

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the 21st day of May 2018, between the **CITY OF SHAKOPEE**, 485 Gorman Street, Shakopee, MN 55379 ("City") and **Barr Engineering Co.**, 4300 Market Pointe Drive, Suite 200, Minneapolis, MN 55435 ("Consultant").

Preliminary Statement

The purpose of this Agreement is to set forth terms and conditions for the provision of professional services by the Consultant for the City for the following described Project:

Shakopee Regional BMP at Scott County Government Center Lot A STS 22-001

The City and Consultant agree as follows:

1. **Consultant's Services.** The Consultant agrees to provide professional services as described in Exhibit A, Scope of Work and any addenda thereto. The Consultant shall serve as the City's professional consultant in the specified work and shall provide consultation and advice to the City during the performance of its services. The Consultant agrees to use the City's standard specifications in any bidding documents prepared under this Agreement. The requirements of this section may be waived by the City if the City Engineer determines that they are not necessary for the successful completion of the project. A Consultant requesting a requirement to be waived must have written authorization from the City Engineer and must be incorporated into this agreement.
2. **Time for Performance of Services.** The Consultant will endeavor to perform the services outlined in the work program within the prescribed days from the date of the contract award. Any changes in this schedule must be approved in writing by the City.
3. **Term.** The term of this Agreement will be from January 21, 2020, through December 31, 2021, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
4. **Compensation for Services.** City agrees to pay the Consultant for services as described in Exhibit A, attached and made a part of this Agreement, which may be amended from time to time by mutual agreement by City and Consultant. The Consultant's hourly rates must be based on the hourly rates approved by the City.

The Agreement amount shall include all services to be rendered by the Consultant as part of this Agreement (including all travel, living and overhead expenses incurred by the Consultant in connection with performing the services herein) except for special services authorized in writing by the City. The amount stipulated shall be considered a "Not to Exceed" cost to the City.

The Consultant must keep track of the costs billable under this contract at all times; any work in excess of the negotiated amount shall not be eligible for payment unless preapproved. The Consultant must notify the City if the Consultant anticipates that the negotiated amount might be exceeded, in order to determine whether or not the City is prepared to increase the compensation. This notification and approval must occur in advance of the work occurring to be considered for compensation.

5. **Payment of Fees.** The Consultant must submit itemized bills for services provided to the City on a monthly basis. The monthly billing must summarize the progress of the project as certified by the Consultant. For work reimbursed on an hourly basis, the Consultant must indicate for each employee, his or her classification, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, the total amount due, the original contracted amount, the current requested amount, and the total amount. Consultant must verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.931. For reimbursable expenses, the Consultant must provide such documentation as reasonably required by the City. Consultant bills submitted will be paid in the same manner as other claims made to the City.
6. **Audit Disclosure.** The Consultant must allow the City or its duly authorized agents reasonable access to such of the Consultant's books and records as are pertinent to all services provided under this Agreement.

Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential must not be made available to any individual or organization without the City's prior written approval. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant will become the property of the City upon termination of this Agreement, but Consultant may retain copies of such documents as records of the services provided and may reuse standard portions of such documents in the normal course of its business.

7. **Termination.** Termination for Cause. This Agreement may be terminated by City by seven day's written notice to Consultant delivered to the address written above.

Upon termination under this provision, the Consultant will be paid for services rendered and reimbursable expenses until the effective date of termination.

If, through any cause (except those reasonably beyond Consultant's control), the Consultant shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulation of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of termination. In that event the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property, and the Consultant shall be entitled to receive just, equitable compensation for any satisfactory work completed on such documents and other materials prior to the effective date of termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

In the event this Contract is terminated for cause, then the City may take over and complete the work, by contract or otherwise, and the Consultant and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, any other rights which the City may have.

Termination Not For Cause. The City may terminate this Contract at any time, with or without cause, by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property. If the Contract is terminated by the City as provided in this paragraph, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total

services of the Consultant covered by this Contract, less payments or compensation previously made.

