Professional Consulting Services Agreement
Master and Work Order Form

This Professional Consulting Services Agreement ("Agreement") is made as of the 10th day of April, 2023, by and between the City of Council Bluffs, an Iowa corporation ("Client"), and Barr Engineering Co., a Minnesota corporation ("Barr"), and who are referred to as a "Party" or the "Parties."

Recitals

Client has a need for professional consulting services and desires to retain Barr to provide certain professional consulting services, all subject to the terms and conditions contained in this Agreement.

Barr is qualified to perform the desired professional consulting services and desires to provide such services for Client, all subject to the terms and conditions contained in this Agreement.

Agreement

In consideration of the foregoing and the mutual promises contained in this Agreement, the Parties agree as follows:

Section 1: Services and Contract Documents

1.1 All professional services provided by Barr (the "Services") under this Agreement will be provided pursuant to one or more written orders signed by Client and Barr detailing the specific project to be completed and Services to be provided (each a "Work Order"). Work Orders may be in the form of a proposal by Barr, countersigned or otherwise accepted by Client or in the form of a proposal by Client countersigned by Barr. The Services described in any Work Order may be modified from time to time with the mutual approval of Client and Barr. Such modifications will be summarized in a modified Work Order and will include equitable modifications to any maximum compensation limits or schedules.

1.2 Either Party may propose a Work Order; the other Party agrees to accept or reject within 10 days of receipt of the proposal. If a proposed Work Order is rejected, neither Party will have further responsibility with respect to that matter.

1.3 This Agreement may be amended only in a writing referring to the specific provision of this Agreement to be changed and signed by the Parties. In case of any inconsistency or ambiguity between the provisions of a Work Order and the provisions of this Agreement, the provisions of the Work Order will prevail.

1.4 The Contract Documents include this document and documents described in it, Work Orders issued under this Agreement, Appendix A, and any other documents described in an exhibit to this Agreement or in a Work Order.

Section 2: Term

This Agreement will be in effect from the date of this Agreement and will continue until terminated pursuant to Section 6.

Section 3: Compensation

3.1 Client will compensate Barr for Services and other charges, expenses, and disbursements relating to a Work Order according to the Fee Schedule in effect when Services are performed. A Work Order 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 Work Order. If the Service Assumptions do not reflect the actual effort, the Parties agree that compensation will be reviewed and may be adjusted as is equitable to reflect actual effort.

3.2 The current Fee Schedule is attached as an Exhibit. Barr reserves the right to change the Fee Schedule not more often than once annually. Barr will notify Client of changes in the Fee Schedule before such changes become effective.

3.3 Barr will submit invoices to Client for Services performed and expenses incurred pursuant to each active Work Order during the period on a four-week cycle. Invoices will summarize the Services performed and reasonably describe all other charges.

3.4 Barr will provide Client with supporting documentation for charges upon request. Barr will promptly address questions and concerns regarding invoices. Barr will retain records related to the Services for three years after the termination of the related Work Order. Records will be available for examination by Client or its designee at reasonable times upon reasonable notice and reimbursement for Barr expenses.

3.5 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.

3.6 Upon written request with payment, Barr will execute and deliver a waiver of lien rights covering its Services and those of its subcontractor for which payment has been made by Client.

Section 4: Barr Duties

4.1 Barr will comply with, and will contractually require all subcontractors to comply with, laws applicable to its performance of Services.

4.2 Barr will perform the Services in a manner consistent with the care and skill ordinarily used by reputable members of the profession practicing under similar conditions at the same time and general location. This statement of duty is exclusive.

4.3 To the extent the Services involve estimates of construction, operating or any other costs, Barr agrees to make its best estimate of such costs based on information made available to it and based on its experience and knowledge. Barr cannot and does not guarantee the accuracy of any such estimates, and it will not be liable to Client or any other person for any claim, loss, or damage based upon the use of, or reliance upon, such estimates.

4.4 Barr will provide the Services in compliance with all reasonable health and safety rules of Client that Client has timely made known to Barr.

4.5 Barr will secure permits and licenses normally required in its name for the performance of the Services. Client will cooperate with Barr in obtaining such permits and licenses. The fees for such permits and licenses are reimbursable expenses.

4.6 Barr may engage subcontractors as it deems necessary to provide the Services. Upon written request, Client will have the right to approve any subcontractor that Barr proposes to use in connection with Services, but such approval will not be unreasonably withheld.

