept.
Presenter (Name and Title): Rich Courtemanche -		Estimated Time Needed: 15 min
Summary of Issue: <p>In December of 2011, the Forest Advisory Committee (now the Natural Resource Advisory Committee) directed the Aitkin County Land Department (ACLD) to explore the possibilities of creating a wetland bank at Judicial Ditch #1.</p> <p>ACLD has proposed and has received approval to submit a final application for a 3,545 acre wetland bank in Sections 2-5&8-10 of T52N R22W (aka. the Wawina Wetland Bank). ACLD approached the Co. Engineer who recommended seeking assistance from a private engineering firm. In July 2017, ACLD conducted a broad mailing seeking proposals. Bolten & Menk, Inc. (Baxter, MN) was the sole bid proposal (\$37,050) for hydrologic modeling and engineering plan sets.</p> <p>The County Attorney has reviewed the proposal and has given his approval of the document to form. ACLD seeks Board of Commissioners approval to use funds to pay for these engineering services to determine if it is feasible or permissible to construct the bank.</p>		
Alternatives, Options, Effects on Others/Comments: <p>Not hire an engineer and forfeit determining if the construction bank is feasible. This would also allow the continued connection of watersheds leaving an avenue for movement of invasive species and degradation of the wetland.</p>		
Recommended Action/Motion: <p>Approval to hire Bolten & Menk, Inc. for engineering and modeling services for the Wawina Wetland Bank.</p>		
Financial Impact: <p>Is there a cost associated with this request? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>What is the total cost, with tax and shipping? \$ 37,050</p> <p>Is this budgeted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Please Explain:</p>		

Legally binding agreements must have County Attorney approval prior to submission.



*Aitkin County Land Department
502 Minnesota Ave N
Aitkin, MN 56431
218-927-7364
e-mail: aclد@co.aitkin.mn.us
web: www.co.aitkin.mn.us*

Wawina Wetland Bank Proposal Finding of Facts

In December of 2011, the Forest Advisory Committee (now the Natural Resource Advisory Committee) directed the Aitkin County Land Department (ACLD) to explore the possibilities of creating a wetland bank at Judicial Ditch #1. ACLD has proposed and has received approval to submit a final application for a 3,545 acre wetland bank in Sections 2-5&8-10 of T52N R22W (aka. the Wawina Wetland Bank).

The benefits of the Wawina Wetland Bank include protecting rare peat formations, restoring subsided ditches, promoting rare rich fen communities, abandoning unused ditches, and severing the avenue for aquatic invasive species that now exists between the St. Lawrence and Mississippi River Watersheds. The creation of a wetland bank provides an opportunity to create a wetland bank in the St. Lawrence watershed and to provide a financial benefit to Aitkin County & Floodwood School District. In order to move forward through the regulatory process, the Army Corps of Engineers and the MN Board of Soil & Water Resources requires that the final application contain civil engineering to show how the ditch plugs will be designed and how they will function under different hydrologic loads.

ACLD has proposed and has received approval to submit a final application for a 3,545 acre wetland bank in Sections 2-5&8-10 of T52N R22W (aka. the Wawina Wetland Bank). ACLD approached the Co. Engineer who recommended seeking assistance from a private engineering firm. In July 2017, ACLD conducted a broad mailing seeking proposals. Bolten & Menk, Inc. (Baxter, MN) was the sole bid proposal (\$37,050) for hydrologic modeling and engineering plan sets.

The County Attorney has reviewed the proposal and has given his approval of the document "to form." ACLD seeks Board of Commissioners approval to use funds to pay for these engineering services to determine if it is feasible or permissible to construct the bank.



