



2/14/2025

Mr. Kristopher Keller
City of Dickinson
38 1st Street W
Dickinson, ND 58601

Re: Agreement for Dickinson Queen City Dam EAP

Dear Mr. Keller:

Thank you for retaining us. 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 the City of Dickinson (Client) and Barr Engineering Co., its affiliates and subsidiaries (Barr) regarding engineering assistance for creating Emergency Action Plan (EAP) for the Queen City Dam (Project #202310).

The scope of professional consulting services Barr will provide for your project includes to assist the City through the cost share application process with the North Dakota Department of Water Resources (NDDWR). This will include time for one (1) kickoff meeting with the City, requesting available data from the NDDWR for the Queen City Dam, preliminary background review of the data provided by the City of Dickinson and as requested from the NDDWR, future project scoping, drafting the necessary materials for the NDDWR WebGrants application for the Queen City Dam, and up to three (3) meetings and follow-up with the NDDWR and City, until approval is reached. We assume the meetings will be held jointly for both the Queen City and Manns Dams (separate Project #202508). Barr assumes that the City will be submitting the grant application to the NDDWR, and the City will be paying the grant application fees.

This Agreement will be effective for the duration of the services unless terminated earlier by either Client or Barr. Barr's Proposal, if any, is not a part of this Agreement except as specifically indicated or referred to in this letter Agreement. Barr will commence work upon receipt of a copy of this letter signed by Client. The estimated schedule for the services is as follows:

- Notice-to-Proceed provided to Barr by 2/20/2025
- Draft Grant Application by 2/20/2025
- Final Application Submittal by 2/24/2025
- Approximate DWR approval 6/1/2025

The above schedule assumes the City is available as needed to meet and coordinate the application for submittal. The approval date for the application is estimated based upon past work with the DWR; however, the schedule will ultimately be determined by DWR responsiveness and availability.

Barr will inform you of progress by biweekly email progress reports and virtual monthly progress meetings. We assume these regular progress updates and meetings will be completed jointly with the Manns Dam Feasibility project as well.

For the services provided, Client will pay Barr according to the attached Standard Terms. Barr will bill Client monthly. The cost of the services will not exceed the lump sum of \$5,000 (USD).

We understand you have the authority to direct us. We will direct communications to you at the address on this letter. Direction should be provided to me or Jennifer Koehler at 4300 MarketPointe Drive, Suite 200, Minneapolis, MN 55435.

During the term of this Agreement, Barr agrees to maintain with a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, the type of insurance and policy limits as set forth below (USD):

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 |

Commercial General Liability

- | | |
|----------------|---|
| 1. \$2,000,000 | General Aggregate |
| 2. \$2,000,000 | Products – Completed Operations Aggregate |
| 3. \$1,000,000 | Each Occurrence |
| 4. \$1,000,000 | Personal Injury |

Commercial Automobile Liability

- | | |
|----------------|---|
| 1. \$1,000,000 | Combined Single Limit Bodily Injury and Property Damage |
|----------------|---|

The Commercial Automobile Liability shall provide coverage for the following automobiles:

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

Umbrella Liability

- | | |
|--|------------------|
| 1. \$10,000,000 | Each Claim |
| \$10,000,000 | Annual Aggregate |
| 2. The Umbrella Liability provides excess limits for the Commercial General Liability, Employers' Liability, and Commercial Automobile Liability policies. | |

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.

Certificates of Insurance

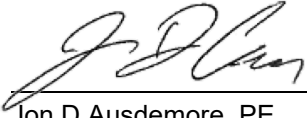
Certificates of Insurance will be provided upon request.

Barr and Client waive all rights, including their insurers' subrogation rights, against each other, their subcontractors, agents, and employees, and the other's consultants, separate contractors, and their subcontractors, agents, and employees for losses or damages covered by their respective property or casualty insurance, commercial general liability, or Builder's Risk insurance. This waiver of subrogation is effective notwithstanding any duty of indemnity.

If this Agreement is satisfactory, please sign the enclosed copy of this letter in the space provided, and return it to Barr.

Sincerely yours,

BARR ENGINEERING CO.



Jon D Ausdemore, PE
Its Vice President

Accepted this _____ day of _____, 20____

CITY OF DICKINSON

By _____

Its _____

Attachments

Standard Terms—Professional Services, as modified and attached

Barr's Agreement with Client consists of the accompanying letter or other authorization, Work Orders, and these Standard Terms – Professional Services.

