

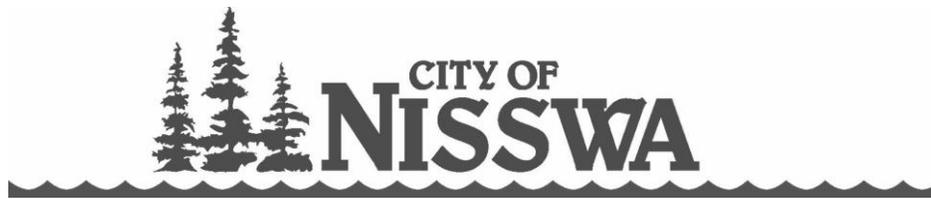
**CITY OF NISSWA
AGENDA – ORGANIZATIONAL MEETING
MONDAY, JANUARY 11, 2021
5:00 PM
NISSWA CITY HALL**

- A.** Call to Order

- B.** Recommendation from City Administrator to approve Short Form Agreement between City of Nisswa and Widseth for Engineering Services (Council Action-Motion)

- C.** Organizational Appointments
 - 1. 2021 City Appointments (Council Action-Motion)
 - 2. 2021 Council Liaison Appointments (Council Action-Motion)
 - 3. 2021 Committee Assignments (Council Action-Motion)
 - 4. 2021 Commission/Committee Meeting Schedule (Council Action-Motion)

- D.** Adjourn



January 11, 2021

To: Nisswa City Council
From: Jenny Max, City Administrator

Re: Short Form Agreement between the City of Nisswa and Widseth for Engineering Services

Action Requested: Council approval to approve the Short Form Agreement as presented.

Background Information:

The City's current agreement for engineering services with Widseth expired at the end of 2020. The proposed Short Form Agreement would provide the City with engineering services for a three year period, through December 31, 2023.

My recommendation is for City Council approval of the Short Form Agreement between the City of Nisswa and Widseth as presented. I would like to express my Thanks to Widseth for their continued service and excellent work provided to the City of Nisswa.

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of January 19, 2021 between City of Nisswa and Widseth Smith Nolting and Associates, Inc. (Widseth) for the period ending December 31, 2023.

Engineer's services under this Agreement are generally identified as follows: City Engineering Services.

Engineer's services under this Agreement are generally identified as follows: Attend regular scheduled monthly council meetings on third Tuesday, planning commission/board of adjustment meetings on the first Tuesday and public works committee meetings on the first Wednesday of each month to assist City staff and representatives during meetings. Handle miscellaneous phone calls/emails and requests for information as required to assist City staff. Engineer will also perform work requested and on specific projects when requested by the City as additional services or specific project work based on an agreement specific to that project. ("Services").

Owner and Engineer further agree as follows:

1.01 Basic Agreement and Period of Service

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in City Engineer Services, Engineer shall furnish services in addition to those set forth above ("Additional Services"). For specific projects initiated by the Owner, Engineer shall provide a separate agreement for which Engineer will provide, or cause to be provided, the services set forth in those specific project Agreements, and Owner shall pay Engineer for such Services as set for in each agreement.
- B. Engineer shall complete its Services on a month by month basis for the period of the agreement. If Owner staff determines that a monthly meeting agenda will likely not require attendance of the Engineer the Owner/Engineer may jointly agree to not have the Engineer attend all or part of the meeting.
- C. If, through no fault of Engineer, such periods of time or dates are changed for monthly meetings, the Engineer may provide notice to Owner that staff schedules and commitments may not allow attendance to the meeting. Engineer will endeavor to provide an alternate engineer/staff to attend when possible.

2.01 Payment Procedures

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 40 days of receipt. If Owner fails to make any payment due Engineer for Additional Services, and expenses within 40 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if

less) from said thirtieth day, and (2) in addition Engineer may, after giving thirty days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- B. *Payment:* As compensation for Engineer providing or furnishing Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion. WSN will not bill hours or expenses for attending the three-monthly meetings outlined on the previous page under City Engineering Services.

2.02 *Basis of Payment—Project*

- A. Engineer will **not** bill the Owner for attendance of regular monthly meetings (3 each month) or miscellaneous phone calls/emails as described as part of the Engineers' Services. If requested Engineer will invoice the Owner showing the hours spent and related cost for special monthly meetings or specific time spend addressing staff questions or items in preparation for a monthly meeting.

2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1. Typically, additional services would be associated with attending special meetings and preparation for those meetings based on requests from Owner for specific projects or requests the Owner is receiving from the general public or developers. Review of specific planning commission/board of adjustment variance requests or development proposals with written/email comments provided are billed as additional service with the Owner determining if these costs are passed on to other parties initiating the additional services.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control.