8. **Subcontractor.** The Consultant must not enter into subcontracts for any of the services provided for in this Agreement without the express written consent of the City.
9. **Independent Contractor.** At all times and for all purposes hereunder, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
10. **Assignment.** Neither party will assign this Agreement, nor any interest arising herein, without the written consent of the other party.
11. **Services not Provided for.** No claim for services furnished by the Consultant not specifically provided for herein will be honored by the City.
12. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.
13. **Entire Agreement.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and duly signed by the parties unless otherwise provided herein.
14. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant must abide by all statutes, ordinances, rules and regulations pertaining to the provision of services to be provided. Any violation will constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
15. **Equal Opportunity.** During the performance of this contract, the Consultant must not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age. The Consultant must post in places available to employees and applicants for employment, notices setting forth the

provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

16. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
17. **Liability and Indemnity.** The Consultant must indemnify and hold harmless the City, its employees and agents, for all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, which they may suffer or for which they may be held liable, as a result of, and to the extent of, the negligent or wrongful acts of the Consultant, his employees, or anyone else for whom he is legally responsible in the performance of this Agreement.

The Consultant assumes full responsibility for relations with its subcontractors, and must hold the City harmless and must defend and indemnify the City, its employees and agents, for any claims, damages, losses, and expenses in any manner caused by such subcontractors, arising out of or connected with this contract.

18. **Insurance.** During the term of this Agreement, Consultant must procure and maintain during the life of this Contract, and provide the City with a certificate of insurance showing, the following coverage for each occurrence and in aggregate:
 - A. Comprehensive General Liability Insurance, including Broad Form Property Damage, Completed Operations and Contractual Liability for limits not less than \$1,500,000 each occurrence for damages of bodily injury or death to one or more persons and \$1,500,000 each occurrence for damage to or destruction of property.
 - B. Insurance coverage for Special Hazards, including but not limited to explosion hazard, collapse hazard, underground property damage hazard, (commonly known as XCU).
 - C. Comprehensive Automobile Liability Insurance, in an amount not less than \$1,500,000 for each occurrence. Coverage shall include all owned autos, non-owned autos, and hired autos.
 - D. Errors and Omissions Insurance against errors and omissions resulting from the performance of Consultant's work under this Agreement. Said coverage shall be in an amount not less than \$2,000,000.

E. Workmen's Compensation insurance for all its employees as required by the Minnesota Worker's Compensation Act.

F. The City of Shakopee must be named as "ADDITIONALLY INSURED" on the insurance described in paragraphs A, B, and C, and must receive notice ten (10) days prior to the cancellation or expiration any of the specified insurance. If the deductible provisions of the Consultant's coverage or any subcontractor's coverage is questioned by the City, the Consultant shall provide the City, upon request, "Proof of Assets".

This policy must provide, as between the City and the Consultant, that the Consultant's coverage shall be the primary coverage in the event of a loss. If the Consultant is providing either architectural or engineering services, the Consultant must also maintain during the term of this Agreement a professional liability insurance policy with the same limits as for general liability. A certificate of insurance on the City's approved form which verifies the existence of these insurance coverages must be provided to the City before work under this Agreement is begun.

19. **Governing Law.** This Agreement will be controlled by the laws of the State of Minnesota.
20. **Whole Agreement.** This Agreement embodies the entire agreement between the parties including all prior understanding and agreements, and may not be modified except in writing signed by all parties.

Executed as of the day and year first written above.

CITY OF SHAKOPEE

BARR ENGINEERING CO.

By: _____
Bill Mars, Mayor

Date: _____

By: _____

Its: _____

Date: _____

By: _____
William H. Reynolds, City Administrator

Date: _____

ATTACHMENT A

January 10, 2020

Mr. Kirby Templin
Water Resources Coordinator
City of Shakopee
485 Gorman Street
Shakopee, MN 55379

Re: Agreement for Design of a Stormwater Flow Diversion and Infiltration System BMP in Scott County Parking Lot A

Dear Mr. Templin:

Thank you for requesting a proposal from Barr to design a stormwater flow diversion and infiltration system BMP in Scott County Parking Lot A (Parking Lot A BMP) design). We have prepared this proposal in the form of an agreement to make it easy for the City to move forward with BMP design work assuming you are satisfied with our proposed scope, schedule, and budget. We will do our best to justify your expression of confidence in us. This letter, together with the current professional services agreement (PSA) sets forth the Agreement between the City of Shakopee (Client) and Barr Engineering Co. (Barr) regarding our design of the Lot A Infiltration BMP.

