



AGENDA ITEM # 9.3

REPORT TO CITY COUNCIL

Report Prepared by: Jason Gorr – Public Works Director

Date: December 3, 2019

Subject: Engineering Services Proposal for North Sluetter Road Project

Report: Tim Houle has compiled the attached Proposal for Design Engineering Services for North Sluetter Road. Within the Proposal, you will find a good recap of history, parcel specifics, jurisdiction and ownership, right-of-way, drainage needs, rules, road standards established, construction recommendations, pictures, fees, scope of work, schedule, and costs (including special assessment discussion).

Mr. Houle will be present to address any questions the Council may have.

Council Action Requested: Council discussion and direction regarding the scope of work included in the Proposal for Design Engineering Services for North Sluetter Road and the potential to specially assess for this Project.

November 25, 2019



Brainerd Baxter
7804 Industrial Park Road
PO Box 2720
Baxter, MN 56425-2720

218.829.5117
218.829.2517
Brainerd@wsn.us.com

WidsethSmithNolting.com

Honorable Mayor and Council Members
City of Pequot Lakes
4638 County Road 11
Pequot Lakes, MN 56472-0361

**RE: Proposal for Design Engineering Services
North Sluetter Road
Pequot Lakes, MN**

Honorable Mayor and Council Members:

At your September 3, 2019 City Council meeting, a motion was passed to pave North Sluetter Road. The motion included using a Rustic Road cross-section. We also understood that the property owners' petition and subsequent Council Resolution for this project said the property owners do not want to be specially assessed.

Since that time, we met with City Staff and Anderson Brothers' (ABs') personnel as they had provided a previous quote to the City for improvements to North Sluetter Road. That AB quote, though, included several qualifiers on improvements – many drainage related – that were not included in their cost. While segments of the road may not need much engineering, there was a relatively long 'middle' segment where it was believed engineering and plans would need to be prepared so that a construction contractor could properly bid and construct improvements.

At your November 5, 2019 City Council meeting, you asked WSN to prepare a proposal.

This is a challenging road – and we are not referring to the discussions at the Council level leading up to the above motions.

It is challenging from an infrastructure project / engineering perspective because of the different governmental entities involved as well as the different existing cross sections of the road.

Thus, first, is some background and clarification on the scope and level of the improvements followed by our proposed engineering effort.

Background and Scope of Improvements

North Sluetter Road is on the boundary between Pequot Lakes (Crow Wing County) and Loon Lake Township (Cass County). To the east of North Sluetter Road is Sibley Lake.

There are 23 parcels (not property owners, a property owner may own more than one parcel) on the City side of the road with varying widths abutting the road. Between the road and the lake, there are also about 17 non-abutting parcels that have, or would have, access out onto North Sluetter Road.

There are presently 6 parcels on the Loon Lake Township side of the road. The most southerly one (about 630 feet of frontage) is a private property owner with a present driveway off of 64th Street SW (in Cass County - County Road 168 in Crow Wing County). The next parcel, also about 630 feet of frontage, is owned by a private property owner. This presently non-developed parcel does not appear to have any other access to a road other than North Sluetter Road. The



next 3 parcels going north (a little over 4,000 feet of frontage) are all shown as Tax Forfeit. These non-developed parcels do not appear to have any other access to a road other than North Sluetter Road. The last parcel has about 540 feet of frontage on North Sluetter Road (this parcel continues northerly) and is shown as a State of Minnesota parcel. This non-developed parcel does not appear to have any other access to a road other than North Sluetter Road. Short of obtaining and reviewing each parcel's Title, there does not appear to be formal dedicated R/W.

The City and Loon Lake Township have a Shared Road / Maintenance Agreement. We have not included details on the full Agreement, but we understand, historically, the two entities switch maintenance duties each year (e.g. winter / snowplow one year, summer / gravel the next year).

The September 3, 2019 City Council motion that was passed referenced using a Rustic Road cross-section. There are two references for Rustic Road.

The first is State Statute Section 160.83 Rustic Roads Program. It states that a "Rustic Road" has the following characteristics:

- (a) outstanding natural features or scenic beauty;
- (b) an average daily traffic volume of less than 150 vehicles per day;
- (c) year-round use as a local access road; and
- (d) maximum allowable speed of 45 miles per hour.

The second reference to Rustic Road is in the City's Guidelines for Road Standards / Specifications approved by the City Council on June 5, 2018.

These Guidelines designated North Sluetter as Rural and Residential (towards its northerly end), not Rustic.

The Guidelines Priority Elements Matrix indicates different preferred lane widths for these three different designations as well as different levels of clearing and drainage / swales / ditches. The Rustic Road designation is the minimalist of the three.

In looking at the existing cross sections along North Sluetter Road, the road can be split into three (3) segments. These are shown on the enclosed Oct. 30, 2019 figure.

