



## Request for Council Action

**TO:** Mayor and City Council  
**THROUGH:** Tim Murray, City Administrator  
**FROM:** Mark DuChene, City Engineer  
**MEETING DATE:** August 12, 2020  
**SUBJECT:** Approve Professional Services Proposal for Cultural Resources Monitoring Services for 2020 Division Street & Central Avenue Improvements Project

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### **Background:**

Due to the history of Peace Park, the Minnesota Archeology Office and the Minnesota Indian Affairs Council are requiring the City to hire a qualified archeological observer to be onsite during certain times of construction for the reconstruction of Division Street between Central Avenue and 1<sup>st</sup> Avenue NE/TH60 as well as the removal of the street and sidewalk within the Park Place right-of-way and regrading for the east library parking lot expansion.

The City has solicited a proposal for these services from Bolton & Menk, Inc. This firm is on the State's approved consultant list for these types of services and is a consulting firm that the City is familiar with and has used their professional services in other disciplines in the past. They are also available to provide the service within the proposed project timeline to keep the project on schedule.

### **Recommendation:**

Approve Proposal from Bolton & Menk, Inc. for Cultural Resources Monitoring Services

### **Attachments:**

- Bolton & Menk Proposal



**BOLTON  
& MENK**

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August 7, 2020

Mark Duchene, PE  
Director of Engineering  
1200 Belview Trail  
Faribault, MN 55021

RE: Cultural Resources Monitoring Services  
City of Faribault

Mark Duchene,

The City of Faribault proposes construction activities near archaeological sites 21RCac and 21RCad, both of which are reported to contain Indian burial grounds. Proposed activities include removals which have potential to expose or disturb burials if present. Due to these difficulties, the Office of the State Archaeologist (OSA) and the Minnesota Indian Affairs Council (MIAC) recommend construction monitoring to be completed by a professional archaeologist licensed to perform such work.

### **Scope of Work**

Bolton & Menk's Monitoring Services includes four tasks outlined below.

#### **Monitoring/Inadvertent Discoveries Plan Development**

Bolton & Menk will conduct research on past work at the sites (presumed to be none) and evaluate the stages of proposed work with potential to expose human remains and burials. Upon identifying these stages and locations, Bolton & Menk will develop Monitoring Plan meeting the needs of MIAC and OSA in order to facilitate permitting and the initiation of construction. This work will be completed immediately upon Notice to Proceed.

#### **Construction Monitoring**

Upon completing the Monitoring Plan, licensing and the initiation of construction, Bolton & Menk will provide cultural resources staff to observe construction as specified by the Monitoring Plan and contractor schedule. Daily rates are depicted below and it is anticipated that work will not exceed around 7 days on site, assuming 12 hours per day including completion of daily logs. The monitor must be on site 15 minutes prior to construction and will leave approximately 15 minutes after completion of work within Monitoring Areas. Daily log forms provided by MIAC will be completed for each day on site.

Reporting

Upon completion of work in the Monitoring Areas, Bolton & Menk will provide a final report of monitoring activities, summarizing observations and including the monitor's daily logs.

Meetings

Monitor will attend any regular construction meetings remotely, if possible, and one preconstruction meeting to be held on August 20, 2020.

**Excluded Work**

Recovery of human remains requires the authorization of MIAC and OSA and intensive consultation. Recovery activities will not be performed under this contract.

**Estimate of Fees**

Our Estimate of Fees, to be on an hourly, not-to-exceed basis for the detailed Scope of Work is below:

Basic Services

Monitoring/Inadvertent Discoveries Plan Development.....	\$2,100.00
Construction Monitoring (per day).....	\$1,100.00
Reporting.....	\$1,800.00
Meetings.....	\$2,200.00
<b>Subtotal Basic Services (assuming 7 days on site).....</b>	<b>\$13,800.00</b>

**Project Timeline**

Bolton & Menk will begin developing the Monitoring Plan immediately upon Notice to Proceed and provide staff as identified by the plan. It may take up to 2 weeks to complete permitting, therefore, efforts to gain permitting will begin immediately. A final report is due to MIAC within 48 hours of monitoring completion.

Sincerely,

**BOLTON & MENK, INC.**

  
 Austin Jenkins, M.S.  
 Cultural Resources Planner

  
 Angie Bersaw, AICP  
 Principal Planner

Enclosures: Exhibit A: Terms of Proposal

We hereby accept this proposal and authorize Bolton & Menk, Inc. to proceed with this work.

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

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

## Terms of Proposal Bolton & Menk, Inc.

The accompanying Proposal (hereinafter referred to as "Proposal") is subject to the following terms and conditions. These Terms of Proposal (hereinafter referred to as "Terms") are an integral part of the accompanying Proposal as if stated directly therein. No change or deviation from these Terms will be binding without the written approval of Bolton & Menk, Inc. (BMI). Such changes may require an adjustment in the proposed fee, schedule or scope of Proposal.

**A. Services:** BMI proposes to perform the services outlined in the Proposal for the stated fee arrangement. Changes required by the Client or other controlling entities (regulatory agencies, contractors, courts, etc.) from the scope or schedule of services described in the Proposal are "Additional Services" and will be invoiced on an hourly basis in addition to the stated fee arrangement. Any additional studies, tasks, or coordination not explicit in the proposed Scope of Work will be performed by others or as additional services. The scope of services provided above is inclusive of all tasks offered under this contract and fee. Parties agree that additional understandings which conflict with this document (including oral agreements) must be negotiated in writing.