4.7 Barr will appoint a Principal in Charge (PIC) and a Project Manager (PM), both designated in the Work Order ("Barr Representatives"), to coordinate the Services with the Client Representative. Only the Principal in Charge may bind Barr as to work scope, schedule, and compensation matters. The Project Manager may bind Barr as to all other matters relating to the Work Order. Barr may change the Principal in Charge or Project Manager on any Work Order upon written notice to Client.

4.8 Except with respect to the work of its subcontractors, Barr will not supervise, direct, stop, or otherwise control the work of others. Barr has no authority over, or no responsibility for, the means, methods, techniques, sequences, or procedures selected by others, or for safety precautions and programs incident to the work of others, or for any failure of others to comply with laws, rules, regulations, ordinances, codes, orders, or client safety rules applicable to furnishing and performing work related to, or in connection with, the Services. Accordingly, Barr does not guarantee the performance of any other person or entity and Barr will have no responsibility for their failure to furnish or perform their work.

4.9 Client acknowledges that often Barr must rely on various studies by others, or others' information about existing or prior systems, or current or anticipated operations at the site. Barr may rely on such information to the extent that such reliance is reasonable under the circumstances without independently confirming the accuracy of it, and except to the extent Barr's reliance was negligent, Client releases and discharges Barr from any liability as to losses caused by such reliance.

4.10 Barr shall be responsible for the professional quality and technical accuracy of all services furnished by Barr under this Agreement, except for that work provided by Client. Barr shall,

without additional compensation, correct or revise any error or deficiencies in his work. Approval of Client of any such work shall not in any way relieve Barr of responsibility for the technical accuracy and adequacy of said services. Client's review, approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

Section 5: Client Duties

5.1 Client will promptly provide and fully disclose to Barr all information in its possession or known to it from time to time that is pertinent to the Services to be performed by Barr including but not limited to budgeting, scheduling requirements, other limitations, and the preferred procurement approach of Client. Client will provide prompt updates regarding any changes to any of the foregoing. Barr will be entitled to rely on such information and to use the same in performing Services. Client will assist Barr, as reasonably required, in securing any other information Barr deems necessary for providing Services.

5.2 If no other provision is made for it, Client will arrange and pay for access to property as is required to provide the Services.

5.3 Client will promptly notify Barr whenever it becomes aware of any development that may affect the scope or timing of the Services or any defect in, or nonconformance of, any Services.

5.4 Client will appoint a "Client Representative" designated in the Work Order to direct the Services. Except as otherwise stated in the Work Order, the Client Representative is authorized to act on behalf of Client and will be available at reasonable times during the term of the Services to respond to questions, problems, or complaints. Client may change the Client Representative upon written notice to Barr.

5.5 Client will notify any other scientific, investigation, design, or construction management professional retained by Client of the relevant provisions of this Agreement and the Work Order and will instruct such other professionals to cooperate with Barr as necessary to permit Barr to perform the Services. Client will further require that each other professional authorize a representative to act on its behalf.

Section 6: Termination

6.1 Either party may terminate this Agreement or a Work Order in the event of a material breach by the other party that is not corrected within ten days after written notice thereof. Failure by Client to pay invoices from Barr within the time prescribed hereunder is a material breach of this Agreement.

6.2 Client may terminate this Agreement or a Work Order, with or without cause, upon ten days advance written notice. If so requested by Client, Barr will cease performing Services as soon as practical after receipt of the notice. Except as provided above, both Parties will continue to perform their respective obligations until termination.

6.3 Barr may terminate this Agreement or a Work Order, with or without cause, upon 30 days advance written notice to Client. Barr will cease performing Services under a Work Order as soon as practical after Client's receipt of Barr's notice of termination. Except as provided above, both Parties will continue to perform their respective obligations until termination.

6.4 Termination will not release Client from its obligation to pay for Services provided and expenses incurred through termination, including reasonable time and expenses involved in the termination. Termination will not release Barr or Client from their respective obligations which are, by nature, continuing.

Section 7: Insurance

7.1 Barr shall maintain insurance to protect Barr from claims under Worker's Compensation Acts; claims due to personal injury or death of any employees or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for which Barr is legally liable. The amounts and extent of such insurance is as follows:

1. Professional Liability - $2,000,000 each claim; $2,000,000 aggregate
2. Vehicle Coverage
   Bodily Injury - $1,000,000 combined single limit (each accident)
3. Worker's Compensation - $100,000 each accident
4. General Liability - $1,000,000 each occurrence and $2,000,000 aggregate

7.4 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.

