

# East Range Water Board

## Regular Meeting

Wednesday, September 15, 2021

4:30 p.m.

City/Town Government Center

### ***Board Members:***

Clark Niemi, TOW    Jon Skelton, TOW

Doug Gregor, COA    David Skelton, COA    Jim Gentilini, COA

### ***Other Team Members:***

Stefanie Dickinson, COA                      Jodi Knaus, TOW                      Wayne Thuringer, COA

Todd Koneczny, BR                      Miles Jensen, SEH                      Kevin Young, SEH

Mia Thibodeau, Fryberger Law                      Mike Larson, SEH                      Dennis Schubbe, NTS

1. Call to Order/Roll Call
2. Approval of Minutes of Last Meeting
3. Treasurer Report
  - a. Payments
  - b. Receipts
  - c. Balances (including the “Biwabik Fund”)
  - d. Invoices to approve
    - i. Building Rescue – Invoice #170: \$2,524.00
    - ii. Others
4. Community Comments
5. Legal Matters:
  - a. Fryberger Law Frim Contracts:
    - i. Engagement Letter
    - ii. Conflict of Interest Waiver
      1. Recommend to have City of Aurora’s Council and Town of White Board approve the Conflict of Interest Waiver
  - b. Scenic Acres Land and Facility Ownership Report from Paul Kilgore
  - c. SLC Lease for Intake Site Status
  - d. By-law Development Status
  - e. Status of Acquisition of Parcel 100-0047-00090 owned by the State of Minnesota
6. Organizational Items:
  - a. St. Louis County Variance Granted for Intake Site Set-back
  - b. Pinville to Scenic Acres Pipeline Corridor Property Owner Contracts – Mike Larson, SEH
7. SEH status
  - a. PAID: Task #1 – Amendment No. 2 - \$11,236.12
  - b. PAID: Task #1 - \$16,184.00

- c. Task #2
  - d. Task #3 – Status
- 8. Funding Initiatives – Status
  - a. U.S. Army Corps of Engineers - Regulatory File No. MVP-2021-01803-ARC
- 9. Tech Committee Report:
  - a. NTS Soil Boring Status
- 10. St. James Pit status update:
  - a. LCCMR
  - b. Zebra mussels
  - c. Bond request for 2022
- 11. Insurance status –LMC update
- 12. NTS Contract - Status
- 13. Scenic Acres Discussion
- 14. Other business
- 15. Next meeting date
- 16. Adjournment

**Invoice**

Building Rescue LLC

4031 West 4th Street  
Duluth, MN 55807

Phone # 218-348-3782

E-mail toddk@building-rescue.com

Date	Invoice #
9/6/2021	170

**Bill To**East Range Water Board  
C/O City of Aurora  
PO Box 160  
16 W. 2nd Avenue North  
Aurora, MN 55705**Customer Information**

Project/Job Number

East Range Water Project

Item	Description	Hours	Rate	Amount
	East Range Water Project Invoice for services from July 24th 2021 through August 31st 2021 Invoice-01			
Service	7/26/21- DNR Liljegren meeting and follow up. Emails to gregor on easement and thorpe on insurance	2	150.00	300.00
Service	7/27/21-Scenic Acres meeting	1.5	150.00	225.00
Service	7/28/21-phone call from Doug Gregor, Exec committee meeting, email to SLC Marinucci on intake site share with Biwabik	2.33	150.00	349.50
Service	7/29/21-Markup drawing to confirm 7/28/21 meeting events.	1	150.00	150.00
Service	7/30/21-Review and comment on the updated SEH intake site development plan for biwabik PUC letter	0.25	150.00	37.50
Service	8/2/21-phone call with Doug Gregor, marked up plans and commented on Biwabik PUC letter.	0.5	150.00	75.00
Service	8/6/21-Phone Call with Doug Gregor 1 hour, review tech meeting minutes. send out agenda. Received SEH agenda and updated plans. Briefly reviewed attachments	1.75	150.00	262.50
Service	8/9/21-reviewed updated cost estimate. Added comments sent to Clark and Jim G. Reviewed scenic acres pipe line at highway 135 and land explorer. Sent off email to Hinzman for clarification on easement requirements.	1.5	150.00	225.00
Service	8/10/21-Tech meeting	3.5	150.00	525.00
Service	8/11/21-Sent PFA info to Jodi.	0.5	150.00	75.00
Service	8/18-21- Executive Board Meeting	2	150.00	300.00