Aitkin County Land Department
209 2nd St. NW Room 206
Aitkin, MN 56431
218-927-7364
e-mail: aclد@co.aitkin.mn.us
web: www.co.aitkin.mn.us

Forest Advisory Committee Minutes

14 December 2011, 6:00 PM

Aitkin County Board Room, Aitkin, MN

FAC members attending: Harold Harms, Kevin Insley, John LaHoud, Bob Lake, Brien Leitinger (DNR), Michelle McDowell (FWS), Brian Napstad (commissioner), Dale Shipp, Galen Tveit, and Jeff Workman. Non-Voting Attending: Rich Courtemanche, Mark Jacobs

1. Call to Order of the Forest Advisory Committee (FAC) 6:00 pm.

Old Business:

2. Approval of October 26, 2011 Minutes: Minutes were approved as mailed out.

Announcements and Discussion:

3. Land Sale: Results of the December 9, 2011 Land Sale was presented. Nine properties totaling 75 acres were sold for a total of \$55,600.
4. Winter Timber Sale: Results of the December 12, 2011 oral bid timber sale was presented. 26 Tracts totaling 19,737 cords were sold for a total of \$390,144.62.

New Business:

5. Land Classification: Discussion and recommendations for the Board of Commissioners were made for twenty-nine separate properties. Eighteen properties were recommended to be "disposed of" or "exchanged." Three properties were recommended to be retained by the County, and eight others were designated as retain to be exchanged with DNR. Since four of the lots were partial interests, there was a discussion how access and management is interpreted by ACLD for these lots.
6. Wetland Mitigation in Unorg. T52 R22: Mark Jacobs presented a proposal from Applied Ecological Services, Inc. to create a wetland bank from the area of Judicial Ditch #1. The eventual restoration to the historic hydrology and vegetation could benefit both the St. Louis and Mississippi River watersheds. The offering of credits in the St. Louis River watershed may be useful for mining expansion projects which often mitigate their wetland impacts in Aitkin County but in the Mississippi River watershed. Observations from Brien Napstad indicated that the Federal Government, ACOE, may be resistant to this proposal as a wetland bank despite the support of the State and County.



*Aitkin County Land Department
209 2nd St. NW Room 206
Aitkin, MN 56431
218-927-7364
e-mail: acld@co.aitkin.mn.us
web: www.co.aitkin.mn.us*

Formal Motion: The Forest Advisory Committee is in agreement with the initial premise of creating a wetland bank at the Judicial Ditch #1 and that such a project would be beneficial to the environment and to Aitkin County. The FAC directs ACLD to explore the possibilities of creating such a project and wishes to be kept apprised of the findings and facts. (Motion by Bob Lake and Seconded by Harold Harms, unanimous)

7. Meeting adjourned at 7:45 PM

Minutes submitted by Rich Courtemanche

Aitkin-Wawina Peatlands Restoration

The Wawina Continental Divide Restoration area is a 3,547 acre parcel located in northeast Aitkin County. This area defines the very headwaters of the Prairie/Willow River watersheds of the Mississippi and the St. Louis watershed of the St. Lawrence River. The dominant hydrologic feature is the Judicial Ditch #1. The ditch system does not effectively drain the adjacent wetlands but is continuously filled with water acting as a transportation system between the Mississippi River and St. Louis watersheds. This project seeks to protect this biologically significant area and to remove the surface water connection that is a threat for migration of invasive species between the basins.



Factors Favoring a New Wetland Bank

- This project would provide a viable replacement opportunity for wetland impacts within the St. Louis River watershed as intended in the Wetland Conservation Act.
- Ditches are filled with water during all seasons including during drought periods and are not functional or maintained as designed. The ditch would be permanently abandoned.
- Attorney Generals are demanding that the Army Corps of Engineers act quicker on “severing” the connection between the two basins preventing aquatic invasive species from migrating between these watersheds.
- The US Fish and Wildlife Service Regional Step-Down plan (a.k.a., Strategic Plan) emphasizes efforts to minimize establishment and spread of non-indigenous invasive species between these watersheds.