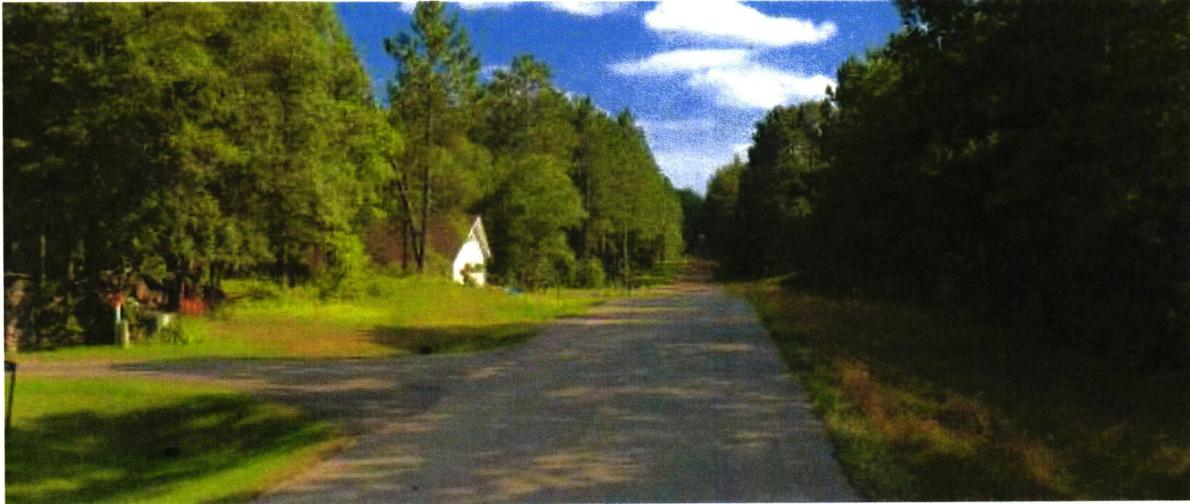
Segment C:

The most northerly 500± feet has, for the most part, good clearing off the edge of the road, good ditching / swales, and good drainage. It is already paved. The pavement, for its age, is in acceptable condition.

These roadway improvements were part of a developer-driven project associated with the Island Vista Plat (2005 – 2006 time frame). At that time, 100% of the improvements were paid for by the developer – there were no City funds used. We suspect the costs of these improvements were passed along to the buyers / owners of the adjacent City parcels.



Following is a photo at one point within Segment C showing the clearance and grassed swales / ditches on either side (including some driveway culverts) and the paved road.

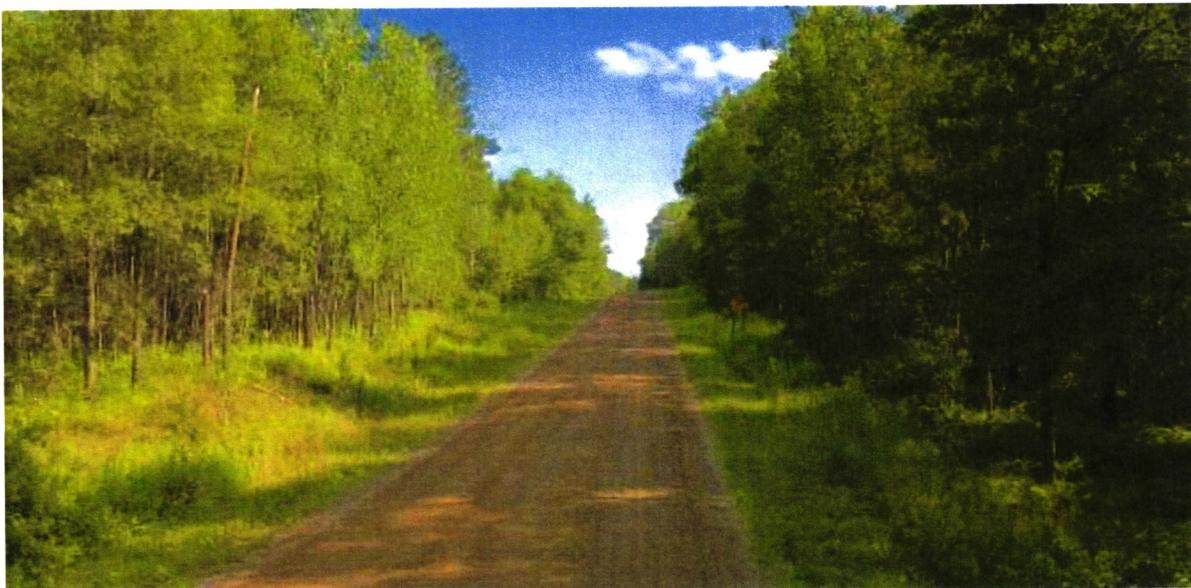


We do not anticipate any improvements to this Segment C portion of North Sluetter Road.

Segment A:

The first 1,900± feet north of County Road 168 has, for the most part, fairly good clearing off the edge of the road, good ditching / swales, and good drainage.

Following is a photo at one point within Segment A showing the relatively good clearance and grassed swales / ditches on either side, and what appears to be a good width of the gravel surfaced road.





Without field survey or measurements yet, we anticipate this Segment A portion would require minimal clearing and ditching, minimal change to the roadbed, some “sweetening” of the Class 5 aggregate base, and then bituminous paving.

Segment B:

The middle 3,500± feet has minimal clearing off the edge of the road and generally poor ditching / swales / drainage. At the “local low point” in this area, there are also what would probably be delineated wetlands on either side of the road (one side shows up on the National Wetland Inventory mapping).

Following are two photos at a couple of points within Segment B. They both show minimal clearance off the edge of the gravel road. The first one shows some drainage rutting on the right, which would most likely increase with hard surface paving. Generally, roadways with this type of cross section require more maintenance, especially along their edges to minimize degradation of the integrity of the surfacing. showing the relatively good clearance and grassed swales / ditches on either side, and the gravel surfaced road.





