

**MASTER AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
BARR ENGINEERING CO.
AND
CITY OF DULUTH**

THIS MASTER SERVICES AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), is made by and between the CITY OF DULUTH, a municipal corporation under laws of the State of Minnesota, hereinafter referred to as "City," and Barr Engineering Co., located at 325 South Lake Avenue, Suite 700, Duluth, MN 55802, hereinafter referred to as "Consultant," for the purpose of rendering services to the City.

WHEREAS, the City desires to utilize Consultant's environmental consulting services on a non-exclusive, project-by-project basis to support the City in meeting its obligations under Minnesota Rules 4410 including, but not limited to, Environmental Impact Statements, Environmental Assessment Worksheets, and Alternative Urban Areawide Reviews; and

WHEREAS, Consultant has represented that it is qualified and willing to perform these services;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services

Consultant will provide environmental consulting services requested by City, including, but not limited to, reviewing environmental review documents for completeness with regard to Minnesota Rules 4410, preparing environmental documents required by Minnesota Rules 4410, conducting some or all of the public review process required by Minnesota Rules 4410, and assembling and making presentations to public bodies concerning environmental review (the "Services"). This agreement does not guarantee Consultant any specific or exclusive rights to provide the Services to City or otherwise limit City's discretion to engage other contractors, consultants, or City employees to provide the Services.

City will request Services from Consultant on a project-by-project basis in the form of a Statement of Work or similar documentation (each a "SOW") detailing Consultant's project responsibilities and deliverables to City. The SOW may set maximum compensation as an amount not to be exceeded without additional authorization. The assumptions that form the basis for a compensation limit ("Service Assumptions") will be described in a SOW. If the Service Assumptions do not reflect the actual effort, City and Consultant agree that compensation will be reviewed and may be adjusted as is equitable to reflect actual effort.

Among this Agreement, any written attachments, amendments, or SOWs ("Contract Documents"), if any provision of this Agreement conflicts with or is inconsistent with any other provision of the Contract Documents, the provision of this Agreement governs.

II. Fees

The total maximum fee for the term of this Agreement shall not exceed the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), payable from 110-132-1301-5310. Fees for each service will be determined by the Consultant's current fee schedule, attached hereto as Exhibit

A and updated annually. All invoices for services rendered shall be submitted monthly to the project manager, or his/her designee, and shall be accompanied by such documentation as the City shall reasonably expect. Upon receipt of said request and appropriate documentation and no later than 35 days after receipt, the City shall reimburse Consultant up to the amount set forth above. Payments not made within 35 days of invoice date will bear interest from the date that is 36 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.

III. General Terms and Conditions

1. Amendments.

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment.

Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City.

3. Data and Confidentiality.

- a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant wherever possible to obtain such records, data and information.
- b. All data collected, created, received, maintained or disseminated for any purpose by the Parties because of this Contract is governed by the Minnesota Data Practices Act. Consultant will not release any reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement without prior authorization from the City. Consultant will notify City immediately upon receiving a request for such data and withhold response until the City has provided instructions.
- c. Consultant agrees that all work created by Consultant for the City is a “work made for hire” and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work (“City Property”). Consultant further agrees that to the extent the work is not a “work made for hire” Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.
- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts,

vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

- f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Consultant shall ensure that at any time on reasonable written notice during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Standard of Performance.

Consultant represents and warrants that:

- a. Consultant and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Consultant contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.
- f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.
- g. City and Consultant will exercise good faith efforts to resolve disputes without litigation. Such efforts may include, but not be limited to meetings attended by each Party's representative empowered to resolve the dispute.

5. Agreement Period.

The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2029, unless terminated earlier as provided for herein.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause, upon ten calendar days advance written notice. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Termination.

City shall have the right to terminate this contract immediately without other cause in the event that the source of all or a portion of the funds, including Local, State, or Federal governments or any local authorities or agencies thereof, that the City intends to use to fund its obligations under the contract reduces or eliminates their obligation to provide some or all of the funds previously committed by it to fund City's payment obligations under the Contract. The City agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date.

