



Meeting: Village Board
Meeting Date: 7/11/11
Agenda Item: 6g

Mission Statement

Delivering quality services in a courteous, cost-effective and efficient manner.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: Burt R. McIntyre, President
Village Board of Trustees

REPORT FROM: Geoffrey S. Farr, PE, Director of Public Works

AGENDA ITEM: Review and take action on an agreement with Short Elliot Hendrickson Inc. (SEH) for professional engineering services, contingent upon Village Attorney comments.

POLICY ISSUE

Should the Village Board approve an agreement for professional engineering services?

BACKGROUND INFORMATION

Currently the Village Water Utility has been investigating water leakage from its distribution system by performing a water audit. A water audit is a multifaceted review of all aspects of a system's water loss, including validation of meter accuracy, meter sizing, data collection, detection of unauthorized consumption, and of course real leakage within the Village's distribution system and customer systems. The Village's water supply system is simply a very large facility to physically investigate with approximately 1000 valves, 6000 services and meters, and 495,000 feet of mains. To further complicate matters, private systems are connected to the Village's distribution system and increase overall system size. Due to the size and multiple system aspects, staff feels that it is worthwhile to obtain peer review services for the investigation process, which will certainly enhance the overall quality of the water audit being completed. SEH will review monthly pumpage and sales data, review large customer sales trends, evaluate meter sizing, test methods and results, review and comment on leak detection activities and other appropriate tasks.

In addition, several other tasks would be performed, including update of the Village's water system computer model, preparation of a Unidirectional Flushing Plan and an Emergency Chlorination plan. The UDF plan will reduce water usage during flushing operations, reduce staff time to flush, do a better job of flushing and further reduce rusty water complaints. This will increase water quality and customer satisfaction. Having an Emergency Chlorination Plan will, in the event positive bacti samples are ever detected, help avoid a "boil water notice" that is very inconvenient for our customers.

The estimated cost of the above described tasks is \$35,000. Given the large scope of the investigation, I feel it will be valuable to "double check our plan of attack" and further increase system reliability and efficiency efforts.

PRIOR ACTION/REVIEW

Staff asked the Village Board if it would like some peer review of Village water audit investigations currently underway.

FISCAL IMPACT:

- | | |
|------------------------------|------------|
| 1. Is There A Fiscal Impact? | <u>Yes</u> |
| 2. Is it Currently Budgeted? | <u>No</u> |
| 3. If Budgeted, Which Line? | |

RECOMMENDED ACTION

Village staff recommends that the Village Board approve the attached agreement.

If the Village Board agrees with this action, the following motion could be used, ***“Motion to approve an agreement with Short Elliot Hendrickson Inc. (SEH) for professional engineering services, contingent upon Village Attorney comments.”***

POLICY ALTERNATIVE(S)

The Village Board could take the following actions:

- Approve the agreement
- Modify the agreement
- Deny the agreement
- Table the agreement

ATTACHED INFORMATION

- I. Professional Services Agreement

COPIES FORWARDED TO:

- I. None

**SHORT ELLIOTT HENDRICKSON INC.
Agreement for Professional Services**

This Agreement is effective as of June 28, 2011, between Village of Howard, Wisconsin (Owner) and Short Elliott Hendrickson Inc. (SEH[®]).

This Agreement consists of:

Agreement for Professional Services
Exhibit A: Master Engineering Services

By entering into this Agreement, Owner agrees to utilize the professional services of SEH and SEH agrees to provide the professional services described in this Agreement.

This Signature Page, the Agreement and Exhibits along with any Supplemental Letter Agreements represent the entire understanding between Owner and SEH with respect to the services to be provided by SEH and may only be modified in writing signed by both parties.

In the event of any conflict between the documents listed above as part of this Agreement, the Agreement for Professional Services shall govern over all other documents with Exhibit B, Supplemental Letter Agreements and Exhibit A following in order of precedence.

Short Elliott Hendrickson Inc.
425 West Water Street, Suite 300
Appleton, WI 54911-6058

By: 

Patrick S. Planton, PE
Principal / Director of Water Services

Village of Howard
2456 Glendale Avenue
Green Bay, Wisconsin 54313

By: _____
Title: _____

Section I – Services of SEH

A. General

1. SEH agrees to perform professional services as hereinafter stated and as set forth in Exhibit A and/or the Supplemental Letter Agreement.
2. SEH shall serve as the Owner's professional representative and provide all engineering, architectural, environmental and planning services to which this Agreement applies, and shall give consultation and professional advice to the Owner during the performance of its services, to the extent agreed upon and stated in Exhibit A and/or the Supplemental Letter Agreement.

