

October 25, 2023

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engineering and environmental consultants



Mr. Aaron Praus  
City of Dickinson  
38 1<sup>st</sup> St W  
Dickinson, ND 58601

**Re: Proposal for Opacity Testing Revision 1**

Dear Mr. Praus,

Thank you for the opportunity to provide a proposal to perform Method 9 opacity testing services for your Dickinson, ND facility.

**Scope of Work**

Barr Engineering Co. (Barr) understands the scope of work to address opacity testing at your Dickinson, ND, solid waste facility. From our discussions, we understand that one source, the Air Curtain Destructor requires opacity testing via EPA Method 9. A one-hour observation will be conducted within a 1-day visit (December 5). It is understood that the testing will be done on the start-up of the source, and requirements for the test follow that as stated in the permit. We assume testing will require less than one 8-hour day on-site. We also assume there will be no observation averages over the allowed opacity limits.

**Project Team**

Adam Driscoll, Vice President, will serve as the Principal in Charge; Stefanie Scherbenske, Environmental Scientist, will serve as the Project Manager and will conduct the opacity evaluation. Adam and Stefanie will rely on others at Barr for support as necessary.

**Schedule**

The opacity observations schedule is set for December 5, 2023. If inclement weather is expected on the agreed-upon test day, testing will be rescheduled. The draft report will be sent to Aaron no later than 14 days after testing.

**Deliverables**

Aaron has also requested Barr's support to develop the test plan to be submitted to NDDEQ at least 30 days prior to the test date (December 5, 2023). After Method 9 testing is completed, Barr will provide a draft test report in electronic format to Aaron within 14 days following the completion of the site visit. Once Aaron has provided comments and/or approval, Barr will submit the final electronic test report via email before January 15, 2024.

**Cost**

Barr's estimated cost associated with the scope of work above is \$4,500. This cost includes the 30-day notification, travel to and from the site, observations, and report creation. The cost assumes all processes are normally operating on the day of the test. All work will be conducted consistent with Barr's standard terms and conditions, which are submitted concurrently with this proposal.

If you have any questions regarding this quotation, please call Stefanie Scherbenske (701)870-0936. If you choose to proceed with this project, please countersign the proposal below as acceptance and provide a copy to Barr or provide a purchase order at your earliest convenience.

Sincerely,



Adam Driscoll  
Vice President

ACCEPTED BY \_\_\_\_\_

PRINT NAME \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

October 16<sup>th</sup>, 2023

Mr. Aaron Praus  
City of Dickinson  
38 1<sup>st</sup> St W  
Dickinson, ND 58601

**Re: Agreement for Opacity Testing**

Dear Mr. Praus:

Thank you for retaining Barr Engineering Co. This letter, together with our Standard Terms (attached), sets forth the Agreement between the City of Dickinson and Barr Engineering Co. (Barr) regarding Method 9 opacity observations at your Dickinson, ND location.

The scope of professional consulting services we will provide is described in the proposal letter dated October 16<sup>th</sup>, 2023, and attached to this contract.

This Agreement will be effective for the duration of the services unless terminated earlier by either you or us. Our Proposal, if any, is not a part of this Agreement except as specifically indicated or referred to in this letter Agreement. We will commence work upon receipt of a copy of this letter signed by you.

The estimated schedule for the services is also described in the earlier-mentioned proposal.

For the services provided, you will pay us according to the attached Standard Terms. We will bill you after the deliverables described in the proposal have been provided. The cost of the services is estimated to be \$4,500 (USD).

We understand you have the authority to direct us. We will direct communications to you at your email and the address on this letter. Direction should be provided to me and Stefanie Scherbenske at our emails and the letterhead address.

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 us. This Agreement will be open for acceptance until October 31<sup>st</sup>,2023 unless earlier withdrawn by us.

Sincerely yours,

BARR ENGINEERING CO.



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Adam Driscoll

Vice President

Accepted this \_\_\_\_\_ day of \_\_October\_\_\_\_\_, 2023\_\_

City of Dickinson

By \_\_\_\_\_

Its \_\_\_\_\_

Attachments

Standard Terms—Professional Services

Fee Schedule

Proposal



## STANDARD TERMS—PROFESSIONAL SERVICES

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. If you direct us to deviate from our selections, you agree to hold us harmless from claims, damages, and expenses arising out of your direction.
- 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.

### 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. You will hold us harmless from claims, damages, and related expenses, including reasonable attorneys’ fees, involving information not timely called to our attention or not correctly shown on documents you furnish to us.
- 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 Site remediation services may involve risk of contamination of previously uncontaminated air, soil, or water.
- 2.5 You agree to make disclosures required by law.

### Section 3: Reports and Records

- 3.1 We will retain analytical data relating to the Services for seven years and financial data for three years.
- 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 cleaned 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, and our computer software, programs, models, and data are instruments of our Services, and they remain our property, subject to a license to you for your use in the related project for the purposes disclosed to us. You may not use or transfer such information and documents to others for a purpose for which they were not prepared without our written approval.
- 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 30 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** If we are delayed by factors beyond our control, or if the project conditions or the scope of work change, or if the standards change, we will receive an equitable adjustment of our compensation.
- 4.6** 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 shall be resolved under remedies afforded under North Dakota law.
- 5.2** We 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. 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** We will not be liable for damages unless you have notified us of your claim within 30 days of the date of your discovery of it and unless you have given us 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** 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.

- 5.5** The law of the state in which the project site is located 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.

*End of Standard Terms*



Description	Rate* (U.S. dollars)
Vice President	\$170-315
Consultant/Advisor	\$205-300
Engineer/Scientist/Specialist IV	\$175-200
Engineer/Scientist/Specialist III	\$145-170
Engineer/Scientist/Specialist II	\$120-140
Engineer/Scientist/Specialist I	\$80-115
Technician IV	\$155-200
Technician III	\$125-150
Technician II	\$95-120
Technician I	\$70-90
Support Personnel III	\$155-200
Support Personnel II	\$95-150
Support Personnel I	\$70-90

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 10 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.

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Vice President 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.