



March 18, 2021

Catherine Cesnik, Chair
Bassett Creek Watershed Management Commission
c/o 16145 Hillcrest Lane
Eden Prairie, MN 55346

**Re: Agreement for Engineering Services
Bassett Creek Watershed Management Commission**

Dear Chair, Cesnik:

Thank you for retaining Barr Engineering Co. (Barr) as the Commission Engineers. We will do our best to justify your expression of confidence in us. This letter, together with our Standard Terms (attached) sets forth the Agreement between Bassett Creek Watershed Management Commission (Commission or Client) for engineering and planning services as assigned and approved by the Commission in accordance with the attached terms and conditions and fee schedule.

During the term of this Agreement, Barr agrees to maintain the following types of insurance and policy limits:

- a. Workers' Compensation and Employers' Liability
 1. Coverage A: Per State Statute
 2. Coverage B: \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

- b. Commercial General Liability
 1. \$2,000,000 General Aggregate
 2. \$2,000,000 Products – Completed Operations Aggregate
 3. \$1,500,000 Each Occurrence (death, injury, property damage)

- c. Commercial Automobile Liability
\$1,000,000 Combined Single Limit Bodily Injury and Property Damage

The Commercial Automobile Liability provides coverage for the following automobiles:

 1. All Owned Automobiles
 2. All Non-Owned Automobiles
 3. All Hired Automobiles

- d. Umbrella Liability
 1. \$10,000,000 Each Claim
\$10,000,000 Annual Aggregate

The Umbrella Liability provides excess limits for the Commercial General Liability, Employers' Liability, and Commercial Automobile Liability policies.

e. Professional and Pollution Incident Liability

Professional Liability insurance including Pollution Incident Liability coverage with limits of not less than \$5,000,000 Per Claim/\$5,000,000 Annual Aggregate.

The Commission shall be named as an additional insured on the Commercial General Liability, Employers' Liability, and Commercial Automobile Liability policies.

This Agreement will be effective until terminated and may be terminated by the Commission or Barr at any time. For the services provided, you will pay us according to the attached Standard Terms.

If this Agreement is satisfactory, please sign this letter in the space provided, and return it to us.

Sincerely yours,

BARR ENGINEERING CO.



Jim Herbert

Its Vice President

Accepted this 18 day of March, 2021

BASSETT CREEK WATERSHED MANAGEMENT COMMISSION

By _____

Its Commission Chair

BASSETT CREEK WATERSHED MANAGEMENT COMMISSION

By _____

Its Commission Secretary

Attachments

- Standard Terms—Professional Services—Bassett Creek Watershed Management Commission
- BCWMC Addressing Potential Conflicts of Interest, Approved November 17, 2020
- Fee Schedule



STANDARD TERMS—PROFESSIONAL SERVICES – Bassett Creek WMC

Our Agreement with you consists of the accompanying letter or other authorization, Work Orders, and these Standard Terms – Professional Services.

Section 1: Our Responsibilities

- 1.1 We will provide the professional services (“Services”) described in this Agreement. We will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality.
- 1.2 We will select the means, methods, techniques, sequences, or procedures used in providing our Services.
- 1.3 We will acquire all licenses applicable to our Services and we will comply with applicable law.
- 1.4 Our duties do not include supervising your contractors or commenting on, supervising, or providing the means and methods of their work unless we accept any such duty in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings.
- 1.5 We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing.
- 1.6 Estimates of our fees or other project costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should add a contingency.
- 1.7 The information you provide to us will be maintained in confidence except as required by law.
- 1.8 Barr will work to the best of its ability to stay within the budget of specific BCWMC Operating Budget lines and will communicate with the BCWMC administrator when it discovers or becomes apparent that budgets are not aligned.
- 1.9 We will comply with the “BCWMC Addressing Potential Conflicts of Interest”, Approved November 17, 2020, attached to this Agreement.

Section 2: Your Responsibilities

- 2.1 You will provide access to property.
- 2.2 You will provide us with prior reports, specifications, plans, changes in plans, and other information about the project that may affect the delivery of our Services.
- 2.3 You agree to provide us with information on contamination and dangerous and hazardous substances and processes we may encounter in performing the Services and related emergency procedure information.
- 2.4 You agree to make disclosures required by law.
- 2.5 You agree to consult with us when developing the Operating Budget and communicate the budget figures to direct our work.