Short of yet having field survey or measurements, we anticipate the roadbed within this Segment B portion will require some widening – at a minimum, reinforcement of the edges.

To ensure as homogeneous a roadbed as possible – to minimize the chances of longitudinal edge cracking in the future – this may require more subgrade and aggregate base work on this Segment B than on Segment A.

Also, we will need to look closely at how drainage is handled to protect the integrity of the investment in bituminous paving of this road. While this may mean creating wider and better grassed swales and ditches, we may be able to use curbing. Concrete curb and gutter is more expensive but tends to have longer life. Bituminous guttering and curbing – an example depicted in the photo on the following page does work, but tends to have a higher risk of damage from snow plows or when heavier vehicles track towards the edge of the pavement.



Direct drainage into wetlands when doing improvements is not permitted. Thus, there will most likely need to be some sedimentation basins constructed upstream of the wetlands in this Segment B.

All of the above will necessitate varying levels of clearing off the edge of the existing road.

WSN Scope of Work

For the above improvements, following is our corresponding scope of services.

1. Conduct office research, and locate horizontal and vertical survey control.
2. Make a Gopher State One Call and preferably obtain field information from utilities. Sometimes they do not provide field locates, and if this is the case, we will have to obtain design maps from them.
3. Field survey all underground and above ground features within the area of anticipated improvements.



4. After improvements are laid out far enough along to identify Right-of-Way (R/W) impacts, discuss with the City what approach we are going to take with R/W.

One option is the City could rely on using prescriptive rights. The City and Township have maintained a certain width corridor for many years (mowing and snow storage off the edge of the roadway). Thus, the City and Township have 'rights' to this width for improvements.

Another option is to formalize a R/W width – usually 33 feet off the centerline or Section Line. This would entail us preparing R/W Maps / Sketch & Descriptions, and then the City acquiring the R/W from each property owner (and the Township?).

We have included consulting with the City on which option they want within this proposal.

Depending on which way the City wants to proceed, we can provide the appropriate tasks as an additional service.

5. Soils borings and a geotechnical report are not part of our scope of work.

In the past, more times than not, due to the generally granular soils in the area, the City has elected not to obtain soil borings and a geotechnical report.

For the most part, we are not aware of any major core road subgrade problems. So, obtaining borings may not provide bidders with significant information that would change their bid.

Depending on the type of stormwater management upstream of wetlands, we may need soil borings at that time. If this becomes the case, we can assist the City in preparing a Request For Proposal from soil boring-geotechnical engineering firms, review the proposals, and assist the City in contracting directly with such a firm.

6. Check vertical profiles.

While it may be appropriate to “shave” off some hills / crests, this review will assist in determining an appropriate speed limit.

7. After improvements are laid out far enough along to identify possible impacts on electric, natural gas, and telecommunications utilities, meet with these utilities to review the project and their anticipated relocations.
8. Layout roadside drainage, and resultant routes and discharge locations of that drainage.
9. Layout sedimentation / infiltration basins. Determine what volume can be captured at these locations and what grading will be needed.
10. We will prepare erosion control drawings as part of the Plan set. But, we are not certain at this time if the City and construction Contractor will need to obtain a National Pollution Discharge Elimination System (NPDES) General Stormwater Permit from the Minnesota



Pollution Control Agency (MPCA). If needed, we can prepare a Stormwater Pollution Prevention Plan (SWPPP) as an additional service.

11. Prepare construction drawings, including typical sections, plans, profiles, details, erosion control sheets, and cross sections as needed.
12. Prepare construction specifications / Contract Manual.
13. Estimate quantities and prepare a construction cost estimate.

It is important to note that as with any construction, there may need to be modifications made to the quantities in the field. As such, we recommend the City budget a contingency of about 10% of the contractor's bid.

14. Complete a Gopher State One Call, as required by State Law, prior to the bid. We will also distribute plans to local utility company contacts.
15. Prepare an Advertisement for Bids, and distribute plans on QuestCDN.
16. Attend the Bid Opening and review bids with the City.

Fee

We propose to perform the above tasks on an hourly basis, in accordance with the attached fee schedule, for an estimated amount of **\$33,100**.

Services that need to be performed in addition to the tasks listed above will first be reviewed for scope and effort with the City staff, Council liaison, or Council.

Due to the unknown frequency and time that might be involved, our above services do not include clarifying property ownership on the Township side, coordinating with the Township, reviewing improvements with the Township, or meeting with the Township. We believe City Staff can work with the Township. But, should we need to be involved, we can do so as an Additional Service.

We have not included field delineation of wetlands for two reasons. During this winter season, these services cannot be properly performed. Also, we will attempt to keep improvements away from slopes and grades prior to what appear to be wetlands. Should we need to deal with delineation or impacts to wetlands, we will define the scope and request Additional Services at that time.

We understand that the abutting private property owners will not be specially assessed for these improvements, and the City will use general City funds to pay for these improvements. Should special assessments be considered and used, we can assist the City in preparing a special assessment roll; prepare for, attend, and facilitate the preliminary special assessment hearing; and prepare for, attend, and facilitate the final special assessment hearing for \$4,000.



