



# Public Service Commission State of North Dakota

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## COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Brian Kroshus

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January 26, 2021

Jason Westbrook  
Barr Engineering Co.  
234 West Century Avenue  
Bismarck, ND 58503

Re: Case No. PU-20-381  
NuStar Pipeline Operating Partnership L.P.  
10" North System Pipeline Relocation – Cass County  
Siting Application

Dear Mr. Westbrook:

Enclosed please find a copy of the executed contract with Barr Engineering Co. to provide construction inspection services for the above referenced case.

Best Regards,

A handwritten signature in blue ink that reads "Patrick Fahn".


Patrick Fahn, Director  
Public Utilities Division

Enclosure

52 PU-20-381 Filed: 1/26/2021 Pages: 19  
Letter enclosing executed Contract

**CONTRACT NUMBER PU-844-21-EE**

<b>Administrator:</b>	State of North Dakota Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400
<b>Date:</b> <u>1/26/21</u>	<b>Case No.</b> <u>PU-20-381</u>
 <b>Steve Kahl</b> Executive Director	

<b>Contractor</b>		
Barr Engineering Co.		
<b>Name</b>		
234 West Century Avenue	Bismarck, ND 58503	701-255-5460
<b>Address</b>	<b>City/State/Zip</b>	<b>Phone</b>
Jason Westbrook, PE		Vice President
<b>Typed Name</b>		<b>Title</b>
		<u>1/14/2021</u>
<b>Signature</b>		<b>Date</b>

<b>Agreement Information</b>	
Contract No.:	<u>PU-844-21-EE</u>
Start Date:	<u>Upon Execution</u>
End Date:	<u>12/31/2023</u>
Case No.	<u>PU-20-381</u>
<b>Type of Contract:</b>	( X ) Fixed Price ( ) Cost Reimb. ( ) Unit Price ( ) Other

<b>Budget Information</b>	
Cost Center:	<u>7800</u>
Services:	<u>Construction Inspection Services</u>
Expenses:	<u>\$9,898.00</u>
<b>Type of Contractor:</b>	( ) Individual ( X ) Corporation ( ) Partnership ( ) Public Agency ( ) Nonprofit Organization ( ) Other

This Contract is entered into between the State of North Dakota acting through the Public Service Commission (STATE) and Barr Engineering Co. (CONTRACTOR). This contract consists of this sheet, general provisions and specific provisions.

PURCHASE OF SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through its North Dakota Public Service Commission, Public Utilities Division (STATE) and Barr Engineering Co., 234 West Century Avenue, Bismarck, ND 58503 (CONTRACTOR).

**1. SCOPE OF WORK**

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, agrees to provide the services enumerated below. CONTRACTOR shall be registered with the North Dakota Secretary of State and the North Dakota State Procurement Office prior to Contract execution.

**Background Information**

The North Dakota Energy Conversion and Transmission Facilities Act (North Dakota Century Code chapter 49-22.1) authorizes the STATE to determine that the location, construction, and operation of jurisdictional energy conversion and transmission facilities will produce minimal adverse effects on the environment and the welfare of the citizens of North Dakota. STATE construction inspections ensure that projects are constructed in compliance with the siting laws (North Dakota Century Code chapter 49-22.1), siting rules (North Dakota Administrative Code article 69-06), and applicable Commission Orders. The STATE is currently contracting for construction inspection services concerning the following case:

Case No. PU-20-381  
NuStar Pipeline Operating Partnership L.P.  
10" North System Pipeline Relocation - Cass County  
Siting Application

**Scope of Work**

CONTRACTOR agrees to perform construction inspections applying engineering and science principles for the purpose of ensuring that energy conversion and transmission facilities authorized by the STATE are constructed in compliance with the siting laws, siting rules, and applicable Commission Orders. CONTRACTOR'S Project Manager assigned to the project shall be capable of reading and interpreting relevant laws, rules, Orders, and Commission precedent for proper execution of the project.

Upon execution of Contract, CONTRACTOR shall participate in all Commission preconstruction conferences for energy conversion and transmission facilities listed within the Contract and held after the effective date of the Contract. If construction is already underway or complete upon Contract execution, CONTRACTOR shall immediately begin providing construction inspection services.