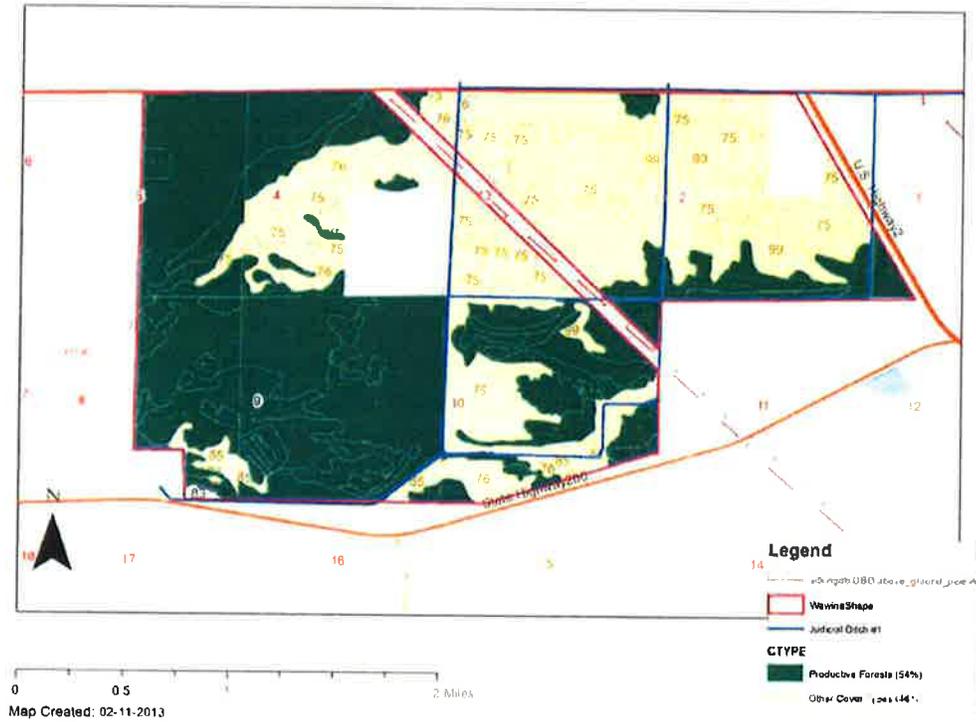
- There will be a change from the land actively managed for “Forestry” to “Ecologic” preserved. The area is deemed of “High Biological Significance” by the MN Biological Survey and is similar to the nearby Wawina Scientific and Natural Area.
 - Area has potential to be leased/mined for peat. The area is dominated by unique Rifle, Greenwood, Lobo/Waskish Peats.
 - MN DNR “Action Plan” on restoration of endangered species prioritizes increasing habitats in lowland conifers like the Wawina Restoration Project.
- A wetland bank would provide revenue opportunity for townships, schools, and Aitkin County. A major beneficiary of the financial relief would be the Floodwood School District which is in crisis as featured in the National Public Radio article “*Small towns 'just one disaster away'*,” November 16, 2011.