B. Services not Provided

1. Owner acknowledges SEH will not direct, supervise or control the work of contractors or their subcontractors, nor shall SEH have authority over or responsibility for the contractors means, methods, or procedures of construction. SEH's services do not include review or evaluation of the Owner's, contractor's or subcontractor's safety measures, or job site safety.

Section II – The Owner's Responsibility

A. General

1. Owner shall have the responsibilities set forth herein and in Exhibit B.

Section III – Period of Services

A. General

1. SEH's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the services to be provided. Unless specific periods of time or specific dates for providing services are specified in this Agreement, SEH's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
2. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of SEH, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If Owner has requested changes in the scope, extent, or character of the Project or the services to be provided by SEH, the time of performance

and compensation for SEH's services shall be adjusted equitably.

3. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

B. Agreement to Continue

Unless sooner terminated as provided in Paragraph V.I this Agreement shall remain in force:

1. For a period which may reasonably be required to complete the services authorized by the Owner, including extra services and any required extension thereto.

C. Suspension

1. If Owner fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if SEH's services are delayed through no fault of SEH, SEH may, after giving seven days written notice to Owner, suspend services under this Agreement.
2. If SEH's services are delayed or suspended in whole or in part by Owner, or if SEH's services are delayed by actions or inactions of others for more than 90 days through no fault of SEH, SEH shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by SEH in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

Section IV – Opinions of Cost

A. Opinions of Probable Construction Cost

1. If requested in Exhibit A, SEH may provide an opinion of Probable Construction Cost. SEH's opinions of Probable Construction Cost provided for herein are to be made on the basis of SEH's experience and qualifications and represent SEH's best judgement as a professional generally familiar with the industry. However, since SEH has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, SEH cannot and does not guarantee that proposals, bids or actual Construction Cost will not vary from opinions of Construction Cost prepared by SEH. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator.

2. SEH assumes no responsibility for the accuracy of opinions of Probable Construction Costs.

B. Designing to Construction Cost Limit

1. If a construction cost limit for a project is established between Owner and SEH, such construction cost limit and a statement of SEH's rights and responsibilities with respect thereto will be specifically set forth in the Supplemental Letter Agreement related to that project.

Section V – General Considerations

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by SEH under this Agreement will be the care and skill ordinarily used by members of SEH's profession practicing under similar circumstances at the same time and in the same locality. SEH makes no warranties, express or implied, under this Agreement or otherwise, in connection with SEH's services.
2. SEH shall serve as Owner's prime professional and shall perform or furnish all professional engineering, architectural, environmental, planning and related services to which this Agreement applies. SEH may employ such Consultants as SEH deems necessary to assist in the performance or furnishing of the services. SEH shall not be required to employ any Consultant unacceptable to SEH.
3. SEH shall not be required to sign any documents, no matter by whom requested, that would result in SEH having to certify, guarantee or warrant the existence of conditions whose existence SEH cannot ascertain. Owner agrees not to make resolution of any dispute with SEH or payment of any amount due to SEH in any way contingent upon SEH's signing any such certification.
4. SEH neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with the Contract Documents.
5. SEH shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except SEH's own employees) at the site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of SEH.

6. SEH will provide field surveys and topographic and utility mapping for design purposes only. Utility mapping will be based on information obtained from utility owners, and SEH makes no express or implied warranties, guarantees, representations or promises as to the accuracy of such information obtained from the Utilities or the lack of such information when not supplied, and shall not be responsible for any variance or deviation of the existing utility locations from those represented by the Utilities as part of SEH's utility mapping service. SEH shall not be responsible for any scheduling or coordination of utility work either prior to or during construction.
7. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. C-700, 2002 Edition) unless both parties mutually agree to use other General Conditions.