CONTRACTOR shall perform and document TOPSOIL REMOVAL INSPECTION(S) during the topsoil removal phase(s) of the project to verify that topsoil has been properly removed and kept segregated from subsoil until replacement occurs. CONTRACTOR

shall provide and maintain personnel at each construction spread during topsoil and subsoil removal and segregation activities until such time as CONTRACTOR has determined that equipment operators have demonstrated proficiency concerning topsoil and subsoil removal and segregation in compliance with the Commission's Order.

CONTRACTOR shall perform and document CONSTRUCTION INSPECTION(S) during project construction as provided in CONTRACTOR's written negotiated proposal to verify that the project is constructed in compliance with the siting laws, siting rules, and applicable Commission Orders. CONTRACTOR shall verify that the pipeline has been installed with the depth of cover required by the Commission's Order.

CONTRACTOR shall perform and document an AS-BUILT CONSTRUCTION INSPECTION upon completion of replacement of topsoil and grading, fertilization and seeding of the entire project area.

CONTRACTOR shall perform and document a RECLAMATION AND REVEGETATION INSPECTION after one full growing season but not less than one year from the anniversary date of completion of fertilization and seeding. The Reclamation and Revegetation Inspection must include a follow-up inspection of areas of concern identified in the As-Built Construction Inspection.

#### **Specific, Results-Oriented Tasks**

CONTRACTOR shall immediately report to the STATE any suspected non-compliance conditions regarding topsoil and subsoil removal and segregation. CONTRACTOR shall immediately report to the STATE a probable violation of the siting laws, siting rules, or applicable Commission Orders. The STATE may direct that CONTRACTOR stop Project construction activities. Project construction activities may not resume until authorized by the STATE.

CONTRACTOR shall provide to the STATE within 15 days after each Topsoil Removal Inspection, a written TOPSOIL REMOVAL INSPECTION REPORT. Each Report must contain:

- 1) location-referenced color photographs of construction activities;
- 2) a map identifying locations where photographs were taken and locations where compliance checks were performed; and
- 3) an executive summary of the Inspection findings concerning issues requiring resolution, areas of concern, and recommendations for resolution of issues.

CONTRACTOR shall provide to the STATE within 15 days after each Construction Inspection, a written CONSTRUCTION INSPECTION REPORT. Each Report must contain:

- 1) location-referenced color photographs of construction activities;
- 2) a map identifying locations where photographs were taken and locations where compliance checks were performed; and
- 3) an executive summary of the Inspection findings concerning issues requiring resolution, areas of concern, and recommendations for resolution of issues.

CONTRACTOR shall provide to the STATE within 30 days after the As-Built Construction Inspection, a written AS-BUILT CONSTRUCTION INSPECTION REPORT. This Report must contain:

- 1) location-referenced color photographs of construction activities;
- 2) a map identifying locations where photographs were taken and locations where compliance checks were performed;
- 3) an executive summary which includes of issues requiring resolution, areas of concern, and recommendations for resolution of issues; and
- 4) a determination whether the transmission facility has been constructed in compliance with the siting laws, siting rules, and applicable Commission Orders.

CONTRACTOR shall provide to the STATE within 15 days after the Reclamation and Revegetation Inspection, a written RECLAMATION AND REVEGETATION INSPECTION REPORT. This Report must contain:

- 1) location-referenced color photographs of construction activities;
- 2) a map identifying locations where photographs were taken and locations where compliance checks were performed;
- 3) an executive summary of the Inspection findings concerning issues requiring resolution, areas of concern, and recommendations for resolution of issues; and
- 4) a determination whether the area affected by construction activities has been restored as near as practicable to the condition as it existed prior to the beginning of construction, including the reestablishment of desired plant species where applicable.

All Reports must be approved and signed by the following lead Project Manager responsible for this project:

Andrew Unbehaun  
Barr Engineering Co.  
234 West Century Avenue  
Bismarck, ND 58503

The written negotiated proposal provided by CONTRACTOR is attached to and incorporated into this agreement.

## **2. COMPENSATION**

### **Contractual Amount**

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \$9,898.

The Contractual Amount is firm for the duration of the Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract, unless amended, regardless of this difficulty, materials or equipment required, including

fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

CONTRACTOR agrees to invoice STATE for amounts not to exceed \$2,722 of the contract amount upon submission of all Topsoil Removal Inspection Reports, \$2,532 of the contract amount upon submission of all Construction Inspection Reports, \$2,332 of the contract amount upon submission of the As-Built Construction Inspection Report, and the remainder of expenses, not to exceed the contract amount in total, upon submission of the Reclamation and Revegetation Inspection Report.

