

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the 1st day of November, 2018, between the **CITY OF SHAKOPEE**, 485 Gorman Street, Shakopee, MN 55379 ("City") and **SHORT ELLIOTT HENDRICKSON, INC.**, 10901 Red Circle Drive, Suite 300, Minnetonka, MN 55343 ("Consultant").

Preliminary Statement

The purpose of this Agreement is to set forth terms and conditions for the provision of professional services by the Consultant for the City for the following described Project:

2019 Sewer Service Lateral Pipe Rehabilitation SEWER-19-003
2019 Cured-In-Place Sewer Pipe Lining SEWER-19-006

The City and Consultant agree as follows:

1. **Consultant's Services.** The Consultant agrees to provide professional services as described in Exhibit A, Scope of Work and any addenda thereto. The Consultant shall serve as the City's professional consultant in the specified work and shall provide consultation and advice to the City during the performance of its services. The Consultant agrees to use the City's standard specifications in any bidding documents prepared under this Agreement. The requirements of this section may be waived by the City if the City Engineer determines that they are not necessary for the successful completion of the project. A Consultant requesting a requirement to be waived must have written authorization from the City Engineer and must be incorporated into this agreement.
2. **Time for Performance of Services.** The Consultant will endeavor to perform the services outlined in the work program within the prescribed days from the date of the contract award. Any changes in this schedule must be approved in writing by the City.
3. **Term.** The term of this Agreement will be from November 1, 2018, through December 31, 2021, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
4. **Compensation for Services.** City agrees to pay the Consultant for services as described in Exhibit A, attached and made a part of this Agreement, which may be amended from time to time by mutual agreement by City and Consultant. The Consultant's hourly rates must be based on the hourly rates approved by the City.

The Agreement amount shall include all services to be rendered by the Consultant as part of this Agreement (including all travel, living and overhead expenses incurred by the Consultant in connection with performing the services herein) except for special services authorized in writing by the City. The amount stipulated shall be considered a "Not to Exceed" cost to the City.

The Consultant must keep track of the costs billable under this contract at all times; any work in excess of the negotiated amount shall not be eligible for payment unless preapproved. The Consultant must notify the City if the Consultant anticipates that the negotiated amount might be exceeded, in order to determine whether or not the City is prepared to increase the compensation. This notification and approval must occur in advance of the work occurring to be considered for compensation.

5. **Payment of Fees.** The Consultant must submit itemized bills for services provided to the City on a monthly basis. The monthly billing must summarize the progress of the project as certified by the Consultant. For work reimbursed on an hourly basis, the Consultant must indicate for each employee, his or her classification, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, the total amount due, the original contracted amount, the current requested amount, and the total amount. Consultant must verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.931. For reimbursable expenses, the Consultant must provide such documentation as reasonably required by the City. Consultant bills submitted will be paid in the same manner as other claims made to the City.
6. **Audit Disclosure.** The Consultant must allow the City or its duly authorized agents reasonable access to such of the Consultant's books and records as are pertinent to all services provided under this Agreement.

Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential must not be made available to any individual or organization without the City's prior written approval. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant will become the property of the City upon termination of this Agreement, but Consultant may retain copies of such documents as records of the services provided and may reuse standard portions of such documents in the normal course of its business.

7. **Termination.** Termination for Cause. This Agreement may be terminated by City by seven day's written notice to Consultant delivered to the address written above. Upon termination under this provision, the Consultant will be paid for services rendered and reimbursable expenses until the effective date of termination.

If, through any cause (except those reasonably beyond Consultant's control), the Consultant shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulation of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of termination. In that event the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property, and the Consultant shall be entitled to receive just, equitable compensation for any satisfactory work completed on such documents and other materials prior to the effective date of termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

In the event this Contract is terminated for cause, then the City may take over and complete the work, by contract or otherwise, and the Consultant and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, any other rights which the City may have.

Termination Not For Cause. The City may terminate this Contract at any time, with or without cause, by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property. If the Contract is terminated by the City as provided in this paragraph, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Consultant covered by this Contract, less payments or compensation previously made.

8. **Subcontractor.** The Consultant must not enter into subcontracts for any of the services provided for in this Agreement without the express written consent of the City.
9. **Independent Contractor.** At all times and for all purposes hereunder, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
10. **Assignment.** Neither party will assign this Agreement, nor any interest arising herein, without the written consent of the other party.
11. **Services not Provided for.** No claim for services furnished by the Consultant not specifically provided for herein will be honored by the City.
12. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.
13. **Entire Agreement.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and duly signed by the parties unless otherwise provided herein.
14. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant must abide by all statutes, ordinances, rules and regulations pertaining to the provision of services to be provided. Any violation will constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
15. **Equal Opportunity.** During the performance of this contract, the Consultant must not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age. The Consultant must post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

16. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
17. **Liability and Indemnity.** The Consultant must indemnify and hold harmless the City, its employees and agents, for all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, which they may suffer or for which they may be held liable, as a result of, and to the extent of, the negligent or wrongful acts of the Consultant, his employees, or anyone else for whom he is legally responsible in the performance of this Agreement.