Background

On December 7, 2018, Barr completed a feasibility report of potential pretreatment and infiltration BMPs in Scott County Parking Lot A and Parking Lot H. A large footprint option and a small footprint option was analyzed for both parking lots. Among the recommendations in the feasibility report, Barr recommended the City construct the smaller footprint BMP in both parking lots. Upon review of the report, the City decided to immediately move forward with the design of the Parking Lot H BMP so it could be constructed in 2019 in concert other work the County is planning in 2019. The Lot H BMP design work was completed but the project was halted upon receipt of bids for the combined County and City project. The City would like to design and install a similarly designed BMP in Lot A before the County mills and overlays the pavement in Lot A (scheduled to be done in fall 2020). The design of the Parking Lot A BMP is the focus of this proposal/agreement.

The major features to be designed for the Parking Lot A BMP will include:

- a storm sewer flow diversion structure.
- a pretreatment hydrodynamic grit and debris separator.
- an underground stormwater infiltration or filtration system consisting of a perforated, corrugated steel pipe or a plastic chamber system encased in gravel. If infiltration is possible, the gravel will

interface with a sandy soil layer suitable for infiltration. If infiltration is not possible, a sand media layer will be incorporated to provide sufficient filtration before the stormwater is discharged to the adjacent city storm sewer system.

- stormsewer piping.
- observation and maintenance ports.
- an outlet control structure.
- the Class 5 base and the bituminous base course for the area disturbed by construction of the Lot A BMP, provided the County isn't to provide that as part of its parking lot work.

Lot A BMP will be a standalone project and not combined with the County activities as the Lot H BMP was. To fit within the County's project schedule, the City needs to quickly design the Parking Lot A BMP so the project can be bid in late winter or early spring of 2020 and then constructed ahead of the County's plans for milling and overlaying the bituminous pavement in Lot A. Nine soil borings were previously placed by the County in the Lot A parking lot. Through our review of those borings, we find there are underlying soils that appear to be conducive for infiltration. However, none of the borings were placed to the bedrock or refusal or identified any groundwater that may be perched or flowing on top of the bedrock. In review of borings placed east of Lot A, it appears there may be bedrock at a slightly deeper elevation than the elevation where borings were stopped in Lot A. So, to better understand if bedrock could be an issue in Lot A, we propose to install additional borings in Lot A to identify if, and the depth at which, bedrock exists and if ground water is present. These borings will be important as the depth to bedrock could inform the BMP design.

Project Scope

The scope of professional consulting services we will provide and budget for those services are as follows:

1. Meetings and Communications (Task budget \$2,880)

- A. Up to two City/County group meetings at Shakopee City Hall to coordinate the City's and County's scheduled projects.
- B. One meeting with City and County staff near or upon the completion of the Parking Lot A BMP design.
- C. Periodic e-mail and telephone updates and communications with City of Shakopee staff.

2. Data Gathering (Task budget \$1,250)

- A. Kirby Templin, Scott County and Scott County's consultant have provided much of the data that Barr needs to perform the design. At this point we do not know if we will need to perform any added surveying work. However, it is possible. Therefore, this scope anticipates the possibly of needing to perform a minor location and elevation design surveying and have factored a cost for Barr to perform this in our proposed budget. If we plan to perform surveying, we will contact Gopher 1 to have utility locates done ahead of our surveying so we can also survey the Gopher 1 painted utility locations. If design surveying is not needed, we of course, will not bill the City for such surveying.

- B. If Barr identifies other data the City or County may have that is important to the design, we will contact the City or County and request the data.

3. Hydro-geologic Assessment (Task budget \$4,200)

- A. Important to the design is developing an understanding of the possibility that chronic mounding of infiltration water under the infiltration area in Lot A could reduce the effectiveness of the Lot A BMP. Also, it will be important to determine if infiltrated water in Lot A could pose issues for the church across the street to the north or other nearby buildings. Therefore, Barr will perform a hydro-geologic assessment and this assessment will help identify the acceptable pipe diameter and the interface footprint of the sandy soil/infiltration area.
- B. A brief memorandum will be prepared summarizing the work performed and results.