7. Independent Contractor.

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. (Public Employee Retirement Association). Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.
- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

8. Indemnity.

To the fullest extent permitted by law, Consultant agrees that it shall indemnify and hold harmless the City, its officers, employees, and agents, past or present, from and against any and all claims including but not limited to claims for contribution or indemnity, demands, suits, judgments, costs, and expenses (including attorneys' fees and incurred defense costs) asserted by itself or any person or persons including agents or employees of the City of Duluth or Consultant by reason of death or injury to person or persons or the loss or damage to property to the extent attributable to, or by reason of, any act, omission, operation or work of Consultant or its employees while engaged in the execution or performance of services under this Agreement.

Said obligations to indemnify and hold harmless shall include, but not be limited to the obligation to indemnify and hold harmless the City in all matters where claims of liability against the City arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of Consultant, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Consultant, its employees, or its agents, and any other source of liability. Said obligations to indemnify and hold harmless shall be triggered upon the assertion of a claim for damages against City. Consultant shall not be required to indemnify City for amounts found by a fact finder to have arisen out of the sole negligent or intentional acts or omission of the City unless Consultant should fail to comply with its insurance obligations in this contract to the detriment of City, in which case Consultant shall indemnify, defend, and hold harmless the City for any and all amounts except amounts attributed to intentional, willful or wanton acts of the City.

This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Consultant. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

Consultant understands this provision may affect its rights and may shift liability.

Consultant shall hold and save the City, its officers, employees, representatives and agents, and the Architect, harmless from liability of any nature or kind, including costs and expenses and reasonable attorney's fees and incurred defense costs to the extent attributable to Consultant's intellectual property infringement of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Technical Specifications.

Nothing herein is intended to impose an obligation on Consultant that is void and unenforceable under Minnesota Statutes Section 604.2

9. Insurance.

- a. Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.
 - i. Workers' compensation insurance in accordance with the laws of the State of Minnesota
 - ii. Commercial General and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, shall be in a company approved by the City of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella

coverage with a “form following” provisions may make up the difference between the commercial general and auto liability coverage amounts and the required minimum amount stated above.

- iii. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of “claims made,” insurance, Consultant hereby commits to provide at least 30 days’ notice prior to any change to the Professional Liability Insurance policy or coverage; and in the event of any change, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this this paragraph which will provide unbroken protection to the City, or in the alternative, to purchase at its cost, extended coverage under the old policy for the period the statute of repose runs; the protection to be provided by said “claims made” insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
 - iv. **City of Duluth shall be named as Additional Insured** under the Commercial General Liability and Automobile Liability. Consultant shall also provide evidence of Statutory Minnesota Workers’ Compensation Insurance. Consultant to provide Certificate of Insurance evidencing such coverage with notice to City of cancellation in accordance with the provisions of the underlying insurance policy included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant’s interests and liabilities. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- b. Certificates showing Consultant is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
 - c. The City shall be named as an additional insured on each liability policy other than the professional liability and the workers’ compensation policies of the Consultant.
 - d. The certificates shall provide that the policies shall not be cancelled during the life of this Agreement without advanced notice being given to the City at least equal to that provided for in the underlying policy of insurance.
 - e. Consultant hereby commits to provide notice to City at least 30 days in advance of any change in the insurance provided pursuant to this Section 8 or in advance of that provided for in the underlying insurance policy or policies whichever is longer. For the purposes of Section 8 of this Agreement, the term, “changed”, shall include cancellation of a policy of insurance provided hereunder and any modification of such policy which reduces the amount of any coverage provided thereunder below the amounts required to be provided hereunder or otherwise reduces the protections provided under such policy to City.

10. Notices.

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or

certified mail, return receipt requested, to the following addresses:

City: City of Duluth
411 W First Street, 160
Duluth MN 55802
Attn: Jenn Moses

Consultant: Barr Engineering Co.
325 S. Lake Ave, Suite 700
Duluth, MN 55802
Attn: Alina Heydt

11. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

12. Laws, Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

13. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

14. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

15. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

16. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

17. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

CITY OF DULUTH

BARR ENGINEERING CO.

By:

By:

Mayor

Company Representative

Attest:

Its:

City Clerk

Title of Representative

Date Attested: _____

Date: _____

Countersigned:

City Auditor

Approved as to form:

Assistant City Attorney