THANK YOU FOR THE OPPORTUNITY TO SERVICE YOUR  
BUSINESS  
TODD KONECZNY**Total** \$2,524.50

RECEIVED  
AUG 25 2021  
CITY OF AURORA

FRYBERGER  
— LAW FIRM —

MIA E. THIBODEAU  
Duluth Office  
[mthibodeau@fryberger.com](mailto:mthibodeau@fryberger.com)  
218.725.6873

August 20, 2021

East Range Water Board  
16 West Second Avenue North  
Aurora, MN 55705

**Re: Engagement Letter**

Thank you for contacting our firm regarding legal services. This letter sets forth the terms of our representation.

I will be the attorney primarily responsible for this matter; however, other members of this firm may also work on certain aspects of the case. The scope of our representation will be to represent you with respect to: 1) certain real estate matters, including analyzing the ownership of the existing water system within Scenic Acres, review and analysis regarding easement acquisition for the joint water system, and draft, review and revise easements and leases for the joint water system at the request of the Board; 2) draft and review of bylaws; and 3) draft and review of water ordinances.

**Fees:** You will be charged for legal services at a rate of \$240 per hour for my time, \$325 per hour for Paul Kilgore's time, and \$120-125 per hour for time spent by a legal assistant performing work under the direction of any attorney. We reserve the right at our discretion to adjust our fees to provide fair compensation to us for the results of our work. Because all legal problems are unique, we cannot accurately estimate the total fees which may be required to complete this legal task.

**Expenses:** It is agreed that, in addition to attorney fees, you will reimburse the firm for all costs advanced and expenses incurred that are directly related to the performance of the legal services undertaken. These include filing fees, court costs, the costs of travel, postage, computer research, witness fees, document delivery charges and other out-of-pocket expenses, if any.

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FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.

CLOQUET  
813 Cloquet Ave.  
Cloquet, MN 55720  
p: (218) 879-3363

DULUTH  
302 West Superior St,  
Ste 700  
Duluth, MN 55802  
p: (218) 722-0861

SUPERIOR  
1409 Hammond Ave., Suite 330  
Superior, WI 54880  
p: (715)392-7405

ST. PAUL  
c/o 302 West Superior St,  
Ste 700  
Duluth, MN 55802  
p: (651)221-1044

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August 20, 2021  
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Billing Procedure: The firm will submit to you periodic statements for fees incurred and expenses advanced. Any amount not paid within thirty (30) days after statement presentation will incur finance charges at the rate of six (6) percent per annum from the billing date. We reserve the right to cease legal work and withdraw as your attorneys if retainer payments are not received within ten days of a request for a retainer, if you fail to cooperate with us in the handling of your case, if our research leads us to believe that your claims or defenses are doubtful in terms of legal liability, or for any reason authorized by the Code of Professional Conduct.

If you accept these terms, please sign this letter below and return it in the enclosed envelope. If you have any question regarding any of these matters, you can call me at any time. I look forward to the opportunity to work with you.

Very truly yours,

FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.

By   
Mia E. Thibodeau

I ACCEPT THE OFFER OF LEGAL SERVICES AND AGREE TO COMPLY WITH THE TERMS OF THIS CONTRACT.

EAST RANGE WATER BOARD

\_\_\_\_\_  
By: Doug Gregor, Chair

ATTEST:

\_\_\_\_\_  
By: Jon Skelton, Vice-Chair

RECEIVED  
AUG 25 2021  
CITY OF AURORA

FRYBERGER  
— LAW FIRM —

MIA E. THIBODEAU  
Duluth Office  
[mthibodeau@fryberger.com](mailto:mthibodeau@fryberger.com)  
218.725.6873

August 20, 2021

East Range Water Board  
16 West Second Avenue North  
Aurora, MN 55705

City of Aurora  
16 West Second Avenue North  
Aurora, MN 55705

**Re: Conflict of Interest Waiver Request**

Dear Sirs:

This letter concerns work by Fryberger, Buchanan, Smith & Frederick, P.A. ("Firm") on behalf of the East Range Water Board (the "Board") with respect to certain real estate matters, drafting of bylaws, and drafting of water ordinances (the "Transactions"). The City of Aurora ("City") and the Town of White recently established the Board pursuant to that Joint Powers Agreement dated July 22, 2021.