Section 3: Reports and Records

- 3.1 We will allow you, or your duly authorized agents, and the state auditor or legislative auditor reasonable access to our books, records, documents, and accounting procedures and practices that are pertinent to all services provided under this Agreement for a minimum of six years from the termination of this Agreement.
- 3.2 Monitoring wells are your property and you are responsible for their permitting, maintenance and abandonment unless we accept that duty in writing. Samples remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are your property. They will be discarded or returned to you, at our discretion, unless within 15 days of the report date you give written direction to store or transfer the materials at your expense.
- 3.3 Our reports, notes, calculations, and other documents prepared for you will be “works made for hire” as defined under 17 U.S.C. §101, for which you have the sole and exclusive right, title and interest, including all rights to ownership and copyright or patent. We will retain the right to all software, intellectual property, and templates that are not a project-specific deliverable as well as to individual features of any design which we would reasonably expect to be able to recreate in whole or in part for other projects.
- 3.4 Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you. In case of any difference or ambiguity between an electronic and a paper document, the paper document shall govern. When accepting document transfer in electronic media format, you accept exclusive risk relating to long-term capability, usability, and readability of documents, software application packages, operating systems, and computer hardware.
- 3.5 If you do not pay for the Services in full as agreed, we may retain reports and work not yet delivered to you and you agree to return to us our reports and other work in your possession or under your control. You agree not to use or rely upon our work for any purpose until it is paid for in full.

Section 4: Compensation

- 4.1 You will pay for the Services as agreed or according to our then current fee schedules if there is no other written agreement as to price. An estimated cost is not a firm figure unless stated as such and you should allow for a contingency in addition to estimated costs.
- 4.2 You agree to notify us of billing disputes within 15 days and to pay undisputed portions of invoices within 35 days of invoice date. For balances not paid under these terms, you agree to pay interest on unpaid balances beginning 10 days after invoice date at the rate of 1.5% per month, but not to exceed the maximum rate allowed by law.

- 4.3 If you direct us to invoice another, we will do so, but you agree to be responsible for our compensation unless you provide us with that person's written acceptance of the terms of our Agreement and we agree to extend credit to that person.
- 4.4 You agree to compensate us in accordance with our fee schedule if we are asked or required to respond to legal process arising out of a proceeding to which we are not a party.
- 4.5 In consideration of our providing insurance to cover claims made by you, you hereby waive any right of offset as to payment otherwise due us.

Section 5: Disputes, Damage, and Risk Allocation

- 5.1 Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include a meeting attended by each party's representative empowered to resolve the dispute. Disputes (except collections) will be submitted to mediation as a condition precedent to litigation.
- 5.2 Each of us waives against the other and its subcontractors, agents, and employees all rights to recover for losses covered by our respective property/casualty or auto insurance policies.
- 5.3 If you fail to pay us within 60 days following invoice date, we may consider the default a total breach of our Agreement and, at our option, we may terminate all of our duties without liability to you or to others.
- 5.4 If we are involved in legal action to collect our compensation, you agree to pay our collection expenses, including reasonable attorneys' fees.
- 5.5 The law of the state of Minnesota will govern all disputes. Each of us waives trial by jury. No employee acting within the scope of employment will have any individual liability for his or her acts or omissions and you agree not to make any claim against individual employees.

Section 6: Miscellaneous Provisions

- 6.1 We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured will be limited to losses caused by our sole negligence.
- 6.2 This Agreement is our entire agreement, and it supersedes prior agreements. Only a writing signed by an authorized representative for each of us making specific reference to the provision modified may modify it.
- 6.3 Neither of us will assign this Agreement without the written approval of the other. No other person has any rights under

this Agreement.

- 6.4 Only a writing may terminate this Agreement. We will receive an equitable adjustment of our compensation as well as our earned fees and expenses if our work is terminated prior to completion.
- 6.5 We will not discriminate against any employee or applicant for employment because of race, color, creed, ancestry, national origin, sex, religion, age, marital status, affectional preference, disability, status with regard to public assistance, membership or activity in a local human-rights commission, or status as a specially disabled, Vietnam-era, or other eligible veteran. We will take affirmative action to ensure that applicants are considered, and employees are treated during their employment, without regard to those factors. Our actions will include, but are not limited to notifications, hiring, promotion or employment upgrading, demotion, transfer, recruitment or recruitment advertising, layoffs or terminations, rates of pay and other forms of compensation, and selection for training or apprenticeship.
- 6.6 Neither we nor you, including our officers, employees, and agents, are agents of the other, except as agreed in writing. Except as agreed in writing, nothing in this Agreement creates in either party any right or authority to incur any obligations on behalf of, or to bind in any respect, the other party. Nothing contained herein will prevent either party from procuring or providing the same or similar products or services from or to any third person, provided that there is no breach of any obligations pertaining to confidentiality.
- 6.7 All services provided pursuant to this Agreement shall be provided by us as an independent contractor and not as an employee of BCWMC for any purpose. Any and all officers, employees, subcontractors, and agents of BCWMC, or any other person engaged by us in the performance of work or services pursuant to this Agreement, shall not be considered employees of BCWMC. Any and all actions which arise as a consequence of any act or omission on the part of us, our officers, employees, subcontractors, or agents, or other persons engaged by us in the performance of work or services pursuant to this Agreement, shall not be the obligation or responsibility of BCWMC.
- 6.8 Data provided, produced or obtained under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. We will immediately report to you any requests from third parties for information relating to this Agreement. We agree to promptly respond to inquiries from you concerning data requests.