Section 1: Barr's Responsibilities

- 1.1 Barr will provide the professional services ("Services") described in this Agreement. Barr will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of Barr's profession practicing in the same locality.
- 1.2 Barr will select the means, methods, techniques, sequences, or procedures used in providing its Services. If Client directs Barr to deviate from Barr selections, Client agrees to hold Barr harmless from claims, damages, and expenses arising out of Client direction.
- 1.3 Barr will acquire all licenses applicable to its Services and will comply with applicable law.
- 1.4 Barr duties do not include supervising Client contractors or commenting on, supervising, or providing the means and methods of their work unless Barr accepts any such duty in writing. Barr will not be responsible for the failure of Client contractors to perform in accordance with their undertakings.
- 1.5 Barr will provide a health and safety program for Barr employees, but will not be responsible for contractor, job, or site health or safety unless Barr accepts that duty in writing.
- 1.6 Estimates of Barr's fees or other project costs will be based on information available to Barr and on Barr's experience and knowledge. Such estimates are an exercise of Barr's professional judgment and are not guaranteed or warranted. Actual costs may vary. Client should add a contingency to the budgeted fees and costs to account for unexpected costs.
- 1.7 The information Client provides to Barr will be maintained in confidence except as required by law.

Section 2: Client Responsibilities

- 2.1 Client will provide access to property.
- 2.2 Client will provide Barr with prior reports, specifications, plans, changes in plans, and other information about the project that may affect the delivery of Barr's Services.
~~Client will hold Barr harmless from claims, damages, and related expenses, including reasonable attorneys' fees, involving information not timely called to Barr's attention or not correctly shown on documents Client furnishes to Barr.~~
- 2.3 Client agree to provide Barr with information on contamination and dangerous and hazardous substances and processes Barr may encounter in performing the Services and related emergency procedure information.
- 2.4 ~~Client agree to hold Barr harmless as to claims that Barr is an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of any law governing the handling, treatment, storage, or disposal of dangerous or hazardous materials.~~
- 2.5 Site remediation services may involve risk of contamination of previously uncontaminated air, soil, or water. If Client is requesting that Barr provide services that include this risk, ~~Client agrees to hold Barr harmless from such contamination claims, damages, and expenses, including reasonable attorneys' fees, unless and to the extent the loss is caused by Barr negligence.~~

- 2.6 Monitoring wells are Client property and Client is responsible for their permitting, maintenance and abandonment unless Barr accepts that duty in writing. Samples remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are Client property. They will be discarded or returned to Client, at Barr's discretion, unless within 15 days of the report date Client gives written direction to store or transfer the materials at Client expense.

- 2.7 2.6 Client agrees to make disclosures required by law. If Barr is required by law or legal process to make such disclosures, Client agrees to hold Barr harmless and indemnify Barr from related claims and costs, including reasonable attorneys' fees.
~~only to the extent allowed under ND law.~~

Section 3: Digital Files, Reports and Work Product

- 3.1 Barr's digital files, including but not limited to models, executable data, source code, and all other digital files, remain the property of Barr and shall be provided to the Client only if expressly provided for in this Agreement. Any digital files not containing a seal are provided for the convenience of the Client only, and use by Client or others to whom Client provides the digital files is at the Client's sole risk and without liability to Barr.
- 3.2 Barr will retain all data relating to the Services for a minimum of seven years and financial data for three years.
- 3.3 Barr reports, notes, calculations, and other documents, and computer software, programs, models, and data developed by Barr are instruments of Barr Services, and they remain Barr property, subject to a license to Client for Client's use in the related project for the purposes disclosed to Barr. At Barr's request, Client will execute Barr's standard digital data and conditional use agreement prior to receiving any digital data files. Further, Client may not use or transfer such information and documents to others for a purpose for which they were not prepared without Barr's written approval. Client agrees to indemnify and hold Barr harmless from claims, damages, and expenses, including reasonable attorneys' fees, arising out of any unauthorized transfer or use.
~~only to the extent allowed under ND law.~~
- 3.4 Because electronic documents may be modified intentionally or inadvertently, Client agrees that Barr will not be liable for damages resulting from change in an electronic document occurring after Barr's transmittal to Client. 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 format, Client accepts exclusive risk relating to long-term capability, usability, and readability of documents, software application packages, operating systems, and computer hardware.
- 3.5 If Client does not pay for the Services in full as agreed, Barr may retain reports and work not yet delivered to Client and Client agrees to return to Barr our reports and other work in Client's possession or under Client's control. Client agrees not to use or rely upon Barr Services or work for any purpose until it is paid for in full.