Schedule

The schedule is to design this winter. We will defer to the City on when bidding and construction will occur.

We have always appreciated the capabilities of the City's staff to observe and administer a construction contract, and will only assist as needed.

We will wait to provide you with a separate proposal for construction phase services (staking, observation, and administration) once a Contractor is selected and City staff know their availability to handle the construction phase.

We plan on being at your December 3rd City Council meeting to discuss this proposal and, if needed, adjust it so we can provide you the most responsive level of service.

If you are in agreement with our proposed scope of services, please sign and return one copy of this letter for our records. We appreciate the opportunity serve the City.

Widseth Smith Nolting

A handwritten signature in black ink that reads "Timothy M. Houle".

Timothy M. Houle, P.E.
Civil Engineer | Vice-President

Attachments: North Sluetter Road segments, Oct. 30, 2019
General Provisions of Professional Services Agreement
2020 WSN Fee Schedule

c: WSN File



.....
Accepted by the City of Pequot Lakes: The above proposal is satisfactory and WSN is authorized to do the work as specified and in accordance with the attached General Conditions. Payment will be made monthly in accordance with the terms on the attached fee schedule.

Printed Name

Mayor
Title

Signature

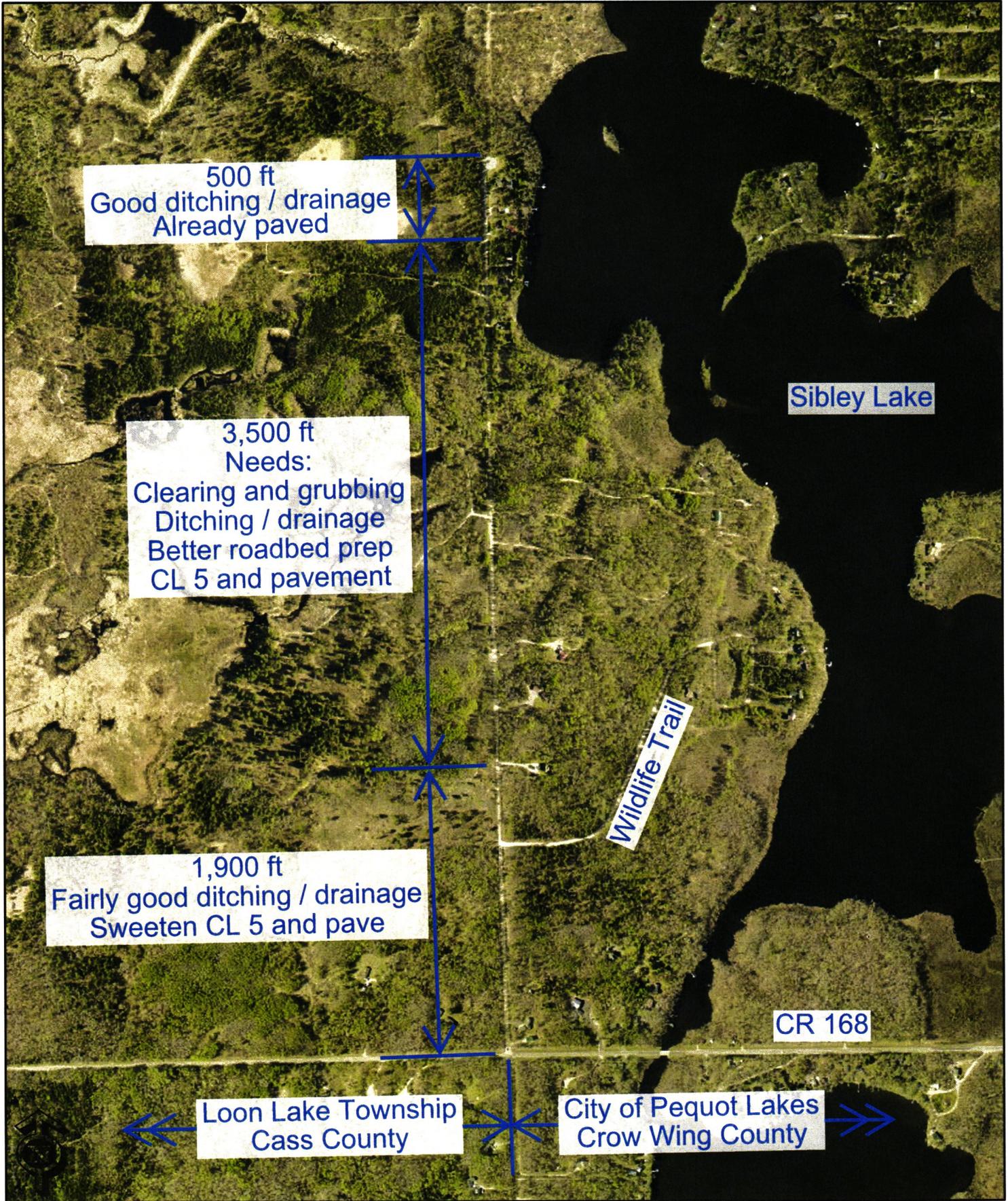
Date

Printed Name

City Administrator
Title

Signature

Date



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

North Sluetter Road

Oct 30, 2019



General Provisions of Professional Services Agreement

These General Provisions are intended to be used in conjunction with a letter-type Agreement or a Request for Services between Widseth Smith Nolting, a Minnesota Corporation, hereinafter referred to as WSN, and a CLIENT, wherein the CLIENT engages WSN to provide certain Architectural, and/or Engineering services on a Project