B. Authorized Project Representatives

1. Contemporaneous with the execution of this Agreement, SEH and Owner shall designate specific individuals to act as SEH's and Owner's representatives with respect to the services to be performed or furnished by SEH and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

C. Indemnification

1. Notwithstanding the Scope of Services to be provided by SEH pursuant to this Agreement, it is understood and agreed that SEH is not a user, handler, generator, operator, treater, storer, transporter or disposer of hazardous or toxic substances, pollutants or contaminants as any of the foregoing items are defined by Federal, State and/or local law, rules or regulations, now existing or hereafter amended, and which may be found or identified on any Project which is undertaken by SEH.

The Owner agrees to hold harmless, indemnify and defend SEH and SEH's officers, subconsultant(s), employees and agents from and against any and all claims, losses, 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 hazardous or toxic substances, pollutants or contaminants of any kind, except

that this clause shall not apply to such liability as may arise out of SEH's sole negligence in the performance of services under this Agreement arising from or relating to hazardous or toxic substances, pollutants, or contaminants specifically identified by the Owner and included within SEH's services to be provided under this Agreement.

2. To the fullest extent permitted by law, SEH shall indemnify and hold harmless Owner, Owner's officers, directors, partners and employees from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of SEH or SEH's officers, directors, partners, employees and SEH's Consultant in the performance and furnishing of SEH services under this Agreement.
3. To the fullest extent permitted by law, Owner shall indemnify and hold harmless SEH, SEH's officers, directors, partners, employees, and SEH's Consultants from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Owner or Owner's officers, directors, partners, employees and Owner's Consultants with respect to this Agreement or the Project.

D. Limitations on SEH's Liability

1. The Owner hereby agrees that SEH's total liability to the Owner for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to a Project or this Agreement from any cause or causes including, but not limited to, SEH's negligence, errors, omissions, strict liability, breach of Contract or breach of warranty shall not exceed the total available insurance proceeds paid on behalf of or to SEH by SEH's insurers in settlement or satisfaction of Owner's claims under the terms and conditions of SEH's insurance policies applicable thereto.
2. SEH's total liability to Owner and anyone claiming by, through or under Owner for any cost, loss or damages caused in part by the negligence of SEH and in part by the negligence of Owner or any other negligent entity or individual, shall not exceed the percentage share that SEH's negligence bears to the total

negligence of Owner, SEH and all other negligent entities and individuals.

E. Reuse of Documents

1. All documents, including computer software, drawings, and specifications, prepared by SEH pursuant to this Agreement are instruments of service with respect to the Project. They are not intended or represented to be suitable for reuse by the Owner or others on extensions of the Project or on any other project. Any reuse without written consent or adaptation by SEH for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to SEH; and the Owner shall defend, indemnify and hold harmless SEH from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from reuse of SEH documents without written consent.
2. The Owner and SEH agree that any CADD files prepared by either party shall conform to the specifications of the systems and technology currently being utilized by SEH. The electronic files submitted by SEH to the Owner are submitted for an acceptance period of thirty (30) days. The Owner agrees it will perform any acceptance tests or procedures within 30 days. Any defects the Owner discovers during this period will be reported to SEH and will be corrected as part of the SEH scope of services. Correction of defects detected and reported after the acceptance period will be compensated for as Additional Services.

Under no circumstances shall transfer of the drawings and other instruments of service on electronic media for use by the Owner be deemed a sale by SEH and SEH makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose.

3. Copies of Documents that may be relied upon by Owner are limited to the printed copies (also known as hard copies) that are signed or sealed by SEH. Files in electronic media format of text, data, graphics or of other types that are furnished by SEH to Owner are only for convenience of Owner. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
4. When transferring documents in electronic media format, SEH makes no representations as to long term compatibility, usability or readability of documents resulting from the use of software application packages, operating system or

computer hardware differing from those used by SEH at the beginning of the Project.

5. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
6. Any verification, reuse, or adaptation of the Documents for extensions of the Project or for any other project will entitle SEH to further compensation at rates to be agreed upon by Owner and SEH.

F. Dispute Resolution

1. In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Owner and SEH agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.
2. The Owner and SEH further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

G. Assignment

1. Neither party to this Agreement shall transfer, sublet, assign any rights under or interests in this Agreement without the prior written consent of the other party.

H. Insurance

1. SEH shall secure and maintain such insurance as SEH deems necessary or appropriate to protect SEH from claims under Workmen's Compensation, accidents or claims for bodily injury, death or property damage which may arise from the performance of SEH services under this Agreement.