Appendix 1, Standard Hourly Rates Schedule.

EJCDC® E-520, Short Form of Agreement Between Owner and Engineer for Professional Services.
Copyright ©2015 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

- c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
- d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Additional Services, and Engineer's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and

information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
 - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants;
 - 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and

4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer for specific Additional Services, whichever is greater.
- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state of Minnesota.
- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Definitions*

- A. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner’s work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

- B. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 *Attachments:* Appendix 1, Engineer's Hourly Rate Fee Schedule for the 2021 year for which this professional services agreement is in place. Widseth will notify the City of Nisswa at the end of each year and provided an updated hourly rate fee schedule to be utilized for 2022 and 2023.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Nisswa, Minnesota

Engineer: Widseth Smith Nolting

By: _____
 Print name: John Ryan
 Title: Mayor
 Date Signed: _____

By: _____
 Print name: Dave Reese
 Title: Vice President
 Date Signed: January 6, 2021

Address for Owner’s receipt of notices:

Address for Engineer’s receipt of notices:

City of Nisswa
 P.O. Box 410
 Nisswa, MN 56468

Widseth Smith Notling
 7804 Industrial Park Road
 Baxter, MN 56425

2021 FEE SCHEDULE

CLASSIFICATION	RATE
Engineer/Architect/Surveyor/Scientist/Wetland Specialist/Geographer	
Level I	\$115 / Hour
Level II	\$140 / Hour
Level III	\$165 / Hour
Level IV	\$175 / Hour
Level V	\$190 / Hour
Technician	
Level I	\$ 76 / Hour
Level II	\$ 96 / Hour
Level III	\$115 / Hour
Level IV	\$130 / Hour
Level V	\$145 / Hour
Computer Systems Specialist	\$175 / Hour
Senior Funding Specialist	\$130 / Hour
Marketing Specialist	\$120 / Hour
Funding Specialist	\$100 / Hour
Administrative Assistant	\$ 73 / Hour
OTHER EXPENSES	
Mileage (Federal Standard Rate) <i>subject to IRS Guidelines</i>	
Meals/Lodging	Cost
Stakes & Expendable Materials	Cost
Waste Water Sampler	\$40 / Day
ISCO Flow Recorder	\$60 / Day
Photoionization Detection Meter	\$80 / Day
Explosimeter	\$50 / Day
Product Recovery Equipment	\$35 / Day
Survey-Grade GPS (Global Positioning System)	\$75 / Hour
Mapping GPS (Global Positioning System)	\$150 / Day
Soil Drilling Rig	\$35 / Hour
Groundwater Sampling Equipment	\$75 / Day
Subcontractors	Cost Plus 10%
REPRODUCTION COSTS	
Black & White Copies: 8-1/2" x 11"	\$0.10 Each
Black & White Copies: 11" x 17"	\$0.50 Each
Black & White Copies: 24" x 36"	\$3 Each
Color Copies: 8-1/2" x 11"	\$2 Each
Color Copies: 11" x 17"	\$4 Each
Color Copies: 24" x 36"	\$12 Each
Color Plots: 42" x 48"	\$22 Each

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



January 11, 2021

To: Niswawa City Council

2021 City Appointments

Acting Mayor	Don Jacobson
City Administrator	Jenny Max
City Clerk	Jonathan Stainbrook
Finance Specialist	Maggi Wentler
Police Chief	Craig Taylor
Fire Chief	Shawn Bailey
Emergency Management Director	Craig Taylor
Planning & Zoning Administrator	Brittney Cotner
Public Works Director	Tom Blomer
Spirits Manager	Brian Farrell
Pickle Factory Manager	Terry Wallin
Park & Recreation Director	Amber Moon-Peterson
City Attorney	Gammello-Pearson
Labor Attorney	Kennedy & Graven
City Engineer	Widseth
Parliamentarian	Gammello-Pearson
City Prosecutor	City of Brainerd
Official Newspaper	Pine and Lakes Echo Journal
Official Depositories	First Western Bank
	Frandsen Bank
	American National Bank
	4M Fund
Bank Account Signatories/ Electronic Funds Transfers	Mayor, Acting Mayor, City Administrator and Finance Specialist
Auditor	Schlenner Wenner & Co.
Financial Manager	PFM Financial Advisors LLC
Insurance Agency (Property)	Weizenegger Engel Insurance for LMC Ins.
Insurance Agency (Health)	A.T. Group
Regular Meeting Schedule	3 rd Tuesday of the Month at 7:00 P.M.