As used herein, the term "this Agreement" refers to (1) the WSN Proposal Letter which becomes the Letter Agreement upon its acceptance by the Client, (2) these General Provisions and (3) any attached Exhibits, as if they were part of one and the same document. With respect to the order of precedence, any attached Exhibits shall govern over these General Provisions, and the Letter Agreement shall govern over any attached Exhibits and these General Provisions. These documents supersede all prior communications and constitute the entire Agreement between the parties. Amendments to this Agreement must be in writing and signed by both CLIENT and WSN

ARTICLE 1. PERIOD OF SERVICE

The term of this Agreement for the performance of services hereunder shall be as set forth in the Letter Agreement. In this regard, any lump sum or estimated maximum payment amounts set forth in the Letter Agreement have been established in anticipation of an orderly and continuous progress of the Project in accordance with the schedule set forth in the Letter Agreement or any Exhibits attached thereto. WSN shall be entitled to an equitable adjustment to its fee should there be an interruption of services, or amendment to the schedule

ARTICLE 2. SCOPE OF SERVICES

The scope of services covered by this Agreement shall be as set forth in the Letter Agreement or a Request for Services. Such scope of services shall be adequately described in order that both the CLIENT and WSN have an understanding of the expected work to be performed.

If WSN is of the opinion that any work they have been directed to perform is beyond the Scope of this Agreement, or that the level of effort required significantly exceeds that estimated due to changed conditions and thereby constitutes extra work, they shall notify the CLIENT of that fact. Extra work, additional compensation for same, and extension of time for completion shall be covered by a revision to the Letter Agreement or Request for Services and entered into by both parties

ARTICLE 3. COMPENSATION TO WSN

A. Compensation to WSN for services described in this Agreement shall be on a Lump Sum basis, Percentage of Construction, and/or Hourly Rate basis as designated in the Letter Agreement and as hereinafter described.

- 1 A Lump Sum method of payment for WSN's services shall apply to all or parts of a work scope where WSN's tasks can be readily defined and/or where the level of effort required to accomplish such tasks can be estimated with a reasonable degree of accuracy. The CLIENT shall make monthly payments to WSN within 30 days of date of invoice based on an estimated percentage of completion of WSN's services
- 2 A Percentage of Construction or an Hourly Rate method of payment of WSN's services shall apply to all or parts of a work scope where WSN's tasks cannot be readily defined and/or where the level of effort required to accomplish such tasks cannot be estimated with any reasonable degree of accuracy. Under an Hourly Rate method of payment, WSN shall be paid for the actual hours worked on the Project by WSN technical personnel times an hourly billing rate established for each employee. Hourly billing rates shall include compensation for all salary costs, payroll burden, general, and administrative overhead and professional fee. In a Percentage of Construction method of payment, final compensation will be based on actual bids if the project is bid and WSN's estimate to the CLIENT if the project is not bid. A rate schedule shall be furnished by WSN to CLIENT upon which to base periodic payments to WSN
- 3 In addition to the foregoing, WSN shall be reimbursed for items and services as set forth in the Letter Agreement or Fee Schedule and the following Direct Expenses when incurred in the performance of the work
 - (a) Travel and subsistence
 - (b) Specialized computer services or programs
 - (c) Outside professional and technical services with cost defined as the amount billed WSN
 - (d) Identifiable reproduction and reprographic costs
 - (e) Other expenses for items such as permit application fees, license fees, or other additional items and services whether or not specifically identified in the Letter Agreement or Fee Schedule
- 4 The CLIENT shall make monthly payments to WSN within 30 days of date of invoice based on computations made in accordance with the above charges for services provided and expenses incurred to date, accompanied by supporting evidence as available

B. The CLIENT will pay the balance stated on the invoice unless CLIENT notifies WSN in writing of the particular item that is alleged to be incorrect within 15 days from the date of invoice, in which case, only the disputed item will remain undue until resolved by the parties. All accounts unpaid after 30 days from the date of original invoice shall be subject to a service charge of 1% per month, or the maximum amount authorized by law, whichever is less. WSN shall be entitled to recover all reasonable costs and disbursements, including reasonable attorneys fees, incurred in connection with collecting amount owed by CLIENT. In addition, WSN may, after giving seven days written notice to the CLIENT, suspend services and withhold deliverables under this Agreement until WSN has been paid in full for all amounts then due for services, expenses and charges. CLIENT agrees that WSN shall not be responsible for any claim for delay or other consequential damages arising from suspension of services hereunder. Upon payment in full by Client and WSN's resumption of services, the time for performance of WSN's services shall be equitably adjusted to account for the period of suspension and other reasonable time necessary to resume performance



ARTICLE 4. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

Either Party has the right to terminate this Agreement upon seven days written notice. In addition, the CLIENT may at any time, reduce the scope of this Agreement. Such reduction in scope shall be set forth in a written notice from the CLIENT to WSN. In the event of unresolved dispute over change in scope or changed conditions, this Agreement may also be terminated upon seven days written notice as provided above.