2. Owner shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause SEH and SEH's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

3. All policies of property insurance shall contain provisions to the effect that SEH's and SEH's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

4. At any time, Owner may request that SEH, at Owner's sole expense, provide additional insurance coverage, increased limits or revised deductibles that are more protective than those being provided. If so requested by Owner, with the concurrence of SEH, and if commercially available, SEH shall obtain and shall require SEH's Consultants to obtain such additional insurance coverage, different limits or revised deductibles for such periods of time as requested by Owner.

I. Termination

1. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. In the event of termination SEH shall be compensated for services performed to termination date, including charges for expenses and equipment costs then due and all termination expenses.

J. Controlling Law

1. This Agreement is to be governed by the law of the state in which the Project is located.

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EXHIBIT A

**MASTER ENGINEERING SERVICES
VILLAGE OF HOWARD, WISCONSIN**

I. SEH'S RESPONSIBILITIES

A. Project Description

OWNER wishes to retain SEH to provide engineering services related to Village of Howard utility and infrastructure projects.

SEH will provide the required engineering services to OWNER. OWNER staff will be able to authorize general routine engineering services for utility and infrastructure projects without Village Board approval, or by approval of individual Task Orders for each project, within criteria established by the Village Board.

B. Scope of Services

This Agreement covers two types of engineering services: General Services and Task Order Services.

1. **General Services** – General Services are services of an immediate or minor nature that will be verbally requested and authorized by OWNER. Examples of general services that may be requested by the OWNER include:

- a. Attending non-project related Board meetings or other meetings as requested.
- b. Attending meetings with staff or OWNER, as requested.
- c. Answering routine engineering-related questions.

When possible, SEH will provide a fee estimate at the time the services are requested.

2. **Task Order Projects**

- a. SEH will prepare a written scope of SERVICES and fee estimate and receive approval prior to starting work.

II. OWNER'S RESPONSIBILITIES

OWNER has the following responsibilities:

A. Representative

Designate a representative for the project who shall have the authority to transmit instructions, receive information, interpret and define OWNER'S policies and make decisions with respect to the SERVICES.

B. Decisions

Provide all criteria and full information as to OWNER requirements for the project, obtain (with SEH's assistance, if applicable) necessary approvals and permits, attend project related meetings, provide interim reviews on an agreed upon schedule, make decisions on project alternatives and generally participate in the project to the extent necessary to allow SEH to perform the SERVICES.

C. Information/Reports

Furnish SEH with project-related information and reports, all of which SEH may rely upon without independent verification in performing the Services:

D. Other Responsibilities

- 1. Contract and pay directly analytical laboratory testing of water samples collected.
- 2. Pay directly any required permits and/or fees.
- 3. Responsibilities as identified in individual Task Orders.

III. COMPENSATION

OWNER shall pay SEH for the Services in accordance with the following:

A. Hourly Rate plus Reimbursables

Compensation for General Services and applicable Task Orders will be on an hourly rate basis plus reimbursables. Labor will be billed based on the actual salary of individuals providing the services, plus a total markup of 200 percent which includes general and administrative costs, overhead, and a profit allowance.

B. General Services Task Order

A task order will be established to accrue charges for General Services such as minor assignments that cannot be defined or clarified sufficiently to establish a fee estimate. Charges to this task order will be verbally authorized by OWNER representative.

C. Fixed Fee Task Orders

SEH will invoice OWNER monthly for fixed fee Task Orders on the basis of percentage of project completion.

D. Task Order Fee Estimates

For each specific project Task Order, SEH will prepare a fee estimate and Task Order Authorization Form. OWNER will review the fee estimate and authorize work on the task order by signing and returning the Task Order Authorization Form. Faxed and scanned emailed copies of the form will be adequate for OWNER authorization. A sample Task Order Authorization form is attached.