Section 8: Risk Allocation and Disputes

8.1 In providing Services under this Agreement, Barr makes no warranty as to the quality or safety of any of the goods, parts, or equipment recommended, specified, or approved in connection with a Work Order. Barr provides no warranties, express or implied, including warranties as to Services or of merchantability or fitness for a particular purpose. Client agrees to rely solely on any warranties provided by the manufacturers of goods, parts, or equipment recommended, specified, or approved in connection with this Agreement, and Barr will, in no event, be liable for any losses or damages of any person or entity arising from or in connection with such goods, parts, or equipment. Barr, at Client's expense, agrees to cooperate with Client in pursuing rights under any such warranties.

8.2 In no event will Barr be liable for special, incidental, indirect, consequential, or punitive damages, including but not limited to damages arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, the cost of capital, or the fault of others.

8.3 Notwithstanding any other provision hereof, and to the fullest extent permitted by law, Client will indemnify and hold harmless Barr, its officers, directors, partners, employees, agents, subcontractors, affiliates, and subsidiaries from and against all claims, costs, losses, and damages (including, but not limited to, all fees and charges of attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to the presence, discharge, release, escape, migration, leaching, transmission, handling, treatment, disposal, or emission of asbestos, PCBs, petroleum derivatives, hazardous materials, hazardous wastes, pollutants, contaminants, or radioactive material which are in any way connected with existing conditions or the aggravation of existing conditions, except to the comparative extent that the same have been proximately caused by Barr gross negligence or willful misconduct.

8.4 Barr agrees to indemnify and save harmless Client, its officers, agents, and employees from and against any and all claims including reasonable attorneys' fees and defense costs to the extent caused by the negligent acts, errors, or omissions of Barr, its officers, agents, and employees in the execution of the services specified in this Agreement.

In recognition of the relative risks and benefits of the project to both Client and Barr, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, to limit the liability of Barr and its sub-consultants to Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of Barr and its sub-consultants to all those named shall not exceed $2,000,000.00. Such claims and causes include negligence, professional errors or omissions, strict liability, breach of contract or warranty.

8.5 Client and all those claiming through it agree not to sue and waive any and all claims against individual employees, officers, directors, and shareholders of Barr and those employees, officers, directors, and shareholders of its subconsultants. It is the expressed intent of this Agreement that only Barr will have any financial liability to others as to alleged professional errors or omissions arising out of or related to the Services and then only to the extent otherwise provided herein.

8.6 Each Party will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to meetings attended by each Party's representative empowered to resolve the dispute. Before either Party commences an action against the other, disputes (except collections) will be submitted to good-faith third-party mediation as a condition precedent to litigation.

Section 9: Work Product

9.1 All written and electronic documents, including without limitation materials, drawings, designs, data, computer programs, and records developed or produced or obtained in connection with the Services ("Documents") are instruments of Barr Services. Barr retains full rights of ownership in and the exclusive right to use all intellectual property involved in the Services but subject to a perpetual license to Client and its successors and assigns to use the Services and to implement them for the intended purposes.

9.2 The foregoing 9.1 notwithstanding, Client will be entitled to obtain a copy of supporting documents (but not operating programs and proprietary information), including any information or material furnished to Barr by any third parties. Recognizing that electronic documents may be modified intentionally or inadvertently and may not be representative of the actual document, in the event of a conflict between signed reports, CAD files and other documents and those electronic documents provided as an instrument of the Services, the signed or sealed document governs. When accepting document transfer of electronic media, Client accepts exclusive risk relating to long-term capability, usability, and readability of documents.

9.3 Client acknowledges that the Documents will be created for a specific purpose. Client agrees not to use the Documents for purposes other than the original purpose for which the Documents were intended. Barr has no responsibility with respect to Client's use of Documents or the information contained therein other than as specifically contemplated and for the purpose developed. Client will defend, indemnify, and hold Barr harmless with respect to claims asserted by any third person and related damages, losses, and expenses (including, but not limited to, fees and charges of attorneys and other professionals and court or arbitration or other dispute resolution costs) to the extent that the same are caused by any use of any such Documents or information other than as specifically contemplated by this Agreement and the applicable Work Order.

9.4 Soil borings and monitoring wells placed by Barr or its subcontractors are the property of Client, and Client is responsible for maintaining and abandoning them, unless Barr accepts that responsibility in writing.

Section 10: Confidentiality

10.1 If requested by the Client in writing, information relative to the Services will be maintained in confidence and will not be disclosed to any person or entity for any reason except as necessary to provide the Services or as provided in Section 10.2 and as to:

a. Information in the public domain at the time of disclosure;
b. Information which becomes part of the public domain after disclosure through no fault of Barr;
c. Information known by Barr prior to the date of this Agreement; and
d. Information supplied to Barr by a third party.