In the event of termination, and upon payment in full for all work performed and expenses incurred to the date of termination, documents that are identified as deliverables under the Letter Agreement whether finished or unfinished shall be made available by WSN to the CLIENT pursuant to Article 5, and there shall be no further payment obligation of the CLIENT to WSN under this Agreement except for payment of an amount for WSN's anticipated profit on the value of the services not performed by WSN and computed in accordance with the provisions of Article 3 and the Letter Agreement.

In the event of a reduction in scope of the Project work, WSN shall be paid for the work performed and expenses incurred on the Project work thus reduced and for any completed and abandoned work, for which payment has not been made, computed in accordance with the provisions of Article 3 and the Letter Agreement

ARTICLE 5. DISPOSITION OF PLANS, REPORTS AND OTHER DATA

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by WSN or its consultants are Instruments of Service and shall remain the property of WSN or its consultants, respectively. WSN and its subconsultants retain all common law, statutory and other reserved rights, including, without limitation, copyright. WSN and its subconsultants maintain the right to determine if production will be made, and allowable format for production, of any electronic media or data to CLIENT or any third-party. Upon payment in full of monies due pursuant to the Agreement, WSN shall make hard copies available to the CLIENT, of all documents that are identified as deliverables under the Letter Agreement. If the documents have not been finished (including, but not limited to, completion of final quality control), then WSN shall have no liability for any claims expenses or damages that may arise out of items that could have been corrected during completion/quality control. Any Instruments of Service provided are not intended or represented to be suitable for reuse by the CLIENT or others on extensions of the Project or any other project. Any modification or reuse without written verification or adaptation by WSN for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to WSN. CLIENT shall indemnify, defend and hold harmless WSN from any and all suits or claims of third parties arising out of use of unfinished documents, or modification or reuse of finished documents, which is not specifically verified, adapted, or authorized in writing by WSN. This indemnity shall survive the termination of this Agreement.

Should WSN choose to deliver to CLIENT documents in electronic form, CLIENT acknowledges that differences may exist between any electronic files delivered and the printed hard-copy. Copies of documents that may be relied upon by CLIENT are limited to the printed hard-copies that are signed and/or sealed by WSN. Files in electronic form are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic documents will be at user's sole risk. CLIENT acknowledges that the useful life of some forms of electronic media may be limited because of deterioration of the media or obsolescence of the computer hardware and/or software systems. Therefore, WSN makes no representation that such media will be fully usable beyond 30 days from date of delivery to CLIENT

ARTICLE 6. CLIENT'S ACCEPTANCE BY PURCHASE ORDER OR OTHER MEANS

In lieu of or in addition to signing the acceptance blank on the Letter Agreement, the CLIENT may accept this Agreement by permitting WSN to commence work on the project or by issuing a purchase order signed by a duly authorized representative. Such purchase order shall incorporate by reference the terms and conditions of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and those contained in the CLIENT's purchase order, the terms and conditions of this Agreement shall govern. Notwithstanding any purchase order provisions to the contrary, no warranties, express or implied, are made by WSN

ARTICLE 7. CLIENT'S RESPONSIBILITIES

A. To permit WSN to perform the services required hereunder, the CLIENT shall supply, in proper time and sequence, the following at no expense to WSN:

- 1 Provide all program, budget, or other necessary information regarding its requirements as necessary for orderly progress of the work.
 - 2 Designate in writing, a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, interpret and define CLIENT's policies with respect to WSN's services.
 - 3 Furnish, as required for performance of WSN's services (except to the extent provided otherwise in the Letter Agreement or any Exhibits attached hereto), data prepared by or services of others, including without limitation, core borings, probes and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary easement, right-of-way, topographic and utility surveys; property descriptions, zoning, deed and other land use restriction, and other special data not covered in the Letter Agreement or any Exhibits attached hereto
 - 4 Provide access to, and make all provisions for WSN to enter upon publicly or privately owned property as required to perform the work
 - 5 Act as liaison with other agencies or involved parties to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project
 6. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by WSN, obtain advice of an attorney, insurance counselor or others as CLIENT deems necessary for such examination and render in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of WSN.
 7. Give prompt written notice to WSN whenever CLIENT observes or otherwise becomes aware of any development that affects the scope of timing of WSN's services or any defect in the work of Construction Contractor(s), Consultants or WSN
 - 8 Initiate action, where appropriate, to identify and investigate the nature and extent of asbestos and/or pollution in the Project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. For purposes of this Agreement, "pollution" and "pollutant" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Hazardous or toxic waste means any substance, waste pollutant or contaminant now or hereafter included within such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended. Waste further includes materials to be recycled, reconditioned or reclaimed.
- If WSN encounters, or reasonably suspects that it has encountered, asbestos or pollution in the Project, WSN shall cease activity on the Project and promptly notify the CLIENT, who shall proceed as set forth above. Unless otherwise specifically provided in the Letter Agreement, the services to be provided by WSN do not include identification of asbestos or pollution, and WSN has no duty to identify or attempt to identify the same within the area of the Project
- With respect to the foregoing, CLIENT acknowledges and agrees that WSN is not a user, handler, generator, operator, treater, storer, transporter or disposer of asbestos or pollution which may be encountered by WSN on the Project. It is further understood and agreed that services WSN will undertake for CLIENT may be uninsurable obligations involving the presence or potential presence of asbestos or pollution. Therefore, CLIENT agrees, except (1) such liability as may arise out of WSN's sole negligence in the performance of services under this Agreement or (2) to the extent of insurance coverage available for the claim, to hold harmless, indemnify and defend WSN and WSN's officers, subcontractor(s), employees and agents from and against any and all claims, lawsuits, damages, liability and costs, including, but not limited to, costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of asbestos or pollution. This indemnification is intended to apply only to existing conditions and not to conditions caused or created by WSN. This indemnification shall survive the termination of this Agreement.
- 9 Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as CLIENT may require or WSN may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as CLIENT may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as CLIENT may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work