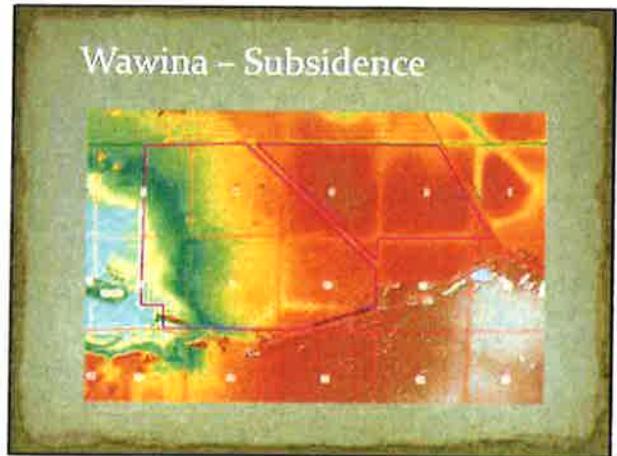
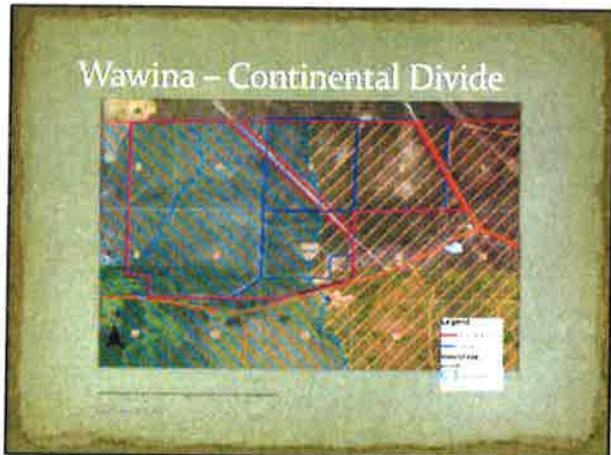
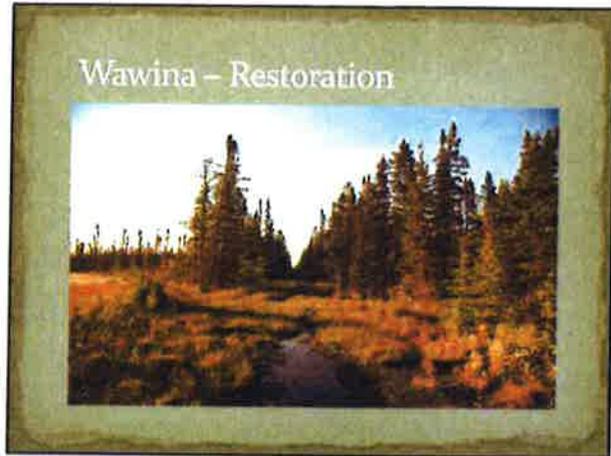


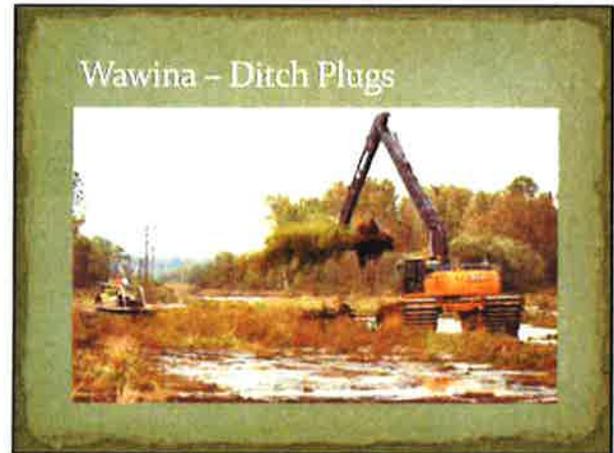
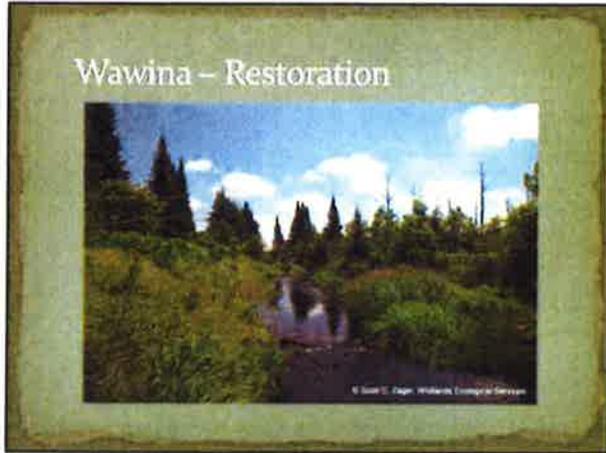
Judicial Ditch #1 - Site Map with Watershed Boundaries



Judicial Ditch #1 - Forest Cover Types







Revised Engineering

Task	Payment	Cost
Initial Agency Meeting	Lump Sum	\$1,750.00
Hydrologic Modeling	Lump Sum	\$6,400.00
Topographic Survey	Lump Sum	\$6,300.00
Project Design and Plan Set	Lump Sum	\$28,900.00
Total Costs of Modeling & Design		\$37,050.00

Unknown Construction Costs ?????