~~only to the extent allowed under North Dakota law,~~

Barr assumes no responsibility for the accuracy of such information and shall not be liable for any inaccuracies or omissions contained therein or any errors, omission or inaccuracies in Barr's work in any way occurring, incident to, arising out of or in connection with any inaccuracies or omissions in such information, except to the extent that Barr's reliance on such information is negligent.

Section 4: Compensation

- 4.1 Client will pay for the Services as agreed or according to the 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 Client should allow for a contingency in addition to estimated costs.
- 4.2 Client will pay each invoice within 30 days after receipt as to all undisputed amounts. Payments not made within 60 days of invoice date will bear interest from the date that is 30 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 law. ~~Client agrees to pay all Barr costs of collection, including reasonable attorney fees~~
- 4.3 If Client directs Barr to invoice another, Barr will do so, but Client agrees to be responsible for Barr compensation unless Client provides Barr with that person's written acceptance of the terms of Barr's Agreement and Barr agrees to extend credit to that person.
- 4.4 Client agrees to compensate Barr in accordance with Barr's fee schedule if Barr is asked or required to respond to legal process arising out of a proceeding to which Barr is not a party.
- 4.5 If Barr is delayed by factors beyond Barr's control, or if the project conditions or the scope of work change, or if the standards change, Barr will receive an equitable adjustment of our compensation.
- 4.6 In consideration of Barr providing insurance to cover claims made by Client, Client hereby waives any right of offset as to payment otherwise due to Barr.

Section 5: Disputes, Damage, and Risk Allocation

- 5.1 Barr and Client 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 Barr will not be liable for special, incidental, consequential, or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital. Barr and Client 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 Barr will not be liable for damages unless Client has notified Barr of Client's claim within 30 days of the date of Client discovery of it and unless Client has given Barr an opportunity to investigate and to recommend ways of mitigating damages, and unless suit is commenced within two years of the earlier of the date of injury or loss and the date of completion of the Services.
- 5.4 For Client to obtain the benefit of a fee which includes a reasonable allowance for risks, Client agrees that Barr's aggregate liability will not exceed ~~the fee paid for Barr's Services, but not less than \$50,000, and Client agrees to indemnify Barr from all liability to others in excess of that amount. If Client is unwilling to accept this allocation of risk, Barr will increase Barr's aggregate liability to \$100,000 provided that, within 10 days of the date of this Agreement, Client provides payment in an amount that will increase Barr fees by 10%, but not less than \$500, to compensate Barr for the greater risk undertaken. This increased fee is not the purchase of insurance.~~

5.5 If Client fails to pay Barr within 60 days following invoice date, Barr may consider the default a total breach of this Agreement and, at Barr's option, Barr may terminate all of Barr's duties without liability to Client or to others.

5.6 If Barr is involved in legal action to collect compensation, Client agrees to pay Barr's collection expenses, including reasonable attorneys' fees.

North Dakota

5.7 The law of the state of ~~Minnesota~~ will govern all disputes. Barr and Client hereby agree to submit to the exclusive jurisdiction of the State Courts sitting in ~~Hennepin County, Minnesota,~~ **Stark ND** for all claims relating to the contract of the services performed by Barr and waive any objections to such location based on jurisdiction, venue or inconvenient forum. Barr and Client 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 Client agrees not to make any claim against individual employees.

Section 6: Miscellaneous Provisions

- 6.1 Barr will provide a certificate of insurance to Client upon request. Any claim as an Additional Insured will be limited to losses caused by Barr's sole negligence.
- 6.2 This Agreement is Barr's entire agreement, and it supersedes prior agreements. Only a writing signed by an authorized representative for Barr and Client making specific reference to the provision modified may modify it.
- 6.3 Neither Barr nor Client 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. Barr will receive an equitable adjustment of Barr's compensation as well as Barr's earned fees and expenses if Barr's work is terminated prior to completion.
- 6.5 Barr 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. Barr will take affirmative action to ensure that applicants are considered, and employees are treated during their employment, without regard to those factors. Barr 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 Barr nor Client, including Barr 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.

End of Standard Terms

\$1,000,000 USD.