End of Standard Terms

BCWMC Addressing Potential Conflicts of Interest
Approved November 17, 2020

This framework is meant to clarify the process for addressing potential Commission Engineer COI so that staff has clear direction and staff and commissioners have congruent expectations.

Barr will continue to operate within the provisions of MN Administrative Rule 1805.0300. In all cases of actual or potential conflicts, transparency about the situation and reporting by and to all parties is of utmost importance.

Administrative review (no approval needed)

- Projects in the Bassett Creek watershed related to water or natural resources that do not require commission review or approval (such as natural resources protection plans, environmental impact statements, response action plans, etc.)
 - a. This is for scenarios where the provisions in Minn. R. 1805.0300 do not apply because there is no actual conflict, nor is the Commission Engineer being compensated by the commission for the same project

Administrative waiver (Administrator, Chair and Attorney):

- Projects where the administrator documents in writing findings on the clear unity of interest, secures the consent of the chair and advice of attorney, and the timeframe of the work is either emergency in nature or requires an expedited timeline such that there is not time for Commission approval; and the administrative waiver is disclosed at the next Commission meeting. (Administrator can always choose to bring the matter to the commission.)

Commission waiver required:

- Projects that require Commission review and approval (whether by the commission proper or the administrator under delegated authority)
 - a. In these scenarios, the Commission will determine whether to:
 - a. waive the conflict
 - b. waive the conflict and contract with an outside firm for review or other remedies deemed appropriate
 - c. decline to waive the conflict



Fee Schedule—2021

Rev. 12/26/2020

Description	Rate* (U.S. dollars)
-------------	-------------------------

Principal	\$160-295
Consultant/Advisor	\$185-250
Engineer/Scientist/Specialist IV	\$155-180
Engineer/Scientist/Specialist III	\$125-150
Engineer/Scientist/Specialist II	\$95-120
Engineer/Scientist/Specialist I	\$65-90
Technician IV	\$155-180
Technician III	\$125-150
Technician II	\$95-120
Technician I	\$65-90
Support Personnel III	\$155-180
Support Personnel II	\$95-150
Support Personnel I	\$65-90

Rates for litigation support services will include a 30% surcharge.

A ten percent (10%) markup will be added to subcontracts for professional support and construction services to cover overhead and insurance surcharge expenses.

Invoices are payable within 30 days of the date of the invoice. Any amount not paid within 30 days shall bear interest from the date 10 days after the date of the invoice at a rate equal to the lesser of 18 percent per annum or the highest rate allowed by applicable law.

For travel destinations within the continental U.S. (CONUS) and Canada, meals will be reimbursed on a per diem basis. The per diem rate will be as published by the U.S. Internal Revenue Service (IRS) based on the High-Low method. Full day per diem rates will be pro-rated on travel days. For travel destinations outside the continental U.S. (CONUS) and Canada, meals will be reimbursed based on actual expenses incurred.

All other reimbursable expenses including, but not limited to, costs of transportation, lodging, parking, postage, shipping and incidental charges will be billed at actual reasonable cost. Mileage will be billed at the IRS-allowable rate.

Materials and supplies charges, printing charges, and equipment rental charges will be billed in accordance with Barr's standard rate schedules.

Principal category includes consultants, advisors, engineers, scientists, and specialists who are officers of the company.

Consultant/Advisor category includes experienced personnel in a variety of fields. These professionals typically have advanced background in their areas of practice and include engineers, engineering specialists, scientists, related technical professionals, and professionals in complementary service areas such as communications and public affairs.

Engineer/Scientist/Specialist categories include registered professionals and professionals in training (e.g. engineers, geologists, and landscape architects), and graduates of engineering and science degree programs.

Technician category includes CADD operators, construction observers, cost estimators, data management technicians, designers, drafters, engineering technicians, interns, safety technicians, surveyors, and water, air, and waste samplers.

Support Personnel category includes information management, project accounting, report production, word processing, and other project support personnel.

*Rates do not include sales tax on services that may be required in some jurisdictions.