**B. Information from Client:** Unless otherwise stated, Client agrees to provide BMI with all site information necessary to complete the proposed services. This information should include current site property descriptions (from abstract, title opinion or title commitment); other legal documents affecting the site; copies of previous surveys, maps, utility locates, engineering studies and plans; existing or required soils and geotechnical reports; governmental, regulatory and utility reviews and determinations; and all other pertinent information. BMI may rely on accuracy of Client provided information. Client shall promptly inform BMI of any alleged defects in services provided or the project.

**C. Access to Site:** Unless otherwise stated, Client agrees to provide BMI with access to the site, including adjoining properties, for activities necessary for the performance of services. It is understood that in the normal course of work, unavoidable property damage may occur due to excavations, tree and brush trimming, marking lines, etc. BMI will take reasonable precautions to minimize damage due to its activities. The cost to correct resulting damage has not been included in the fee and the Client agrees to reimburse BMI for any costs associated with required restoration work.

**D. 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 BMI's profession currently practicing under similar conditions. **BMI makes no warranties, expressed or implied, or otherwise with respect to any services performed or furnished.**

**E. Certifications:** Any certification provided by BMI is a professional opinion based upon knowledge, information and beliefs available to BMI at the time of certification. Such certifications are not intended as and shall not be construed as a guarantee or warranty. BMI shall not be required to certify the existence of conditions whose existence BMI cannot reasonably ascertain.

**F. Utilities:** BMI assumes no liability for matters arising from subsurface utilities that vary from locations depicted on previous plans or locates provided by Client or utility companies.

**G. Project Approval:** Due to site limitations, code interpretation, regulatory reviews, political considerations and Client directed design and improvements; BMI makes no representations as to acceptability or approvability of the project, or, zoning requests, permit applications, site and development plans, plats and similar documents. Client's obligation for payment of fees owed BMI is not contingent upon project approval.

**H. Ownership and Alteration of Documents:** All documents, including reports, drawings, field data, notes, plans, specifications and documents or electronic media prepared or furnished by BMI under this agreement remain the property of BMI. Upon payment of all amounts owed, the Client is granted a limited license to BMI's submittals for Client's reasonable use and to make and retain copies for such use. However, BMI's submittals are not intended for reuse by the Client or third parties on other projects or alteration by others without the written consent of BMI. Electronic media may be furnished for convenience of Client; however, only signed and certified paper copies of submittals may be relied upon as documentation of professional services provided.

**I. Billings and Payments:** Invoices for BMI's services shall be submitted, at BMI's option, either upon completion of such services or on a monthly basis. Unless credit to Client is approved, payment is due upon receipt of services and deliverables. If, at sole discretion of BMI, credit is advanced to Client, invoices shall be due and payable within 30 days after the invoice date. If the invoice is not paid within 30 days, BMI may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of its services. BMI reserves the right to

withhold any deliverables until all unpaid fees are paid in full. Amount of retainer (if applicable) will be applied to amount owed on final invoice.

**J. Late Payments:** Accounts unpaid 30 days after the invoice date will be subject to a monthly service charge of 1.5% on the unpaid balance. If any portion or all of an account remains unpaid 60 days after billing, the Client shall pay all costs of collection, including reasonable attorney fees.

**K. Waiver:** To the fullest extent permitted by law, Client and BMI waive against each other, and the other's employees, partners, officers, agents, insurers and subcontractors, 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.

**L. LIMITATION OF LIABILITY:** In recognition of the relative risks, rewards and benefits of the project to both the Client and BMI, the risks have been allocated such that the Client agrees that BMI's total liability to the Client for any and all injuries, claims, losses, expenses, damages or claimed expenses arising out of the performance of this agreement from any cause or causes, shall not exceed **\$25,000**. Such claims include, but are not limited to, BMI's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

**M. Certificates of Insurance:** BMI will maintain, at its expense, statutory worker's compensation insurance coverage, automobile liability insurance, commercial general liability insurance and professional liability coverage for claims arising from bodily injury, death or property damage which may arise from the negligent performance by BMI or its employees. BMI will, upon request, furnish Certificates of Insurance documenting terms of coverages. BMI will not be required to extend coverages beyond those which are usual and customary for similar firms practicing similar surveying and engineering services unless BMI is reimbursed for additional premium expenses.

**N. Dispute Resolution:** Any claims or disputes made during or after the performance of services between BMI and the Client, with the exception of claims by BMI for non-payment of services rendered, shall first be

submitted to mediation for resolution prior to initiating any other legal proceedings.

**O. Agreement:** If the Proposal is accepted, the Client and BMI will enter into an Agreement incorporating the accompanying Proposal, these Terms and such additional terms and conditions as may be mutually acceptable to BMI and Client. In the absence of a separate, executed written agreement, the accompanying Proposal and these Terms of Proposal shall constitute the whole and complete agreement between BMI and the Client.

**P. Termination of Services:** The Agreement created under Paragraph Q may be terminated by the Client or BMI should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay BMI for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

**Q. Withdrawal of Proposal:** This Proposal constitutes a non-binding offer to perform services and BMI reserves the right to withdraw or modify this proposal, without liability to the Client, at any time prior to receipt of written acceptance from the Client and execution of a signed agreement in accordance with Paragraph Q.

**R. LIEN RIGHTS:** Pursuant to the representations by the CLIENT in this Agreement and improvements to be made to the project property, the BMI reserves the right to file a lien against the project property in the event of delinquent or non-payment of monies owed to BMI by the CLIENT. In accordance with Minnesota law, the CLIENT and PROJECT PROPERTY OWNER are hereby advised:

**“(a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for the contributions.**

**(b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due them from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or material for the improvement and who gave you timely notice.**