Potential

Use/Type	Area	Cost/ft ²	Cost	Value
Preservation	2,926.86	12.5%	365.86	\$3,984,188.18
Restoration	595.57	50.0%	297.79	\$3,242,933.10
Approximate Value based on \$0.25 per sq ft				\$7,227,121.28



**BOLTON
& MENK**

Real People. Real Solutions.

7656 Design Road
Suite 200
Baxter, MN 56425-8676

Ph: (218) 825-0684
Fax: (218) 825-0685
Bolton-Menk.com

July 13, 2018

Mr. Rich Courtemanche
Aitkin County Land Department
209 2nd Street Northwest, Room 206
Aitkin, MN 56431

RE: Wetland Bank Services
Aitkin Wawina Peatland Preservation
Aitkin County, Minnesota

Dear Rich:

Bolton & Menk, Inc. (BMI) is pleased to present this proposal for professional engineering services related to the Aitkin Wawina Peatland Preservation project. The proposed design services are intended to be in compliance with the current Board of Soil and Water Resources (BWSR) and U.S. Army Corp of Engineers (USACE) requirements for wetland banking in Minnesota. This proposal will define our scope of work and provide you with an estimate of the cost of each phase of our services.

Bolton & Menk, Inc. looks forward to working with the Aitkin Country Land Department, the BWSR, the Minnesota Department of Natural Resources (MNDNR) and the USACE to help the County successfully complete this project.

This proposal is subject to the attached Terms of Proposal. If this proposal and the attached terms are acceptable, please secure the appropriate signatures and return one signed copy of this letter and the attached Scope of Services. This will constitute the professional services agreement between you and Bolton & Menk, Inc.

Thank you for considering Bolton & Menk, Inc., for your surveying and civil engineering needs. Bolton & Menk, Inc. puts a high priority on ensuring that our company's efforts are consistent with our client's needs. Please review the attached documents and contact me if you have any questions.

Sincerely,
Bolton & Menk, Inc.

Accepted by:

Bryan G. Drown, P.E.
Project Engineer

Signature

Date

Name: Aitkin Wawina Peatland Preservation
Date: July 13, 2018
Page: 2

I. DESCRIPTION OF PROPOSED PROJECT

This project will include the reestablishment of the historic hydrologic break between the Prairie/Willow River and St. Lawrence River watersheds. These watersheds were combined early last century when Judicial Ditch No. 1 (JD 1) was established in an effort to facilitate farming and peat mining. The proposed reestablishment will preserve the remaining peatland from future farming and mining. The restoration of the hydrologic boundaries of these watersheds is proposed to be accomplished by strategically placing ditch blocks within JD 1.

This project has been under review by the agencies since December of 2012. With the Scoping Document, Concept Plan and Full Application reviews complete, Bolton & Menk, Inc. has been asked to complete a hydrologic model of the site and surrounding area and to prepare an engineering plan set as the final phase of the permitting process.

In order to better understand the agency engineering requirements, Bolton & Menk will request a meeting with the BWSR engineering staff. This improved communication will ensure that Bolton & Menk fully understands each of the agency design suggestions, thereby streamlining the design process and allowing for the County to present a plan set that can be quickly approved by agency reviewing staff.

Bolton & Menk will model the existing and proposed design conditions to prepare a plan showing all proposed ditch plugs and filling in accordance with agency discussions. Generally, the agencies look for one ditch plug per foot of fall, with ditch fill consisting of organic material gathered from the site. Considering the relatively level nature of the site, Bolton & Menk will work closely with BWSR engineering staff to design an appropriate spacing pattern to complete the intended nature of the project. Typical plug cross-sections and specifications will be provided on the plans, detailing the construction of the plugs. Specifications on ditch fill will also be included with the plan set.