The Board has requested that the Firm represent the Board in regards to the Transactions. The Firm also represents the City of Aurora in other municipal and real estate matters. The Firm's work regarding the Transactions will be on behalf of the Board.

A conflict of interest arises when the Firm represents a client and that representation will be directly adverse to another client. While the Board's interests generally align with the City, the Board's actions could be adverse to the interests of the City, and vice versa. Pursuant to the Rules of Professional Conduct governing lawyers, a lawyer may not represent a client if the representation of the client will be directly adverse to another client, unless: (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and (2) each client consents after consultation.

We believe our representation of the Board in documenting the Transactions will not adversely affect the Firm's relationship with the City. Therefore, if you are agreeable to having the Firm carry out the work on behalf of the Board regarding the Transactions, please indicate your

FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.

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813 Cloquet Ave.  
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August 20, 2021

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consent by signing this letter, as provided below, and deliver (email delivery is best) an executed copy to me.

You should each understand that if a conflict arises between the Board and City that cannot be resolved, the Firm cannot participate in a lawsuit or other action by either party and may be required to withdraw. Such a withdrawal could impose delays and additional costs on all parties.

As required by the Rules, I am seeking your written consent to the Firm's representation as outlined above. If you do consent, please indicate your consent by signing in the space provided below and returning the letter to me at your earliest convenience. The requested consent is for this real estate transaction only.

This letter/agreement may be executed in one or more counterparts and scanned, faxed and/or emailed signatures are acceptable.

If you have any questions, please do not hesitate to give me a call.

Sincerely,



Mia E. Thibodeau

August 20, 2021

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SIGNATURE PAGE TO CONFLICT LETTER

AGREED AND ACCEPTED BY:

EAST RANGE WATER BOARD

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By: Doug Gregor, Chair

ATTEST:

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By: Jon Skelton, Vice-Chair



FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.

August 20, 2021

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SIGNATURE PAGE TO CONFLICT LETTER

AGREED AND ACCEPTED BY:

CITY OF AURORA, MINNESOTA

---

By: Doug Gregor

Its: Mayor



**STATUS REPORT**  
**EAST RANGE WATER PROJECT**  
 TASK 2 – Final Design  
 EAST RANGE WATER BOARD  
 CITY OF AURORA & TOWN OF WHITE  
 SEH Project No. 159723

DATE: Friday, September 10, 2021

**DISCUSSION ITEMS**

The following provides a brief discussion of the project status to date. The items in **BOLD** are new since the 8/16/2021 status report.

- 1) Plans
  - a) WTP: Work on the WTP plans is continuing toward the 60% mark.
  - b) Raw Water Intake Building:
    - i) 6/25/2021 Feasibility Study of the raw water intake site east of the boat landing delivered.
    - ii) 6/30/2021 Site location east of the boat landing was selected at ERJW Committee meeting.
    - iii) Work on the Raw Water Intake Station is not, yet at 30%.
    - iv) Setback Variance:
      - (1) Selected site requires a 75-foot variance from the County to make it the lowest cost option.
      - (2) 7/19/2021 A draft variance request was issued to the County Planning and Community Development Department for review.
      - (3) **9/9/2021 Public Hearing the SLC Board of Adjustments approved the requested variance.**
- 2) Task 2 – Final Design
  - a) **Task 2 scope and fees approved by ERWB at 8/18/2021 meeting.**
  - b) **SEH proceeding with design efforts toward 60% plans.**
  - c) **Expected delivery of 60% plans will be on, or about, 9/23/2021.**
  - d) Includes preparation and completion of 100%, bid-ready plans and specifications of the:
    - i) Raw Water Intake,
    - ii) Raw Water Main,
    - iii) Finished Water main,
    - iv) WTP, and
    - v) Environmental Review
  - e) **SEH awaiting signed Task 2 agreement.**
- 3) **Appropriations Permit**
  - a) **SEH & DNR are currently working together to assemble the draft the permit application.**
  - b) **Additional Water Balance Modeling: It is uncertain if the DNR will request additional water balance modeling of Lake Mine to determine impact from Aurora/Town of White.**
  - c) **SEH staff is projecting the likelihood of being able to submit the draft application by the end of September.**
- 4) Environmental Review:

- a) **SEH staff has the draft environmental review document prepared and awaiting internal QC.**
- b) **Expect submittal to the various regulatory agencies by the end of September 2021.**
- 5) Building Official Review:
  - a) 30% review is complete.
  - b) Awaiting submittal of 60% documents at the end of September.
- 6) MDH Communications and Review:
  - a) No change from 7/20/2021 report.
  - b) SEH continues to discuss project regularly with Chad Kolstad at MDH.
  - c) 7/19/2021 most recent communications.
  - d) Chad is comfortable with current project status and schedule.
- 7) Project Schedule
  - a) Task 1:
    - i) Task 1 is complete with the exception of the Raw Water Intake.
    - ii) 30% plan work will assume 75-foot variance approved for the Raw Water Intake Station.
    - iii) Expect completion of the 30% Raw Water Intake on, or about 8/27/2021.
  - b) Task 2 - Final Design Phase mid-July 2021 – November 2021
    - i) 60% Design Level (all but raw water intake) August 2021 - September 2021
    - ii) 90% Design Level September 2021 – October 2021
    - iii) 100% Final Design Level October 2021 – November 2021
    - iv) Expect raw water intake design to catch up at end.
  - c) Task 3 - Permitting and Regulatory Approvals March 2020 – November 2021
  - d) Task 4 - Bidding & Project Award Services December 2021 – February 2022
- 8) Scenic Acres:
  - a) Consider next meeting with the Scenic Acres group after the 60% plans are completed at the end of September. SEH suggests early October.
  - b) Still working through ROW availability for water main.
  - c) Service agreement and connection fees between East Range Water Board and Scenic Acres yet to be determined.
- 9) Pineville and Scenic Acres Water Pressure and Chlorine Residual
  - a) PRV station required to lower pressures to 80 psi or less.
  - b) Remote chlorine feed for residual needed.
  - c) Proposed PRV somewhere on north end of Pineville.
  - d) Pursuing chlorine booster feed in a separate water line from the WTP High Service Pump room, downstream of the finished water flow meter that connects with the water line running to Pineville.
  - e) PRV to be placed in a manhole at north end of Pineville.
- 10) Tech Meetings:
  - a) 9/7/2021 meeting:
    - i) Civil focus.
    - ii) Reviewed WTP and Raw Water Intake site layouts to date,
    - iii) Discussed connecting the water main through Pineville at the north and south ends of the development and continuing to use the existing pipelines through Pineville for local services.

b) Next Tech Meeting is proposed for 9/28/2021

END.

### Agreement for Professional Services

This Agreement is effective as of September 7, 2021, between the East Range Water Board (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **East Range Water Project, Aurora and Town of White, Task 2 - Design Services.**

**Client's Authorized Representative:** Mr. Doug Gregor, Mayor

**Address:** 16 West 2nd Avenue North  
Aurora, MN 55705

**Telephone:** 218.229.2614 **email:** gregor@ci.aurora.mn.us

**Project Manager:** Miles B. Jensen, PE

**Address:** 615 9th Street North  
Virginia, MN 55792

**Telephone:** 651.490.2020 **email:** mjensen@sehinc.com

### PROJECT BACKGROUND:

#### Original Proposal and Original Scope of Services:

Consultant's original scope of services is generally defined as Tasks 1, 2, 3, 4 and Alternates 1B and 1C, as defined in the Consultant's letter proposal dated November 12, 2020, here forth referred to as the Original Proposal. Consultant's original scope of services in the Original Proposal was prepared in reference to a system configuration for the East Range Water Project that included siting of the raw water intake and pump station (RWPS) at Site 4A, construction of a water treatment plant (WTP) at the Pineville site, and extension of a finished water line through Pineville and out to Scenic Acres along Scenic Acres Road.

#### Current Scope of Services (Task 1):

On January 19, 2021, Client retained the services of the Consultant to complete Task 1 of the Original Proposal and then subsequently modified the system configuration of the East Range Water Project by choosing to relocate the site of the WTP to the Client's existing water tower site. With this decision, the system configuration for the East Range Water Project now includes siting of the RWPS at Site 4A, construction of WTP at the Aurora water tower site, and extension of a finished water line through Pineville and out to Scenic Acres along Scenic Acres Road. This configuration effectively increased the length of raw water main between Site 4A and the Aurora water tower site by approximately 1 mile over the Site 4A to Pineville WTP configuration.