January 11, 2021

To: Niswawa City Council

2021 Council Liaison Appointments

John Ryan, Mayor

City Clerk/Treasurer, Liaison
Personnel Committee
Financial Management
Public Relations

Don Jacobson

Planning & Zoning, Liaison
Financial Management

Ross Krautkremer

Planning & Zoning, Liaison Pro-Tem
Fire Department, Liaison
Financial Management

Mark Utzinger

Public Works, Liaison
Police Department, Liaison
Personnel Committee
Financial Management

Open Council – TBD

Open Liaison assignments include – Parks & Recreation and Liquor Departments

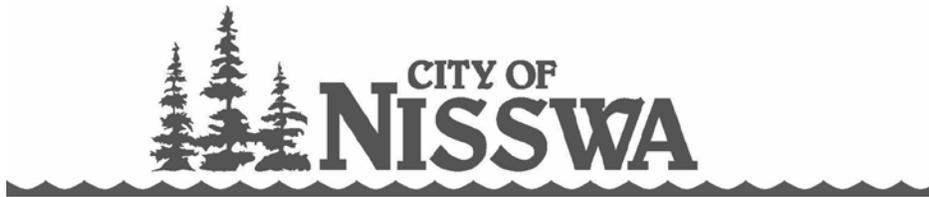


PARK & RECREATION
ADVISORY COMMITTEE

TBD, Council Liaison
Parks & Recreation Director
Ed Carlson
Tessa Cappelle
Justin Isaacson
Open Seat – 2
Two Open (Non-Voting) Students from
181 or 186 School Districts
Finance Specialist, Secretary

PLANNING COMMISSION/
BOARD OF ADJUSTMENT

Don Jacobson, Council Liaison
Ross Krautkremer, Liaison Pro Tem
Linda Gettleman
Gary Harris
Josh Young
Open Seat – 2
Planning & Zoning Administrator
Finance Specialist, Secretary



January 11, 2021

To: Nisswa City Council

2021 Commission/Committee Appointments

PUBLIC WORKS /
RED FLAG COMMITTEE

Mark Utzinger, Council Liaison
Peter Mann
Dil Stachour
Open Seat - 3
Public Works Director
City Clerk, Secretary
City Engineer

BUDGET & FINANCE
COMMITTEE

John Ryan Open Meeting
Don Jacobson All Council
Ross Krautkremer
Mark Utzinger
Open Council Seat
City Administrator
PFM Financial Advisors LLC

LIQUOR COMMITTEE

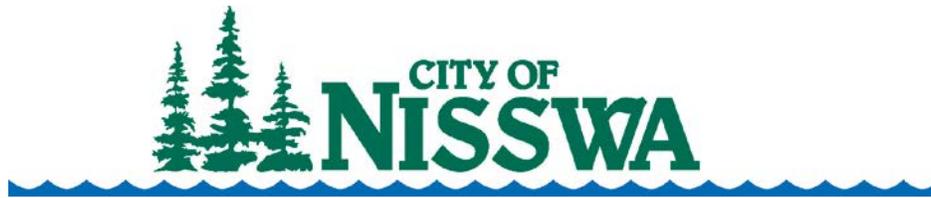
TBD, Council Liaison
City Administrator
Spirits of Nisswa Manager
Pickle Factory Manager

COMMUNICATION
COMMITTEE (website)

_____ John Ryan, Mayor
_____ City Administrator
_____ Parks & Recreation Director
_____ Finance Specialist

PERSONNEL COMMITTEE

John Ryan, Mayor
Mark Utzinger, Council
City Administrator



CITY OF NISSWA REGULARLY SCHEDULED MONTHLY MEETINGS

City Council - Meets the third Tuesday of the month at 7:00 P.M. at City Hall

Planning & Zoning Commission - Meets the first Tuesday of the month at 6:00 P.M. at City Hall

Park & Recreation Commission - Meets the first Thursday of the month at 5:00 P.M. at City Hall

Gull Lake Trail Steering Committee – Meets the second Thursday of the month at 5:00 P.M. at City Hall

Public Works Committee - Meets the first Wednesday of the month at 5:00 P.M. at City Hall

Meetings may be rescheduled due to extenuating circumstances. Meeting date changes will be posted on the bulletin board in the lobby of City Hall and on the City of Niswawa website at www.cityofniswawa.com. A QUORUM OF THE CITY COUNCIL MAY BE PRESENT AT THESE MEETINGS.