10. Provide "record" drawings and specifications for all existing physical features, structures, equipment, utilities, or facilities which are pertinent to the Project, to the extent available

- 11 Provide other services, materials, or data as may be set forth in the Letter Agreement or any Exhibits attached hereto

B. WSN may use any CLIENT provided information in performing its services. WSN shall be entitled to rely on the accuracy and completeness of information furnished by the CLIENT. If WSN finds that any information furnished by the CLIENT is in error or is inadequate for its purpose, WSN shall endeavor to notify the CLIENT. However, WSN shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by CLIENT.

ARTICLE 8. OPINIONS OF COST

Opinions of probable project cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for in the Letter Agreement or any Exhibits attached hereto are to be made on the basis of WSN's experience and qualifications and represent WSN's judgment as an experienced design professional. It is recognized, however, that WSN does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices, and that any evaluation of any facility to be constructed, or acquired, or work to be performed on the basis of WSN's cost opinions must, of necessity, be speculative until completion of construction or acquisition. Accordingly, WSN does not guarantee that proposals, bids or actual costs will not substantially vary from opinions, evaluations or studies submitted by WSN to CLIENT hereunder.

ARTICLE 9. CONSTRUCTION PHASE SERVICES

CLIENT acknowledges that it is customary for the architect or engineer who is responsible for the preparation and furnishing of Drawings and Specifications and other construction-related documents to be employed to provide professional services during the Bidding and Construction Phases of the Project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute or equal items of materials and equipment proposed by bidders and Contractor(s), (3) in connection with approval of shop drawings and sample submittals, and (4) as a result of and in response to WSN's detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. CLIENT agrees that if WSN is not employed to provide such professional services during the Bidding (if the work is put out for bids) and the Construction Phases of the Project, WSN will not be responsible for, and CLIENT shall indemnify and hold WSN, its officers, consultant(s), subcontractor(s), employees and agents harmless from, all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution, acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by CLIENT or others. Nothing contained in this paragraph shall be construed to release WSN, its officers, consultant(s), subcontractor(s), employees and agents from liability for failure to perform in accordance with professional standards any duty or responsibility which WSN has undertaken or assumed under this Agreement.

ARTICLE 10. REVIEW OF SHOP DRAWINGS AND SUBMITTALS

WSN may review and approve or take other appropriate action on the contractor's submittals or shop drawings for the limited purpose of checking for general conformance with information given and design concept expressed in the Contract Documents. Review and/or approval of submittals is not conducted for the purpose of determining accuracy and completeness of other details or for substantiating instructions for installation or performance of equipment or systems, all of which remain the exclusive responsibility of the contractor. WSN's review and/or approval shall not constitute approval of safety precautions, or any construction means, methods, techniques, sequences or procedures. WSN's approval of a specific item shall not indicate approval of an assembly of which the item is a component. WSN's review and/or approval shall not relieve contractor for any deviations from the requirements of the contract documents nor from the responsibility for errors or omissions on items such as sizes, dimensions, quantities, colors, or locations. Contractor shall remain solely responsible for compliance with any manufacturer requirements and recommendations.

ARTICLE 11. REVIEW OF PAY APPLICATIONS

If included in the scope of services, any review or certification of any pay applications, or certificates of completion shall be based upon WSN's observation of the Work and on the data comprising the contractor's application for payment, and shall indicate that to the best of WSN's knowledge, information and belief, the quantity and quality of the Work is in general conformance with the Contract Documents. The issuance of a certificate for payment or substantial completion is not a representation that WSN has made exhaustive or continuous inspections, reviewed construction means and methods, verified any back-up data provided by the contractor, or ascertained how or for what purpose the contractor has used money previously paid by CLIENT.

ARTICLE 12. REQUESTS FOR INFORMATION (RFI)

If included in the scope of services, WSN will provide, with reasonable promptness, written responses to requests from any contractor for clarification, interpretation or information on the requirements of the Contract Documents. If Contractor's RFI's are, in WSN's professional opinion, for information readily apparent from reasonable observation of field conditions or review of the Contract Documents, or are reasonably inferable therefrom, WSN shall be entitled to compensation for Additional Services for WSN's time in responding to such requests. CLIENT may wish to make the Contractor responsible to the CLIENT for all such charges for additional services as described in this article.

ARTICLE 13. CONSTRUCTION OBSERVATION

If included in the scope of services, WSN will make site visits as specified in the scope of services in order to observe the progress of the Work completed. Such site visits and observations are not intended to be an exhaustive check or detailed inspection, but rather are to allow WSN to become generally familiar with the Work. WSN shall keep CLIENT informed about the progress of the Work and shall advise the CLIENT about observed deficiencies in the Work. WSN shall not supervise, direct or have control over any Contractor's work, nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor. WSN shall not be responsible for any acts or omissions of any Contractor and shall not be responsible for any Contractor's failure to perform the Work in accordance with the Contract Documents or any applicable laws, codes, regulations, or industry standards.