II. SCOPE OF WORK

Bolton & Menk, Inc. (BMI) will complete the following scope of work:

Task 1 – Initial Agency Meeting

BMI will request a meeting with agency review staff, including BWSR engineering staff. This meeting is anticipated to take place in St. Paul at the BWSR offices. BMI staff in attendance will include wetland specialists, hydrologist and design engineer. Aitkin County staff will also be invited, but County staff attendance is optional.

Task 2 – Hydrologic Modeling

A hydrologic and hydraulic model will be created using XP Solution's XPSWMM software. XPSWMM utilizes the Soil Conservation Service (SCS) Technical Release No. 20 (TR-20) hydrologic methodology to route watershed runoff through the system using a rainfall hydrograph. XPSWMM and the TR-20 methods were chosen because they can accurately model storage volumes and ponding durations as well as flow rates entering and leaving the area for various rainfall events.

For this study, we will use the recently published Atlas-14 rainfall data along with the MSE 3, 24-hour rainfall distribution. The hydrologic and hydraulic modeling will be used to help determine flow

Name: Aitkin Wawina Peatland Preservation
Date: July 13, 2018
Page: 3

conditions and potential impacts of the proposed project on adjacent properties. Bolton & Menk will provide a summary report detailing the findings of the hydrologic and hydraulic investigation.

Task 3 – Project Design and Plan Set

Based on the hydrologic modeling, survey data collected and LiDAR data, BMI will design the JD 1 alterations that will effectively restore the divide between the Prairie/Willow River and St. Lawrence River watersheds. This will include a detailed plan set that will depict plug locations, plug construction details, ditch fill locations and limited specifications within the plans. This Task includes subsequent design and drafting revisions to include special design considerations requested by the review agencies after submitting a draft set for their review and approval.

FEES

For the hydrologic modeling and design of the Aitkin Wawina Peatland Preservation Project, BMI proposes to complete the work described herein as follows:

TASK	FEE BASIS	COSTS
1. Initial Agency Meeting	Lump Sum	\$1,750.00
2. Hydrologic Modeling	Lump Sum	\$6,400.00
3. Project Design and Plan Set	Lump Sum	\$28,900.00
TOTAL COSTS OF MODELING AND DESIGN		\$37,050.00

This proposal does not include costs for:

- Bidding and construction specification documents
- Completing any outstanding permitting or the Final Mitigation Banking Instrument
- Management of the sale of wetland credits
- Easement and Title filing
- Forwarding proof of Easement and Title filing to BWSR Banking staff

If the County would like assistance in completing these tasks, we would be happy to submit a separate proposal for these services.

This proposal does not include any construction costs associated with the construction of ditch plugs or other structural aspects of the project. These costs may include, but are not limited to grading, structure construction and ditch manipulation.

AGREEMENT FOR PROFESSIONAL SERVICES Ver. 2016-08

STANDARD PROJECT-PUBLIC CLIENT

AITKIN COUNTY and BOLTON & MENK, INC.

This Agreement, made this 1st day of August, 2018, by and between Aitken County Land Department, 209 2nd Street NW #206, Aitken, MN 56431 ("CLIENT"), and BOLTON & MENK, INC., 1960 Premier Drive, Mankato, MN 56001, ("CONSULTANT").

WITNESS, whereas the CLIENT requires professional services in conjunction with the Aitkin Wawina Peatland Preservation ("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 I - CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to perform the various Basic Services in connection with the proposed project as described in Exhibit I.
- B. Upon mutual agreement of the parties, Additional Services may be authorized 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 shall include but shall not be limited 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 I.
- 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.

