



September 19, 2002

RE: Rapid City Planning Department
Master Plan for Telecommunication
Facilities
SEH No. ARAPIC0203.00

Marcia Elkins
Planning Director
Rapid City Planning Department
300 6th Street
Rapid City, MN 57701

Dear Ms. Elkins:

Enclosed with this letter is a copy of a Subcontract Agreement between SEH and Garrett Lysiak of Owl Engineering for sub-consulting work related to the Rapid City Telecommunication Facilities Master Plan Project. It is my hope that the City's issues and concerns regarding contract administrative issues have been satisfactorily addressed in order to allow processing of payment for professional services and reimbursable expenses that have been previously invoiced.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Wozniak". The signature is written in black ink and is positioned below the word "Sincerely,".

Michael A. Wozniak, AICP
Senior Planner/Project Manager

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Attachment

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**SUBCONTRACT AGREEMENT
BETWEEN
SHORT ELLIOTT HENDRICKSON INC.
AND
Owl Engineering & EMC Test Labs, Inc.
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this 17th day of September, 2002 and memorializes a verbal agreement entered into on December 18, 2001 by and between SHORT ELLIOTT HENDRICKSON INC., Butler Square Building, Suite 710C, 100 North Sixth Street, Minneapolis, Minnesota 55403-1505 hereinafter referred to as SEH and Owl Engineering & EMC Testing Labs, Inc., hereinafter referred to as the CONSULTANT.

WITNESSETH:

WHEREAS, SEH has entered into an agreement dated December 18, 2001, with the City of Rapid City, South Dakota, OWNER, which is herein referred to as the Prime Agreement and which provides for SEH furnishing professional services in connection with the project described as follows: Master Plan for Telecommunication Facilities and,

WHEREAS, it is the desire of SEH to enter into a subagreement with the CONSULTANT for the performance of services which SEH is required to furnish to the Owner under the prime agreement; and

WHEREAS; a copy of all portions of the Prime Agreement and attachments thereto pertinent to the CONSULTANT's responsibilities, compensation and timing of services hereunder is attached, made a part hereof and marked Exhibit No. 1; and

WHEREAS, the CONSULTANT has been furnished a copy of the OWNER'S latest program for the project to the extent available and will be furnished data, maps and other material pertinent to the CONSULTANT's responsibilities hereunder as they become available to SEH.

NOW, THEREFORE, SEH and the CONSULTANT hereby mutually agree as follows:

SECTION I – SERVICES TO BE PERFORMED BY THE CONSULTANT

A. Basic Services

- a. SEH proposes to engage the CONSULTANT to assist SEH with the preparation of various tasks related to the preparation of a Master Plan for Telecommunication Facilities which SEH is required to furnish for the OWNER under the Prime Agreement, and will do so in accordance with the terms and conditions of this subagreement. The CONSULTANT is referenced as a "Communication Consultant" in the attachment (spreadsheet) to the prime agreement that lists work tasks to be completed by various project team members.
2. The part of the Project for which CONSULTANT is to furnish such services is herein referred to as This Part of the Project and is generally described as assisting with major projects tasks 1.0 (Initiate Master Plan/Research), 2.0 (Preliminary Phase) and 3.0 (Prepare Master Plan).
3. The CONSULTANT shall perform services in accordance with the terms and conditions of this Agreement as SEH's independent consultant for This Part of the Project, shall be responsible for the means and methods used in performing services under this Agreement and is not a joint-venturer with SEH. SEH shall be the general administrator and coordinator of the CONSULTANT's services for the Project, and shall facilitate the exchange of information

among the independent professional associates and consultant's employed by SEH for the Project as necessary for the coordination of their services.

4. The CONSULTANT shall at CONSULTANT's own expense obtain all data, information, permits, and licenses necessary for the performance of the CONSULTANT's services. The CONSULTANT is responsible to see that the documents prepared by the CONSULTANT and the services the CONSULTANT renders hereunder conform to the applicable laws, rules, regulations, ordinances, codes, orders and special requirements of the place where the Project is located. All of the CONSULTANT's communications to or with OWNER or SEH's other independent professional associates and consultants will be through or with the knowledge of SEH.

B. Additional Services

1. If authorized in writing by SEH, the CONSULTANT shall provide within the time periods stipulated in such authorization Additional Services which are not included as part of Basic Services.

SECTION II – SEH'S RESPONSIBILITIES

A. SEH Shall:

1. Make available to the CONSULTANT drawings, specifications and data which were prepared by SEH, or by others which SEH knows are reasonably available to SEH, and which SEH and the CONSULTANT consider pertinent to the CONSULTANT's responsibilities hereunder, all of which the CONSULTANT may rely upon in performing services hereunder except as may be specifically provided otherwise in writing.
2. Request OWNER to arrange for access to and make all provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform services under this Agreement.
3. Give prompt written notice to the CONSULTANT whenever SEH observes or otherwise becomes aware of any development that affects the scope or timing of the CONSULTANT's services, or any defect or nonconformance in the work of Contractor affecting This Part of the Project.
4. Advise the CONSULTANT of the identity of other independent professional associates or consultants participating in the design or construction administration of This Part of the Project and the scope of their services.