### **Payment**

1. Payment made in accordance with this Compensation section constitutes payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR will not receive any additional compensation hereunder.
2. STATE will make every attempt to make payment under this Contract within thirty (30) calendar days after receipt of an approved invoice.
3. Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation to this contract. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.
4. For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from the payments that are or will become due and payable to CONTRACTOR under this Contract.

### **Travel**

CONTRACTOR acknowledges travel costs are included in the Contractual Amount and may not invoice STATE for travel costs.

### **Prepayment**

STATE will not make any advance payments before full performance by CONTRACTOR under this Contract.

### **Payment of Taxes by STATE**

STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

### **Taxpayer ID**

CONTRACTOR shall provide STATE with its federal employer ID number and North Dakota tax ID number upon request.

### **Purchasing Card**

STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.

### **3. TERM OF CONTRACT**

This Contract begins upon execution by both parties and ends on December 31, 2023.

#### **No Automatic Renewal**

This Contract will not automatically renew.

#### **Extension Option**

STATE reserves the right to extend the Contract up to three times for an additional period of time not to exceed 12 months per extension.

#### **Renewal Option**

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to three options to renew this Contract under the same terms and conditions for a period of twelve months each.

### **4. TIME IS OF THE ESSENCE**

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties.

### **5. TERMINATION OF CONTRACT**

#### **Termination by Mutual Agreement**

This Contract may be terminated by mutual consent of both parties, executed in writing.

#### **Termination without Cause**

STATE may terminate this Contract in whole or in part when it has determined that continuing the Contract is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.

#### **Termination for Lack of Funding or Authority**

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

#### **Termination for Cause**

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by STATE; or
- 2) If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **6. FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

#### **7. INDEMNITY**

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (STATE), from and against claims based on the vicarious liability of the STATE or its agents, but not against claims based on the STATE's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by CONTRACTOR to the STATE under this provision shall be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary. An attorney appointed to represent the STATE shall first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under North Dakota Century Code section 54-12-08. CONTRACTOR also agrees to defend, indemnify, and hold the STATE harmless for all costs, expenses, and attorneys' fees incurred if the STATE prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation continues after the termination of this agreement.

#### **8. INSURANCE**

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require from all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during

the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Contractor shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change of cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies is the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by the STATE.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the STATE. The policies must be in form and terms approved by the STATE.
- 3) The duty to defend, indemnify, and hold harmless the STATE under this agreement is not limited by the insurance required in this agreement.
- 4) The State of North Dakota and its agencies, officers, and employees (STATE) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The STATE shall have all the benefits, rights and coverages of an additional insured under these policies that may not be limited to the minimum limits of insurance required by this agreement or by the Contractual indemnity obligations of CONTRACTOR.

- 5) The insurance required in this agreement, through a policy or endorsement, must include:
  - a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the STATE;
  - b) a provision that CONTRACTOR'S insurance coverage is primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the STATE and that any insurance, self-insurance or self-retention maintained by the STATE is in excess of the CONTRACTOR'S insurance and does not contribute with it;
  - c) cross liability/severability of interest for all policies and endorsements;
  - d) The legal defense provided to the STATE under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary;
  - e) The insolvency or bankruptcy of the insured CONTRACTOR does not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- 6) CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this agreement. All endorsements must be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of Contract entitling the STATE to terminate this agreement immediately.
- 8) CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to these policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

## **9. WORKS FOR HIRE**

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE is the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall

execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

#### **10. WORK PRODUCT**

All work product, equipment or materials created or purchased under this Contract belong to STATE and must be delivered to STATE at STATE'S request upon termination of this Contract.

#### **11. NOTICE**

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

Jason Westbrook, PE	North Dakota Public Service Commission
Barr Engineering Co.	600 E Boulevard Ave., Dept. 408
234 West Century Avenue	Bismarck, ND 58505-0480
Bismarck, ND 58503	

Notice provided under this provision does not meet the notice requirements for monetary claims against the STATE found at North Dakota Century Code section 32-12.2-04.