10.2 The foregoing notwithstanding, Barr is entitled to disclose the Documents or Client information to governmental authorities to the extent Barr reasonably believes it has a legal obligation to make such disclosures. If Barr believes that any such disclosure is required, it will provide advance notice to Client to provide it with a reasonable opportunity to attempt to obtain an injunction or other protective order preventing such disclosure. Barr will be compensated for all reasonable expenses, including attorney fees, expended in responding to legal process.

Section 11: Force Majeure

Notwithstanding any other provision of this Agreement, Barr will not be in breach of this Agreement nor will it be liable to Client for any losses or damages of any type arising from delays or changes in the Services due to any act or neglect of the Client, its employees or other contractors, or any fire, labor disputes, unusual delays in transportation, flood or other adverse weather conditions not reasonably foreseeable, unavoidable casualties, or any other causes beyond the reasonable control of Barr.

Section 12: Nondiscrimination

See Appendix A.

Section 13: Notices

All notices, requests, demands, and other communications will be given to the Party's Representative. If any such notice, request, demand, or other communication is required to be in writing, it will be addressed to the other Party. Delivery by mail will be to the address set forth below or to such other address as such Party may have directed by written notice. Mailed notice is effective three business days after mailing. Notice by electronic transmission will be promptly receipted by the other Party.

To Client, at: _____

_____

_____

To Barr, at: Barr Engineering Co.
4300 MarketPointe Drive, Suite 200
Minneapolis, MN 55435

Attn: Scott Sobiech, Vice President

Section 14: Assignment

Neither Barr nor Client may assign or transfer this Agreement or any rights or contract obligations without the written consent of the other Party, and any such other attempt to assign or transfer is void and of no effect. Consent to an assignment or transfer will not be unreasonably withheld. Barr agrees to cooperate with Client as to its needs as to project financing or similar needs that may call for assignments.

Section 15: Choice of Law and Jury Trial Waiver and Arbitration

The law of the state in which the project is located will govern all disputes. Any controversy or claim arising out of this Agreement may, if both parties agree, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

The cost of the arbitration, if any, will be divided equally between Client and Barr.

Section 16: Miscellaneous

16.1 Headings and captions used in this Agreement are for convenience only and will not affect the meaning or interpretation of this Agreement.

16.2 This Agreement constitutes the entire and exclusive agreement of the Parties and it supersedes any prior agreements concerning the subject matter except as such agreements are included as Contract Documents.

16.3 Barr agrees that it is providing Services under this Agreement as an independent contractor, and nothing in this Agreement will create in either Party any right or authority to incur any obligations on behalf of, or to bind in any respect, the other Party, and nothing in this Agreement will be construed so as to create any agency, joint venture, or partnership between the Parties. Individuals employed or engaged by Barr are not employees of Client for any purpose. Neither Party nor anyone claiming through either of them will make or maintain any claim against an employee of either Party in their individual capacity if said employee is or was acting within the scope of their employment as to the loss giving rise to such claim.

16.4 No waiver by Barr or Client of any condition or breach of any term, covenant, representation, or warranty contained in this Agreement or any document referred to herein will, whether by conduct or otherwise, be construed as a waiver or release of any other term, covenant, condition, or warranty.

16.5 This Agreement may be amended only in a written agreement signed by Barr and Client.

16.6 Except as explicitly set forth in Section 8, nothing in or under this Agreement will be construed to give any rights or benefits of this Agreement to anyone other than Client or Barr, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Barr and not for the benefit of any other party.

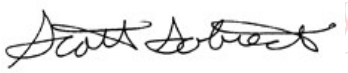
16.7 The invalidity or partial invalidity of any portion of this Agreement will not invalidate the remainder thereof, and the remainder will be construed as if the invalidated portion was not a part of this Agreement.

COUNCIL BLUFFS

By _____

Its _____

BARR ENGINEERING CO.



Digitally signed by Scott Sobiech
Date: 2023.03.29 10:29:10 -05'00'

Scott Sobiech

Its Vice President

APPENDIX "A"

During the performance of this contract, the engineer, for itself, its assignees and successors in interest (hereinafter referred to as the "Engineer") agrees as follows:

1. Compliance with Regulations: The Engineer shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Engineer, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "B" of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Engineer of the Engineer 's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Council Bluffs, the Iowa Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the City of Council Bluffs shall impose such contract sanctions as it, the Iowa Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

a. withholding of payments to the Engineer under the contract until the Engineer complies; and/or,
b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Engineer shall include the provisions of Paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event an engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Engineer may request the City of Council Bluffs or the Iowa Department of Transportation to enter into such litigation to protect the interests of the City of Council Bluffs or the Iowa Department of Transportation; and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

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 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.

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.