#### Amendment No. 1 to Task 1 Scope of Services:

##### Raw Water Intake Site Evaluation:

On Wednesday, April 21, 2021, Client retained the services of the Consultant to complete an evaluation of a raw water intake site located east of the boat landing and immediately west of the Biwabik intake site, on St. Louis County parcel ID No. 570-0021-001000. This work was performed under Task 1, Amendment No. 1 and on June 25, 2021, the Consultant delivered the evaluation report indicating the site to be the lower cost option over Site 4A as long as St. Louis County (County) agrees to a 75-foot setback variance in lieu of the required 150-foot setback. The Client directed the Consultant to assist the Client in pursuit of the variance and proceed with layout of this site for the proposed raw water intake facilities. Consultant has submitted the application in advance of the August 6, 2021 deadline and is now awaiting approval by the County at their September 9, 2021 hearing.

Now referred to as Site 4F, Client's use of Site 4F for construction of the RWPS, has been approved by the State Legislature. The Client and the County are currently in the process of establishing a long-term lease agreement. In the interim, the County has agreed to allow the Client access to the site for survey and soil boring activities.

Survey:

Under the previous Task 1A, Consultant completed survey of the original

- Pineville WTP site,
- Raw water main route between Site 4A and the Pineville WTP site, and the
- Finished watermain route from the north end of Pineville out to the proposed Scenic Acres connection.

The Consultant completed the following additional survey work under this Amendment No. 1:

- Aurora Water Tower WTP site, and the
- Raw water main route between Site 4F and the Aurora WTP site

**Amendment No. 2 to Task 1 Scope of Services:**

Wetland Delineation:

For the Consultant to continue with the work of Task 1, Consultant completed a delineation of the wetlands that will be temporarily impacted by construction of the proposed water system improvements.

**Task 1 Scope of Services Completed by SEH to Date:**

1. Meetings and Communications
  - a. Attend the Technical Team, Water Committee and Public Meetings (on-going).
  - b. Attend meeting with Water Committee members, Owner's Representative and staff members from the Minnesota DNR and St Louis County on the placement of the intake structures on Site 4A (and 4F) and establishing a process for access and long-term lease of the selected property.
2. Re-Visited Select Task 1A Elements:
  - a. Confirmed current and future water demand projections for the proposed East Range Water Treatment Plant inclusive of the City of Aurora, Town of White, City of Biwabik, and City of Hoyt Lakes.
  - b. Applied the updated water demand values to the water treatment capacity.
  - c. Re-visited the process basin sizing given the updated capacities. This effort will include the application of MDH required minimum detention times and maximum flow rate parameters for each proposed process.
  - d. Water treatment plant process design satisfying MDH N+1 requirement.
  - e. Water treatment plant layout and occupiable space features as discussed at the 10/13/2020 progress meeting.
3. Withdrawal Permitting
  - a. July 19, 2021, SEH met with DNR to discuss process for preparing and submitting an application for a Water Appropriations permit.
  - b. Assembly of the necessary documents is proceeding.
4. Prepared background drawings of water treatment plant
5. Completed preparation of the 30% level plan sheets of:
  - a. Civil,
  - b. Architectural – including 3D rendering of the building exteriors,
  - c. Process
    - i. including 3D renderings of the process design
    - ii. Water System Modeling:
      1. Continue to review the hydraulic profile requirements and establish the appropriate hydraulic grade lines to serve Pineville, Scenic Acres and Aurora/Town of White.
      2. Complete a water quality analysis of the proposed Pineville, Scenic Acres and Aurora/Town of White system to determine if a re-chlorination station will be needed in the Scenic Acres portion of the system.
      3. Determined that a pressure reducing and chlorine booster station will be needed for serving the north end of Pineville to Scenic Acres.
  - d. Structural,
  - e. Mechanical, and
  - f. Electrical/SCADA
6. Continued with SEH 30% QC review.

7. Prepared a 30% level opinion of probable cost (OPC).
8. Met with Building Official to review building egress, ADA and fire sprinkling requirements.
9. Initiated Environmental Review of the project as required by the Minnesota Public Facilities Authority – originally considered to be a Task 2 effort that was started early.
10. Met with the MDH to review the proposed project.