The Consultant assumes full responsibility for relations with its subcontractors, and must hold the City harmless and must defend and indemnify the City, its employees and agents, for any claims, damages, losses, and expenses in any manner caused by such subcontractors, arising out of or connected with this contract.

18. **Insurance.** During the term of this Agreement, Consultant must procure and maintain during the life of this Contract, and provide the City with a certificate of insurance showing, the following coverage for each occurrence and in aggregate:

A. Comprehensive General Liability Insurance, including Broad Form Property Damage, Completed Operations and Contractual Liability for limits not less than \$1,500,000 each occurrence for damages of bodily injury or death to one or more persons and \$1,500,000 each occurrence for damage to or destruction of property.

B. Insurance coverage for Special Hazards, including but not limited to explosion hazard, collapse hazard, underground property damage hazard, (commonly known as XCU).

C. Comprehensive Automobile Liability Insurance, in an amount not less than \$1,500,000 for each occurrence. Coverage shall include all owned autos, non-owned autos, and hired autos.

D. Errors and Omissions Insurance against errors and omissions resulting from the performance of Consultant's work under this Agreement. Said coverage shall be in an amount not less than \$2,000,000.

E. Workmen's Compensation insurance for all its employees as required by the Minnesota Worker's Compensation Act.

F. The City of Shakopee must be named as "ADDITIONALLY INSURED" on the insurance described in paragraphs A, B, and C, and must receive notice ten (10) days prior to the cancellation or expiration any of the

specified insurance. If the deductible provisions of the Consultant's coverage or any subcontractor's coverage is questioned by the City, the Consultant shall provide the City, upon request, "Proof of Assets".

This policy must provide, as between the City and the Consultant, that the Consultant's coverage shall be the primary coverage in the event of a loss. If the Consultant is providing either architectural or engineering services, the Consultant must also maintain during the term of this Agreement a professional liability insurance policy with the same limits as for general liability. A certificate of insurance on the City's approved form which verifies the existence of these insurance coverages must be provided to the City before work under this Agreement is begun.

19. **Governing Law.** This Agreement will be controlled by the laws of the State of Minnesota.
20. **Whole Agreement.** This Agreement embodies the entire agreement between the parties including all prior understanding and agreements, and may not be modified except in writing signed by all parties.

Executed as of the day and year first written above.

CITY OF SHAKOPEE

SHORT ELLIOTT HENDRICKSON, INC

By: _____
William P. Mars, Mayor

Date: _____

By: _____
William H. Reynolds, City Administrator

Date: _____

By: Robert L. Ellin

Its: PRINCIPAL

Date: 11/8/2018



Building a Better World
for All of Us®

EXHIBIT A

October 25, 2018

RE: City of Shakopee
2019 Sanitary Sewer Lateral Pipe
Rehabilitation
SEH No. SHAKO 148258 14.00

Ryan Halverson, PE
Assistant City Engineer
City of Shakopee
485 Gorman Street
Shakopee, MN 55379

Dear Ryan:

Thank you for again asking us to assist the City with its Sanitary Sewer Rehabilitation Program. In accordance with the Master Agreement for Professional Services between the City and SEH, effective July 13, 2011. This Supplemental Letter Agreement dated October 26, 2018 authorizes and describes the scope, schedule, and fee for our work on this project. This year, we have combined the design services and construction services into a single proposal.

SCOPE

The City needs assistance with bidding document preparation and construction phase services to rehabilitate the segment of the sanitary sewer, as illustrated in Exhibit A (pipe) at each of the properties shown in Exhibit B. The property owner owns both pipe segments C and D shown in Exhibit A on the street and house side of the right-of-way line respectively. Furthermore, the City may need assistance educating property owners in the project area about what to expect during rehabilitation.

The City may need a right-of-entry from each property owner to complete its rehabilitation work. The City will likely request right-of-entry in exchange for City payment of the rehabilitation cost. The City will pay for the rehabilitation using its sanitary sewer fund.

Due to the fact that both the sanitary sewer trunk pipe and street pavement in front of each property are in good condition, dig-and-replace method is not feasible to rehabilitate this pipe. Therefore, rehabilitation will occur using trenchless method structural cured-in-place pipe (CIPP) lining. If a property owner chooses to rehabilitate the rest of their pipe at a future date using their own plumber and dig-and-replace rather than trenchless method, rehabilitating the pipe to about 5 feet beyond the back of the concrete curb and gutter will protect the concrete curb and gutter from damage.