If construction observation services are not included in the scope of services, CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the CLIENT waives any claims against WSN that are connected with the performance of such services.

ARTICLE 14. BETTERMENT

If, due to WSN's negligence, a required item or component of the Project is omitted from the construction documents, WSN shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event, will WSN be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

ARTICLE 15. CERTIFICATIONS, GUARANTEES AND WARRANTIES

WSN shall not be required to sign any documents, no matter by who requested, that would result in WSN having to certify, guarantee or warrant the existence of conditions whose existence WSN cannot ascertain. CLIENT agrees not to make resolution of any dispute with WSN or payment of any amount due to WSN in any way contingent upon WSN signing such certification.

ARTICLE 16. CONTINGENCY FUND

CLIENT and WSN agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the plans and specifications prepared by WSN, and therefore, that the final construction cost of the Project may exceed the bids, contract amount or estimated construction cost. CLIENT agrees to set aside a reserve in the amount of 5% of the Project construct costs as a contingency to be used, as required, to pay for any such increased costs and changes. CLIENT further agrees to make no claim by way of direct or third-party action against WSN with respect to any increased costs within the contingency because of such changes or because of any claims made by any Contractor relating to such changes.

ARTICLE 17. INSURANCE

WSN shall procure and maintain insurance for protection from claims against it under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims against it for damages because of injury to or destruction of property including loss of use resulting therefrom.

Also, WSN shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by any negligent act, error, or omission for which WSN is legally liable.

Certificates of insurance will be provided to the CLIENT upon request.

ARTICLE 18. ASSIGNMENT

Neither Party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by WSN as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

ARTICLE 19. NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship or a cause of action by a third-party against either WSN or CLIENT. WSN's services pursuant to this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against WSN because of this Agreement.

ARTICLE 20. CORPORATE PROTECTION

It is intended by the parties to this Agreement that WSN's services in connection with the Project shall not subject WSN's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary, CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against WSN, a Minnesota corporation, and not against any of WSN's individual employees, officers or directors.

ARTICLE 21. CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota.

ARTICLE 22. ASSIGNMENT OF RISK

In recognition of the relative risks and benefits of the project to both the CLIENT and WSN, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of WSN, employees of WSN and sub-consultants, to the CLIENT and to all construction contractors, subcontractors, agents and assigns 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 total aggregate liability of WSN, employees of WSN and sub-consultants, to all those named shall not exceed WSN's total fee received for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

ARTICLE 23. NON-DISCRIMINATION

WSN will comply with the provisions of applicable federal, state and local statutes, ordinances and regulations pertaining to human rights and non-discrimination.

ARTICLE 24. SEVERABILITY

Any provision or portion thereof in this Agreement which is held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding between CLIENT and WSN. All limits of liability and indemnities contained in the Agreement shall survive the completion or termination of the Agreement.

ARTICLE 25. PRE-LIEN NOTICE

Pursuant to the Agreement WSN will be performing services in connection with improvements of real property and may contract with subconsultants or subcontractors as appropriate to furnish labor, skill and/or materials in the performance of the work. Accordingly, CLIENT is entitled under Minnesota law to the following Notice:

- (a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for its contributions.
- (b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or materials for the improvement and who gave you timely notice.

WIDSETH SMITH NOLTING



2020 FEE SCHEDULE

CLASSIFICATION	HOURLY RATE
<u>Engineer/Architect/Surveyor/Scientist/Wetland Specialist/Geographer</u>	
Level I	\$110.00
Level II	\$135.00
Level III	\$160.00
Level IV	\$170.00
Level V	\$185.00
<u>Technician</u>	
Level I	\$ 73.00
Level II	\$ 92.00
Level III	\$110.00
Level IV	\$125.00
Level V	\$140.00
Computer Systems Specialist	\$150.00
Senior Funding Specialist	\$125.00
Marketing Specialist	\$110.00
Funding Specialist	\$ 95.00
Administrative Assistant	\$ 70.00

OTHER EXPENSES	RATE
Mileage (Federal Standard Rate) <i>subject to IRS Guidelines</i>	Cost
Meals/Lodging	Cost
Stakes & Expendable Materials	Cost
Waste Water Sampler	\$40.00/Day
ISCO Flow Recorder	\$60.00/Day
Photoionization Detection Meter	\$80.00/Day
Explosimeter	\$50.00/Day
Product Recovery Equipment	\$35.00/Day
Survey-Grade GPS (Global Positioning System)	\$75.00/Hour
Mapping GPS (Global Positioning System)	\$150.00/Day
Soil Drilling Rig	\$35.00/Hour
Groundwater Sampling Equipment	\$75.00/Day
Subcontractors	Cost Plus 10%

Reproduction Costs	RATE
Black & White Copies: 8 ½ x 11	\$0.10
Black & White Copies: 11 x 17	\$0.50
Black & White Copies: 24 x 36	\$3.00
Color Copies: 8 ½ x 11	\$2.00
Color Copies: 11 x 17	\$4.00
Color Copies: 24 x 36	\$12.00
Color Plots: 42 x 48	\$22.00

These rates are effective for only the year indicated and are subject to yearly adjustments which reflect equitable changes in the various components.