**Remaining Scope of Task 1 Services to be Completed:**

1. Withdrawal Permitting: Prepare required permit application document.
2. Prepare 30% level plan sheets of Raw Water Intake:
  - a. Civil,
  - b. Architectural – including 3D rendering of the building exteriors,
  - c. Process
  - d. Structural,
  - e. Mechanical, and
  - f. Electrical/SCADA

**PROPOSED PROJECT:**

For this Agreement, the Consultant is proposing to take the project from its current, basic 30% design state through final design and bidding under Task 2 - Final Design. Permitting and regulatory review/approval will be completed under a separate Task 3 - Permitting and Regulatory Approvals. The services of Task 2 - Final Design and Task 3 - Permitting and Regulatory Approvals are defined in the Consultant's Original Proposal, dated November 12, 2020. Currently, the Consultant is requesting the Client approve SEH for Task 2.

Once these Tasks all near completion, the Consultant will make a request to the Client – under a separate Agreement, to execute the Bidding phase of this project, defined as Task 4 under the Consultant's Original Proposal, dated November 12, 2020.as discussed above.

**Basic Services:**

The Basic Services to be provided by the Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 07.14.16), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

For this project, the Consultant proposes to execute the following:

**Task 2: Final Design Phase**

**1. 60% Design Level**

- a. Attend the Technical Team, Water Committee and Public Meetings as discussed above.
- b. Prepare 60% level plan sheets from all disciplines.
- c. Regulatory, Lease Agreement, and ROW/Easement Assistance:
  - i. Continue Water Appropriations permitting discussions & application with MNDNR.
  - ii. Continue to work with St. Louis County on the Raw Water Intake Site 4F variance approval.
  - iii. Assist the Client's attorney with preparation of exhibits or other documents as may be necessary to complete the Raw Water Intake Site 4F lease agreement with the County.
  - iv. Assist Client and Client's attorney with preparation of exhibits or other documents as may be necessary for easements for construction of the finished water main from Pineville to Scenic Acres.
- d. Update 3D Revit building model.
- e. Continue to update design development document.
- f. Continue with Environmental Review of the project as required by the Minnesota Public Facilities Authority.
- g. Prepare outline specifications.
- h. Prepare 60% OPC.
- i. Present 60% construction documents, design development document, outline specifications, and OPC to Aurora/TOW for review.
- j. Hold project sequencing discussions and operations review with Aurora staff.
- k. Present 60% construction documents to MDH, Building Official and Fire Marshal for review.

**Deliverables:** Fifteen (15) copies of the 60% level plan sheets (11"x17"), design development document, outline specifications, and OPC.

**2. 90% Design Level**

- a. Attend the Technical Team, Water Committee and Public Meetings as discussed above.
- b. Prepare 90% level plan sheets from all disciplines.
- c. Continue permitting discussions with MNDNR as needed.
- d. Update 3D Revit building model.
- e. Update design development document from the 60% review meeting.
- f. Prepare formal project specifications.
- g. Prepare sequencing specification and plan notes/details.
- h. Discuss specification requirements for the Contractor's plant Demonstration Period.
- i. Complete Contractor Constructability Review.
- j. Prepare formal project bidding documents.
- k. Discuss tax-exempt purchasing or sales tax rebate receipt collection preferences to be inserted into the Contract Documents.
- l. Prepare draft Advertisement for Bids.
- m. Update OPC.
- n. Present 90% construction documents, design development document, outline specifications, and OPC to Aurora/TOW for review.
- o. Present 90% construction documents to MDH for review.

**Deliverables:** Fifteen (15) copies of the 90% level plan sheets (11"x17"), design development document, formal specifications, and OPC.

**100% Final Design Level**

- a. Complete 100% level plan sheets by all disciplines.
- b. Complete 3D Revit building model.
- c. Complete project specifications and bidding documents.
- d. Update OPC.
- e. Complete SEH 100% level QA/QC Review.
- f. Present 100% construction documents and OPC to Aurora/TOW for review.
- g. Receive formal approval to bid project.
- h. Present 100% Final construction documents, design development document, outline specifications, and OPC to Aurora/TOW for review.

**Deliverables:**

- a. Fifteen (15) copies of the 100% Final Design level plan sheets (11"x17"), final specifications, and OPC to Aurora/TOW.
- b. Two (2) sets of Final Construction documents to the MDH.