In addition to the approximately 100 sanitary sewer laterals that are identified in the 2019 Project Area, the City will include three 3-inch diameter laterals from the 2018 project area, and 1 area on Canterbury Road totaling approximately 1,100 LF of sanitary sewer main to be rehabilitated using CIPP lining, as shown in Exhibit B.

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 10901 Red Circle Drive, Suite 300, Minnetonka, MN 55343-9302
SEH is 100% employee-owned | sehinc.com | 952.912.2600 | 800.734.6757 | 888.908.8166 fax

The City needs assistance educating the property owners in the project area, and encouraging them to rehabilitate the rest of their pipe using their own plumber after the City's contractor completes their rehabilitation work. The education effort will likely include the following items:

1. Host an information meeting for the property owners to educate them about all aspects of this project. Private plumbers will be invited to attend the meeting to answer property owner questions about rehabilitating the rest of their pipe after the City's rehabilitation contractor completes their work.
2. Record the information meeting and post it on the City's YouTube page for on-demand viewing by property owners unable to attend the meeting. (Assist the City as needed.)
3. Establish a project web page, updated throughout the project, containing important information about this project. (Assist the City as needed.)
4. Verify, and if necessary adjust, the City's Permit Application and Inspection Process for property owner use should they choose to rehabilitate the rest of their pipe using their own plumber and a trenchless method.
5. If requested, use the City's eNotification tool to:
 - a. notify property owners to review important documents and videos posted on the project's web page, and
 - b. If needed, remind property owners to submit their executed right-of-entry before its due date.

As in past projects, due to other project workloads, the City may want to periodically ask SEH to provide part-time assistance to its inspector during the construction for the following tasks:

1. Enforcing the project's SEH prepared contract documents.
2. Preparing or back checking the content of communications that update affected property owners about the status of the rehabilitation.

The goal of this is for SEH to provide technical support and guidance to the City's field staff on trenchless technology requirements and assisting them in learning the process to utilize on future rehabilitation program projects. We are essentially a resource for the City and its staff to use in any capacity they desire.

We understand that the City will have an inspector from its Engineering Department monitor the City contractor's rehabilitation work. But based on workloads, the City anticipates a potential need for assistance with the construction phase services at this time. As such, we have estimated part-time inspection and administrative duties assuming City staff takes part of it. Additionally, during the 2 year correction period, there is the need to provide CCTV inspection review and offer the City our recommendation on final warranty acceptance.

SCHEDULE

The schedule below explains the timing of key milestones for this years' pipe rehabilitation program. We anticipate that the program in future years would occur following the 2019 schedule.

Milestone	Date
Prepare Bidding Documents	December, 2018-January, 2019
Send Invitation to Neighborhood Informational Meeting	January 2019
Neighborhood Informational Meeting	January 8, 2019
Advertise / Open Bids / Award	January - February 2019

Milestone	Date
City Contractor Rehabilitates Lateral Pipes (Pipe C)	March – September 2019
Private Plumbers May Rehabilitate Lateral Pipes (Pipe D)	August – October 2019
City Contractor Achieves Substantial Completion	October 2019

FEE

Design Phase

The enclosed task hour budget describes in detail our approach to complete this project's scope and calculates our fee for design and bidding purposes. Our fee is hourly (not-to-exceed) and estimated to be \$47,500 including expenses for the design phase. We will prepare a similar style of plans and specifications and bid documents as was used in the 2018 program.

Construction Phase

Attached is a task hour budget for the construction services portion of the project. Our fee is hourly not-to-exceed and is estimated at \$35,600. It is an estimate because we will expend the construction services fees only when requested by the City. Of this amount, Task 1 and Task 2 will be completed in 2019 totaling approximately \$18,000 while Task 3 and Task 4 will occur during the correction period (2021) and warranty period (2024), respectively.

Combined Fee

The combined total fee for both phases is as follows:

Design	\$47,600
Construction	<u>\$35,600</u>
Total	\$83,200

The City can request more, or less, of the amount of services described by this proposal. This fee is consistent with previous construction services proposals for the CIPP Lateral Lining program.

Please contact me with questions and comments at 612.255.8747 or dhutton@sehinc.com.

Sincerely,

SHORT ELLIOTT HENDRICKSON INC.



David E. Hutton, PE
Project Manager



Wayne Houle, PE
Client Service Manager

Attachments:

2 Task Hour Budgets – Design and Construction Phases
Exhibit A – Property Owner Pipe Segment
Exhibit B – Service Lining Project Area (2 pages)
Calendar

c: Paul Pasko – SEH