E. Standard Charges

In addition to regular hourly billing rates, OWNER will also pay for:

1. Overtime at straight time rates for exempt employees to the extent an employee works more than forty (40) hours per week for OWNER.
 2. Overtime at straight time for non-professional employees. Overtime premium equal to one-half (2) of their straight time hourly wage is part of overhead.
 3. Cost of a record set of microfilm to be retained by SEH's files in cases where the OWNER wants the original drawings and for the cost of postage and insurance for mailing such original drawings.
 4. Expert witness testimony is outside the Scope of this Agreement.
 5. Use of computer services in design, project control reporting, cost control reporting, and other services are included in an hourly technology charge of \$3.00 per hour for each labor hour expended.
 6. All reproductions on behalf of the assignment at our standard rates.
 7. All field office expenses.
 8. Cost for the use of field equipment, safety equipment, and field sampling equipment in accordance with our standard Equipment Fee Schedule.
 9. Telex, TWX, postage, and courier service.
 10. Travel and subsistence of SEH's personnel incurred on behalf of the project. (Current rate for the use of personal cars is \$0.51 per mile and is subject to revision in accordance with IRS allowance.)
 11. Cost plus 10 percent of outside consulting and/or professional services - such as, analytical, drilling, legal, accounting, engineering, and other specialized services. SEH will obtain OWNER's approval before authorizing such services.
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Exhibit B
to Agreement for Professional Services
Between Village of Howard, Wisconsin (Owner)
and
Short Elliott Hendrickson Inc. (SEH®)
Dated June 28, 2011

Owner's Responsibilities

A. General

The Owner's responsibilities related to the services to be provided by SEH are generally as listed in this Exhibit B. Modifications to these responsibilities shall be made through Supplemental Letter Agreements. The Owner shall:

1. Provide full information as to its requirements for the services to be provided by SEH and SEH shall be entitled to rely on the accuracy and completeness thereof.
2. Assist SEH by furnishing all available information pertinent to the services to be provided by SEH. All information available in electronic formats shall be provided in such formats suitable for use with current SEH systems and technology.
3. Guarantee access to and make all provisions for SEH to enter upon public and private lands as required for SEH to perform its services under this Agreement.
4. Provide such legal, accounting, financial and insurance counseling and other special services as may be required for the Project.
5. Give prompt written notice to SEH whenever the Owner observes or otherwise becomes aware of any changes in the Project or any defect in the services being provided by SEH or makes or wishes to make changes in the Project.
6. Furnish television inspection of sewers, land surveys, soil borings, laboratory tests, material tests, soil tests and other special items pertinent to the Project and the services provided by SEH.
7. Be responsible for the accuracy of all data consisting of, but not limited to, computations, as-built drawings, electronic data bases and maps furnished by the Owner. The costs associated with correcting, creating or recreating any data that is provided by the Owner that contains inaccurate or unusable information or is found to omit information necessary for SEH to perform its services are the responsibility of the Owner.
8. Promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals and other documents presented by SEH and render the necessary decisions and instructions so SEH may continue in a timely manner to provide the services necessary for completion of the Project.
9. Pay all costs incidental to advertising for bids and acquiring regulatory or review agencies' permits and/or approvals.
10. Furnish or instruct SEH to provide, at the Owner's expense, additional services that become necessary to complete the work called for in this Agreement or to complete work added to the Project by the Owner or others and not related to the agreed responsibilities of SEH.
11. Furnish to SEH, prior to any performance of services by SEH, a copy of any design and construction standards and comprehensive plans which the Owner shall require SEH to follow or incorporate into its work.
12. Act promptly to review and approve or reject all proposed Change Orders and/or Supplemental Agreements.
13. Employ and pay the costs for an independent cost estimator as provided in Section IV.A. of the Agreement.
14. Bear all costs incidental to compliance with the requirements of this Exhibit B.
15. Notify SEH (prior to commencement of construction of a project) of any notice or certification that SEH will be requested to provide to Owner or third parties in connection with the project. Owner and SEH shall reach agreement on the terms of any such requested notice or certification, and Owner shall authorize such Additional Services as are necessary to enable SEH to provide the notices or certifications requested.
16. Require all Private Utilities with facilities in the Owner's Right of Way to:
 - (a) Locate and mark said utilities upon request.
 - (b) Relocate and/or protect said utilities as determined necessary to accommodate the proposed Work.

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- (c) Submit a schedule of the necessary relocation/protection activities to the Owner for review.

B. Assumption of Risks

The Owner and SEH agree that the risks of the Project and the costs related to those risks remain with the Owner or with others and that SEH does not assume any risks that are not specifically called out in the Agreement.