**SCHEDULE:**

The schedule presented in the Original Proposal is now outdated and the actual schedule for completing Tasks 1, 2, 3, and 4 has shifted due to the change from Raw Water Intake Site 4A to Site 4F and the need to receive a variance from the County for Site 4F. While Task 1 (30% plans) is largely complete, Client and Consultant recognize that Consultant's Task 1 work on the RWPS, the raw water transmission main, and water withdrawal permitting are delayed through September 2021 until Client's variance from the County is established. Client and Consultant are striving to hold the overall schedule of the project to receive Minnesota Department of Health (MDH) project certification by November 2021. For this to occur, Client and Consultant agree to strive to meet the following schedule goals:

- |                                |                               |
|--------------------------------|-------------------------------|
| 1. Task 1 – Continue to 30%    | Now – September 2021          |
| 2. Task 2 - Final Design Phase | August 2021 – November 2021   |
| a. 60% Design Level            | August 2021 – September 2021  |
| b. 90% Design Level            | September 2021 – October 2021 |



- |   |                              |
|---|------------------------------|
| c. 100% Final Design Level                      | October 2021 – November 2021 |
| 3. Task 3 - Permitting and Regulatory Approvals | Now – December 2021          |
| 4. Task 4 - Bidding Services                    | January 2022 – March 2022    |

**PAYMENT:**

The lump sum fee for Task 2 is \$493,000 as set forth in the Original Proposal. The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-2.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the “Agreement”) supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under “Other Terms and Conditions”. The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

**ASSUMPTIONS AND CLARIFICATIONS**

1. The City of Aurora and Town of White will pay all permitting and regulatory review fees.
2. SEH will provide assistance with the State Drinking Water Revolving Fund regulatory review and permitting applications.
3. SEH will provide supporting documents and assistance to the Owner’s Representative with communications to the financial and legal service providers retained by the COA/TOW associated with the project.
4. This proposal does not include fees for water service assessments as the need for, or the extent of the need has not yet been determined. SEH will provide a request for project scope amendment in the event that any portion of the project is selected by the COA/TOW for special assessments.
5. The following services are not included in this proposal, however, SEH can provide these supplemental services should circumstances drive the need:
  - a. Water rate analysis for the determination of cost sharing or project cost recovery.
  - b. Any efforts associated with preparation of an Environmental Assessment Worksheet (EAW) as may be determined by the MNDNR for provision of a raw water withdrawal appropriations permit, raw water intake or transmission main, or finished water transmission main.
  - c. Any efforts associated with preparation of an Environmental Impact Statement (EIS) as may be determined by the MNDNR for provision of a raw water withdrawal appropriations permit, raw water intake or transmission main, or finished water transmission main.
  - d. Efforts or fees associated with abandonment of any of the existing Scenic Acre’s wells.
  - e. Efforts or fees associated with abandonment or demolition of the existing City of Aurora raw water intake/pump station and water treatment plant.

**OTHER TERMS AND CONDITIONS:**

Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:

- 1. Remove the following from the General Conditions of the Agreement for Professional Services:
  - a. Paragraph C.1 under Section IV – General Considerations
  - b. Paragraph A.1 under Section V – Dispute Resolution

**Short Elliott Hendrickson Inc.**

By: \_\_\_\_\_  
Miles B. Jensen, PE  
Title: Principal/Water Market Leader

**East Range Water Board**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**East Range Water Board**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A-2**  
**to Agreement for Professional Services**  
**Between East Range Water Board (Client)**  
**and**  
**Short Elliott Hendrickson Inc. (Consultant)**  
**Dated September 7, 2021**

**Payments to Consultant for Services and Expenses**  
**Using the Lump Sum Basis Option**

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

**A. Lump Sum Basis Option**

The Client and Consultant select the Lump Sum Basis for Payment for services provided by Consultant. During the course of providing its services, Consultant shall be paid monthly based on Consultant's estimate of the percentage of the work completed. Necessary expenses and equipment are provided as a part of Consultant's services and are included in the initial Lump Sum amount for the agreed upon Scope of Work. Total payments to Consultant for work covered by the Lump Sum Agreement shall not exceed the Lump Sum amount without written authorization from the Client.

The Lump Sum amount includes compensation for Consultant's services and the services of Consultant's Consultants, if any for the agreed upon Scope of Work. Appropriate amounts have been incorporated in the initial Lump Sum to account for labor, overhead, profit, expenses and equipment charges. The Client agrees to pay for other additional services, equipment, and expenses that may become necessary by amendment to complete Consultant's services at their normal charge out rates as published by Consultant or as available commercially.

**B. Expenses Not Included in the Lump Sum**

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client and shall be paid for as described in this Agreement.

1. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
2. Other special expenses required in connection with the Project.
3. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses not included in the Lump Sum amount.