(Remainder of this page intentionally left blank)

SECTION III - COMPENSATION FOR SERVICES

A. FEES.

1. The CLIENT will compensate the CONSULTANT a Lump Sum (Fee) of \$ 37,050.00 for performance of Agreement services.
2. Additional Services as outlined in Section I.B will vary depending upon project conditions and will be billed in addition to the Lump Sum Fee on an hourly basis at the following rates:

Schedule of Fees

Employee Classification	Hourly Billing Rates
Sr. Project Manager - Principal Engineer	\$165
Project Engineer	\$120
Design Engineer	\$104
Wetland Scientist	\$105
Wetland Specialist	\$88
Administrative Support & Clerical	\$86
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

3. The preceding Schedule of Fees shall apply for services provided through December 31, 2019. Hourly rates may be adjusted by CONSULTANT, in consultation with CLIENT, 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, upon written acceptance by CLIENT.
4. Rates and charges do not include sales tax, if applicable.
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 rates 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.

6. Additional services as outlined in Section I.B will vary depending upon project conditions and will be billed on an hourly basis at the rate described in Section III.A.2.
7. Expenses required to complete the agreed scope of services or identified in Paragraph III.A.7 will be invoiced separately, and include but are not limited to large quantities of prints; extra report copies; out-sourced graphics and photographic reproductions; document recording fees; special field and traffic control equipment rental; outside professional and technical assistance; geotechnical services; and other items of this general nature required by the CONSULTANT to fulfill the terms of this Agreement. CONSULTANT shall be reimbursed at cost plus an overhead fee (not-to-exceed 10%) for these Direct Expenses incurred in the performance of the work. Expenses are in addition to the Lump Sum.

B. PAYMENTS AND RECORDS

1. Payment to the CONSULTANT will be made by the CLIENT upon billing at intervals not more often than monthly of that part of the Fee in approximate proportion to the percentage of completed services and in accordance with herein 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 CONSULANT 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 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. 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
5. Total fee for study and design services (Basic Fee) is estimated to be \$ 30,050.00. The payment of the Basic Fee to the CONSULTANT will be made by the CLIENT with the following limitations. Remainder of Lump Sum fee may be invoiced and will be paid on that part of the remaining fee in approximate proportion to the percentage of completed services. All other fees may be invoiced and will be paid on a not more than monthly basis, as provided.
 - a. Upon completion of the preliminary meeting, total payments to the CONSULTANT shall not exceed 5 percent of the Basic Fee.
 - b. Upon submittal of completed plans and specifications to the CLIENT, total payments to the CONSULTANT shall not exceed 95 percent of the Basic Fee.

- c. Additional Services shall be in addition to the Basic Fee and not subject to the foregoing limitations.

(Remainder of this page intentionally left blank)

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. 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 of the project from that described in Exhibit I, 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. The CONSULTANT shall furnish an estimate of additional cost, prior to authorization of the changed scope of work and Agreement will be revised in writing.

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 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 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. 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.
5. 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.

D. INSURANCE

1. The CONSULTANT agrees to maintain, at CONSULTANT'S expense a commercial general liability (CGL) and excess 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 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. During the period of design and construction of the project, 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. 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. Prior to commencement of this Agreement, each party will provide the other 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 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 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.

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 Plans and Specifications, together with any other documents delivered to the CLIENT or to others on behalf of the CLIENT) 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 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 such other explicitly identified completion period, after which time the Agreement may be extended upon mutual agreement of both parties.

K. TERMINATION

This Agreement may be terminated by either party for any reason or for convenience by either party upon seven (7) 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.

L. INDEPENDENT CONTRACTOR

Nothing in the 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 the Agreement.

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 Contract, 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. ASSIGNMENT

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

P. 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.

Q. 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.

R. CONTROLLING LAW

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

S. 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.

T. MINNESOTA GOVERNMENT DATA PRACTICES ACT

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 concerning release of data to requesting party and CONSULTANT will be reimbursed as Additional Services by CLIENT for its reasonable expenses in complying with the request.

U. ETHICAL STANDARDS

No member, officer, employee or agent of the Aitkin County 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 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: _____

CONSULTANT: Bolton & Menk, Inc.