4. Supplemental Soil Borings (Task Budget \$6,000)

- A. As described above, our review of the borings the City has for Lot A, and in near proximity; we determined the onsite borings were not taken to a depth deep enough for us to determine the viability of filtration or infiltration for the Lot A BMP. Therefore, we will supplement the boring information the City has for Lot A with three additional borings placed to bedrock or 30 feet, whichever is shallower. These borings will also be used to inform the hydro-geologic assessment we will perform (Task 3 above). Barr will subcontract with a soil drilling firm to obtain those borings. A Barr geotechnical engineer will do the field logging. It is assumed the City will secure permission from the County for the soil boring work to be performed.
- B. A brief memorandum will be prepared summarizing the work performed and the soil logs.

5. Project Design (Task budget \$14,000)

- A. **60% Design:** At a point when we have completed approximately 60% of the design we will provide the design to the City for review and collaboration with the County to determine if there are any issues or concerns with the location, size of design elements, or footprint of the project features. Because time is of the essence, we would ask for the City and County's comments within 2 weeks of Barr's electronic transmittal of the documents to review. Our budget for design assumes that Barr will work with and receive non-proprietary CADD files, specific to the project, from a manufacturer, such as we received for the Lot H project design. We assume that the manufacturer will provide the CADD details at no cost to the project; as our experience indicates manufacturers do not charge for this service. Though highly unlikely, should the manufacturer determine it needs to charge for preparing its CADD details, we will inform the City and develop a change order to our contract with the City for that cost.
- B. **100% Design:** Once we have received responses from the City and County on the 60% design information, we will complete the drawings and the Contract Documents package. We understand the City would like Barr to use, where appropriate, the City's developed front-end documents for the Lot A Contract Documents package. We will use those documents, where appropriate, and modify them to be project specific.

6. Bid Form and Bidding Support (Task budget \$3,720)

- A. Barr will prepare a complete bid package, and have it posted on Quest CDN.
- B. Once the bid documents are advertised, we anticipate potential bidders and suppliers will pose questions to the City or Barr. Barr will provide the necessary responses and addenda, if needed.
- C. Unless circumstances arise during the design that would necessitate conducting a pre-bid meeting, we are not anticipating holding one.
- D. Barr will review the bids received, prepare the bid tabulation and provide the City with that information and our recommendation for contractor selection.

7. Construction Support and Project Close-out Services (Task Budget \$11,700)

Barr will be happy to perform onsite construction observation and basic surveying work for the project. Per your request, for this agreement we have allotted 80 hours of time devoted to construction support (72 hours for construction observation and construction payment request coordination, 4 hours for as-built drawing preparation and 4 hours of senior level construction support and QAQC services). We have also included 16 hours for a Barr survey crew to perform pre-construction horizontal and vertical control staking (sufficient for the contractor to perform his work) and to collect as-built data (upon project completion) necessary for us to prepare record drawings for the City. As it is planned the project will essentially match grade and alignment for existing bituminous surfaces and curb and gutters, we have not built in anytime to set stakes or blue-tops for curb and gutters or pavement placement. It is assumed the contractor can easily replicate those lines and grades. At about the point of 90% completed design, we will review these assumptions and determine if the project may warrant more time than we have budgeted herein for this task. We will inform you if we believe more hours may be needed.

This Agreement will be effective for the duration of the services unless earlier terminated by either you or us. We will commence work on this project upon receipt of a copy of the signed professional services agreement the City develops for this project. The estimated schedule is to complete the services involved for Tasks 1 through 6 (described above) by May 1, 2020 or sooner assuming the additional soil borings can be placed by February 1, 2020. We will inform you of our progress by e-mail or phone call approximately every 2 weeks.

For the services provided, you will pay us according to the PSA. We will bill you approximately every 4 weeks. We will bill on a time and expenses basis with the cost of the services for Tasks 1 through 7 not to exceed \$43,750 (USD) without prior approval by you.

We understand you have the authority to direct us. We will direct communications to you at 485 Gorman St., Shakopee, MN 55379. Direction should be provided to Steve Klein at Barr Engineering Co., 4300 MarketPointe Dr., Minneapolis, MN 55435.

If you have any questions or suggested edits for this document, please let me know and I will be happy to modify it to your and our satisfaction.

Sincerely;

BARR ENGINEERING CO.

A handwritten signature in black ink, appearing to read "Steven M. Klein". The signature is fluid and cursive, with the first name "Steven" being more legible than the last name "Klein".

Steven M. Klein, PE, PH
Vice President