[https://sehincazure-my.sharepoint.com/personal/mjensen\\_sehinc\\_com/documents/documents/mbj/aurora/wtp design & construction/task 2 & 3/exhibit a2.docx](https://sehincazure-my.sharepoint.com/personal/mjensen_sehinc_com/documents/documents/mbj/aurora/wtp design & construction/task 2 & 3/exhibit a2.docx)

# General Conditions of the Agreement for Professional Services

## SECTION I – SERVICES OF CONSULTANT

### A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Basic Services"). Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

### B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
2. If Client has requested changes in the scope, extent, or character of the Project or the services to be provided by Consultant, the time of performance and compensation for Consultant's services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

### C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for Basic Services, then Consultant shall promptly notify the Client regarding the need for additional services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional services, and to an extension of time for completion of additional services absent written objection by Client.
2. Additional services shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

### D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon 7 days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant.
2. 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.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

## SECTION II – CLIENT RESPONSIBILITIES

### A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the services provided by Consultant and access to all public and private lands required for Consultant to perform its services.
2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's services, including but not limited to, previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning, deed and other land use restrictions; as-built drawings, electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide services in a timely manner.
4. Client shall require all utilities with facilities within the Client's Project site to locate and mark said utilities upon request, relocate and/or protect said utilities as determined necessary to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.

## SECTION III – PAYMENTS

### A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Instruments of Service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

## SECTION IV – GENERAL CONSIDERATIONS

### A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. If requested in the scope of a Supplemental Letter Agreement, then Consultant may provide an Opinion of Probable Construction Cost. Consultant's Opinions of Probable Construction Cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Construction Cost prepared by Consultant. If Client wishes greater assurance as to probable Construction Cost, Client shall employ an independent cost estimator or negotiate additional services and fees with Consultant.

### B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter or disposer of hazardous or toxic substances, therefore the Client agrees to hold harmless, indemnify and defend Consultant and Consultant's officers, directors, 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 at the site.

### C. Limitations on Consultant's Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed five hundred thousand dollars (\$500,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional five hundred thousand dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including, without limitation, lost rentals, increased rental expenses, loss of use, loss of income, lost profit, financing, business and reputation and for loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.
3. It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated

with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

### D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

## SECTION V – DISPUTE RESOLUTION

### A. Mediation

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or services provided under this Agreement, (except for unpaid invoices which are governed by Section III), shall be submitted to nonbinding mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.

### B. Litigation – Choice of Venue and Jurisdiction

1. Any dispute not settled through mediation shall be settled through litigation in the state where the Project at issue is located.

## SECTION VI – INTELLECTUAL PROPERTY

### A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service") and Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Consultant shall retain all of its rights in its proprietary information including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be Work Product or Work for Hire and Consultant shall not be restricted in any way with respect thereto.

### B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its services, Client shall have the right in the form of a license to use Instruments of Service resulting from Consultant's efforts on the Project. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of services are available to Client subject to Consultant's current rate schedule.

### C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT  
180 FIFTH STREET EAST, SUITE 700  
ST. PAUL, MN 55101-1678

09/01/2021

Regulatory File No. MVP-2021-01803-ARC

**THIS IS NOT A PERMIT**

Mr. Doug Gregor  
City of Aurora  
16 West Second Avenue North  
Aurora, MN 55705

Dear Mr. Gregor:

We have received your submittal described below. You may contact the Project Manager with questions regarding the evaluation process. The Project Manager may request additional information necessary to evaluate your submittal.

File Number: MVP-2021-01803-ARC

Applicant: City of Aurora

Project Name: City of Aurora Water Treatment Plant Wetland Delineation

Project Location: Section 4 of Township 58 N North, Range 15 W, St. Louis County, Minnesota (Latitude: 47.5316338511795; Longitude: -92.2542956655708)

Received Date: 09/01/2021

Project Manager: Andrew Chambers  
(218) 788-6407  
Andrew.R.Chambers@usace.army.mil

Additional information about the St. Paul District Regulatory Program can be found on our web site at <http://www.mvp.usace.army.mil/missions/regulatory>.

Please note that initiating work in waters of the United States prior to receiving Department of the Army authorization could constitute a violation of Federal law. If you have any questions, please contact the Project Manager.

Thank you.

U.S. Army Corps of Engineers  
St. Paul District  
Regulatory Branch