SECTION III – PAYMENTS TO THE CONSULTANT

A. Hourly Rate Method of Payment

1. SEH shall compensate the CONSULTANT for all Professional Services rendered under Section I at the rates shown on the attached Exhibit No. 2 plus the cost of reimbursable expenses.
2. The CONSULTANT will bill SEH monthly. The monthly billing will summarize (1) the work completed, and (2) the number of hours charged to the project by each person. The monthly billing will also itemize all reimbursable expenses.
3. Invoices will be processed and payments made by SEH to the CONSULTANT within ten (10) days of the date of receipt by SEH of payments by the OWNER for services performed by the CONSULTANT.

4. Total payments to the CONSULTANT for the Basic Services described in Section I shall not exceed \$5,000.00.

B. Reimbursable Expenses

- a. The following reimbursable expenses representing actual expenditures made by the CONSULTANT, his employees, or his professional consultants specifically for the Project as part of the project maximum fee shall be paid for travel and expenses connected therewith required in connection with the Project and authorized by SEH.

SECTION IV – GENERAL CONSIDERATIONS

A. Personnel and Timing

1. The CONSULTANT has, or will secure, qualified personnel, equipment and facilities to complete the services outlined in this subagreement. The CONSULTANT shall not subcontract any services to others without approval from SEH.
2. It is understood that the services under Section I will not commence until a notice-to-proceed is given to the CONSULTANT by SEH.
3. The services as described herein shall be commenced and carried out expeditiously. These services will be completed according to the project schedule agreed upon between SEH and the Owner.

B. Change in Project and Agreement Changes

1. Terms of this Agreement may be changed by mutual understanding of SEH and the CONSULTANT. Such changes shall be approved by both parties and incorporated in written amendments to the Agreement.

C. Termination

1. SEH and the CONSULTANT shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event, all finished and unfinished document data, studies, surveys, drawings, maps, models, photographs, and work papers prepared by the CONSULTANT shall become the property of SEH and the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory services completed on such documents. The CONSULTANT shall have the right to stop performing services under this Agreement during a period when SEH or the OWNER is in default, but only after giving written notice to SEH specifying the default and the CONSULTANT's intention to stop performing services at least thirty (30) days prior to stopping work.

D. Records

1. Fiscal records of the CONSULTANT pertinent to the CONSULTANT's compensation and payments under this Agreement will be kept in accordance with generally accepted accounting practices.
2. The CONSULTANT shall maintain all records (fiscal and other) and design calculations on file in legible form. A copy of these shall be available to SEH at the CONSULTANT's expense and the originals shall not be disposed of by the CONSULTANT until after sixty (60) days' prior written notice to SEH.

3. The CONSULTANT's records and design calculations will be available for examination and audit if and as required by the Prime Agreement.

E. Insurance

1. SEH shall be the project administrator. The CONSULTANT is SEH's independent professional consultant for the project, responsible for the means and methods used in performing its services under this Agreement and is not a joint-venturer with SEH.
2. The CONSULTANT agrees to provide to SEH a certificate evidencing that it has in effect with an insurance company in good standing and authorized to do business in South Dakota, a professional liability insurance policy, insuring payment of damages for legal liability arising out of the performance of professional services for SEH, in the insured's capacity as Consultant, if such legal liability is caused by an error, omission or negligent act of the insured or of any person or organization for whom the insured is legally liable, to an amount of \$1,000,000; and stating that such insurance cannot be canceled until thirty (30) days after SEH has received written notice to the insurer's intention to cancel the insurance.
3. Worker's compensation insurance in the statutory amount and employer's liability insurance in an amount not less than \$500,000 for all employees engaged in the Work.
4. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles in an amount not less than the prescribed State requirements.
5. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of SUBCONSULTANT or of any of its employees, agents, or subcontractors, with not less than \$500,000 occurrence and in the aggregate.

F. Hold Harmless Clause

1. The CONSULTANT agrees to defend and hold SEH harmless from any claims, demands, losses and expenses including attorney's fees, or causes of action arising out of any negligent act or omission on the part of the CONSULTANT, or his agents, servants or employees in the performance of or with relation to any of the work or services provided or to be performed or furnished by the CONSULTANT under the terms of this Agreement.

In witness whereof, this Agreement is herewith executed the date and year first above written.

SHORT ELLIOTT HENDRICKSON INC.

Butler Square Building, Suite 710C
100 North Sixth Street
Minneapolis, MN 55403-1505

By Michael A. Wozniak
Michael A. Wozniak, AICP
Project Manager/Senior Planner

Date 9/17/02

Owl Engineering & EMC Test Labs, Inc.

8889 Hastings Avenue Northeast
Minneapolis, MN 55449

By Garrett Lysiak
Garrett Lysiak, P.E.

Date 9/18/02

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10/05/01