#### **12. CONFIDENTIALITY**

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code chapter 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract.

#### **13. COMPLIANCE WITH PUBLIC RECORDS LAW**

CONTRACTOR understands that, in accordance with this Contract's Confidentiality clause, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE promptly upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

#### **14. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Contract, except to the extent specified in this Contract.

#### **15. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate without cause.

CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

#### **16. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

#### **17. MERGER AND MODIFICATION**

This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents shall control in this order of precedence:

- a. The terms of this Contract as may be amended;
- b. CONTRACTOR's written negotiated proposal dated January 8, 2021.

- c. All terms and conditions contained in any end user agreements (e.g. automated click-throughs, shrink wrap, or bonus wrap) are specifically excluded and null and void, and may not alter the terms of this Contract.

## **18. SEVERABILITY**

If any term of this Contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.

## **19. APPLICABLE LAW AND VENUE**

This Contract is governed by and construed in accordance with the laws of the STATE. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

## **20. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

## **21. ATTORNEY FEES**

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by North Dakota Century Code section 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.

## **22. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this Contract all licenses and permits required by law. CONTRACTOR'S failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

## **23. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all such records for at least three years following completion of this Contract and be able

to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice prior to conducting examination.

January 8, 2021

Adam Renfandt  
North Dakota Public Service Commission  
600 East Boulevard, Department 408  
Bismarck, ND 58505-0480

**Re: Construction inspection services for the NuStar North System Pipeline Relocation Project**

Dear Mr. Renfandt:

Barr Engineering Co. is pleased to submit our proposal to provide construction inspection services for a 10.25-inch, 2.21 mile refined petroleum product pipeline. This pipeline is known as the North System Pipeline project in case no. PU-20-381 located in Cass County, North Dakota, approximately 8 miles west of Fargo.

The North Dakota Century Code (chapter 49-22) authorizes the North Dakota Public Service Commission (PSC) to determine that location, construction, and operation of energy conversion facilities will produce minimal adverse effects on the environment and welfare of North Dakota citizens. The construction and reclamation inspections ensure that projects are in compliance with the siting laws and rules, and are applicable to the PSC findings of fact, conclusions of law, and order.

### Scope of work

Barr will complete the following construction inspection services:

#### Task 1: Topsoil removal inspection

Barr will inspect topsoil stripping along the construction right of way to verify that topsoil is properly removed and kept segregated from subsoil until replacement occurs. We will provide personnel at each construction spread at the start of topsoil and subsoil removal and segregation activities. We will also determine whether equipment operators have demonstrated proficiency concerning topsoil and subsoil removal and segregation in compliance with applicable PSC orders.

#### Task 2: Construction inspection

Barr will complete a construction inspection of the project and all construction extents at approximately 75% construction completion to confirm compliance with applicable construction and restoration conditions, siting laws and rules, and applicable PSC orders. We will observe construction activities to determine compliance with required depth of cover, observe ongoing topsoil segregation during construction, and determine compliance with all other PSC orders. Construction reports will include locations where checks were performed, color photos of construction activities, and identification of areas of concern and recommendations for resolution of issues.

### **Task 3: As-built construction inspection**

After completing topsoil replacement and grading as well as fertilization and seeding of the entire project area, Barr will conduct an as-built inspection of the project. During the reclamation and revegetation inspection, we will identify areas of concern that will need to be addressed after one full growing season. We will also determine whether the pipelines have been constructed in compliance with the siting laws and rules and applicable PSC orders.

### **Task 4: Reclamation and revegetation inspection**

Barr will complete a post-construction reclamation and revegetation inspection of the project and all construction extents to confirm compliance with relevant construction and restoration conditions, siting laws and rules, and applicable PSC orders. A follow-up inspection of the areas of concern identified in the as-built inspection report will be included. Barr will determine whether the area affected by construction activities has been restored as near as practicable to pre-construction conditions, including the reestablishment of desired plant species where applicable.

## **Assumptions**

Barr made a number of assumptions regarding quantity and duration of topsoil removal and construction inspections. These assumptions are listed below and are subject to our negotiated final proposal.

- We assume two hours of inspection for one inspector for topsoil removal with one mobilization.
- We assume one construction inspection with one mobilization. Additional inspections can be performed at the PSC's direction for a price of \$2,900 per additional inspection.
- Barr assumes a construction duration of six months based on information provided in the consolidated application and waiver request.
- Our current price is based on available information on the docket as of the date of this proposal. Additional PSC orders requiring more inspections or additional reporting will need to be discussed with Barr and may require a contract amendment for additional services.
- Barr will complete the reclamation and revegetation inspection after one full growing season, from the anniversary date of the completion of fertilization and seeding.
- Barr will complete the as-built inspection during one mobilization.
- Barr will complete the reclamation inspection during one mobilization.
- The PSC will provide Barr with the tree and shrub mitigation plan for the desired species planted for final restoration.
- Our work will be limited to what can be visually observed from the ground surface at the time of the inspections.

## Professional personnel

The Barr team is anchored by Jason Westbrook, who brings more than two decades of project leadership experience. As principal in charge, he will oversee our technical team to enable the delivery of quality work. Our project manager, Andrew Unbehaun, will manage project work and serve as lead construction inspector, while Wyatt Mack will serve as lead inspector for the as-built and reclamation inspections. The profiles below summarize our team's qualifications and experience.



**Jason Westbrook, PE** • VP, Senior Civil Engineer • MBA; BS, Civil Engineering  
**Role:** principal in charge

Jason has 23 years of experience in civil and water resources engineering. He specializes in project management, large-project planning, civil engineering design and construction, and hydrologic and hydraulic modeling for projects focused on flood risk management, earthen embankments, and pipelines.



**Andrew Unbehaun** • Mechanical Engineer • BS, Mechanical Engineering  
**Role:** project manager

Andrew has five years of industrial construction management experience. At Barr, he provides project management, piping system design, construction management and support, as-built documentation, and technical reporting on projects involving pipelines, well pad connections, natural gas processing, and refining. Andrew has also conducted quality control inspections and is involved in quality assurance documentation.



**Wyatt Mack** • Environmental Scientist • MS, Natural Resources Management  
**Role:** lead inspector

At Barr, Wyatt works on projects involving federal and state environmental review, regulatory compliance, and permitting. He helps clients address environmental and regulatory constraints and prepare applications and reports required for project permitting and implementation. Wyatt's field survey experience includes reclamation and restoration inspections, threatened and endangered species surveys, vegetation sampling, wetland delineations, and construction oversight.

## Deliverables

Barr's deliverables consist of four written reports:

1. Topsoil Removal Inspection Report,
2. Construction Inspection Report,
3. As-Built Inspection Report
4. Reclamation and Revegetation Report.

Each report shall include the following:

- Location-referenced color photographs of construction activities
- A map identifying locations where photographs were taken and locations where compliance checks were performed
- An executive summary of the inspection findings concerning issues requiring resolution, areas of concern, and recommendations for resolution of issues
- A determination of whether the transmission facility has been constructed in compliance with the siting laws, siting rules, and applicable PSC orders
- A determination of whether the area affected by construction activities has been restored as near as practicable to the pre-construction conditions, including reestablishment of desired plant species where applicable

## Schedule and budget

Barr proposes to complete the scope of work identified above for a cost of **\$9,898**. A breakdown of the costs for each task is provided below.

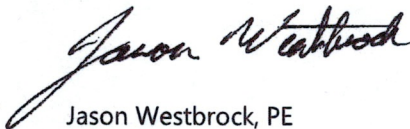
### OE2 pipeline inspection services

Topsoil removal inspection	\$2,722
Construction inspection	\$2,532
As-built inspection	\$2,332
Reclamation and revegetation inspection	\$2,312
<b>Total</b>	<b>\$9,898</b>

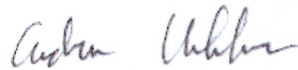
Barr is prepared to begin work upon approval from the PSC. We propose to complete the tasks on a time-and-materials basis not to exceed \$9,898 without prior approval. Barr will deliver the topsoil removal, construction, and reclamation and revegetation inspection reports within 15 days after initial inspection, and the as-built construction inspection report within 30 days after initial inspection.

We appreciate the opportunity to offer our services for this project. If you have questions or would like additional information, please call Jason at 701-255-5472 or Andrew at 701-221-5402.

Sincerely,



Jason Westbrook, PE  
Vice President



Andrew Unbehaun  
Project Manager