

RS&H Project No. 1130009001

Short Title: Aurora: Fox River West Dam and Canoe Chute

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (this "Agreement") is made as of the _____ day of _____, 2020 (the "Effective Date"), by and between the City of Aurora, a Illinois Municipal corporation with offices located at 44 E. Downer Place Aurora, IL 60507 (the "CLIENT"), and **RS&H, Inc.**, a Florida corporation with offices located at 10748 Deerwood Park Blvd South, Suite 300, Jacksonville, Florida 32256 ("RS&H") (CLIENT and RS&H are collectively referred to as "the Parties").

IN CONSIDERATION of the mutual promises and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. RELATIONSHIP

For all work performed hereunder RS&H is an independent contractor to CLIENT, solely responsible for the means and methods used in performing services hereunder, and it shall not be deemed an employee, agent, partner or joint venturer of CLIENT for any purpose.

2. PROVISION OF SERVICES/METHOD OF AUTHORIZATION

2.1 RS&H shall provide those professional services (check appropriate description below):

_____ As described in Attachment "A," attached hereto and made a part hereof by reference (the "Services"); or

X As described in separately authorized Work Orders (the "Services").

2.2 Any Work Order, when signed by the Parties, shall be incorporated into and form a part of this Agreement. Each such Work Order shall contain a Project Description, a detailed Scope of Services, Project Schedule, Deliverables, Compensation Terms and special provisions or conditions specific to the Services or project being authorized (the "Project"). In the event of a conflict between this Agreement and any Work Order issued hereunder, the terms of the Work Order shall govern the provision of the particular Services or Project involved.

2.3 Should CLIENT issue a purchase order or other instrument related to RS&H's Services, it is understood and agreed that such document is for CLIENT's internal accounting purposes only and shall in no way modify, add to, or delete any of the terms and conditions of this Agreement. If CLIENT does issue a purchase order or other similar instrument, it is understood and agreed that RS&H shall indicate the purchase order number on the invoices sent to CLIENT.

2.4 Since RS&H has no control over the cost of labor, materials, or equipment or over a contractor's methods of determining prices, or over competitive bidding or market conditions, when requested by CLIENT to estimate project construction costs, RS&H's opinions of probable costs provided as a service hereunder are to be made on the basis of its experience and qualifications and represent its judgment as a design professional familiar with the construction industry; however, RS&H cannot and does not guarantee that proposals, bids, or the construction costs will not vary from opinions of probable costs prepared by it. If CLIENT wishes greater assurance as to the construction costs, it shall employ an independent cost estimator at its own expense. Services to modify approved documents to bring the construction cost within any limitations established by CLIENT will be considered Additional Services and entitle RS&H to additional compensation which shall be negotiated and mutually agreed upon by the Parties and set forth in either a Work Order or Supplemental Agreement.

2.5 If the Services are to include services during construction, any construction inspection or testing provided by RS&H is for the purpose of determining the contractor's compliance with the functional provisions of Project specifications only. RS&H neither guarantees nor insures any contractor's work nor assumes responsibility for (i) the means, methods or materials used by any contractor, (ii) Project site safety, or (iii) any contractor's compliance with laws and regulations. CLIENT agrees that, in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for Project site conditions during the course of construction of the Project, including safety of all persons and property, and that this responsibility shall be continuous and not be limited to normal working hours.

3. ADDITIONAL SERVICES

RS&H shall furnish work beyond the scope of the Services (hereinafter "Additional Services") ONLY if authorized in writing by the CLIENT. Before such Additional Services shall be rendered, the scope of such Additional Services and the compensation therefor shall be mutually agreed upon by either written amendment to this Agreement in the form of a Supplemental Agreement or by an additional or amended Work Order. Additional Services furnished by RS&H without written authorization by the CLIENT shall be furnished at RS&H's sole risk and expense.

4. CLIENT'S RESPONSIBILITIES

4.1 CLIENT shall, with reasonable promptness, provide to RS&H available information regarding the requirements for the Services.

4.2 CLIENT shall make all provisions for RS&H to enter upon public and private property as required for RS&H to perform Services under this Agreement.

4.3 CLIENT shall give prompt written notice to RS&H whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of RS&H's Services.

5. PERIOD OF SERVICE

5.1 The term of this Agreement shall be from the Effective Date through December 31, 2021, unless sooner terminated as provided in Section 8 hereof, or extended through written agreement signed by the Parties to this Agreement.

5.2 The Services called for herein shall be completed by RS&H as set out in Attachment "A" or the applicable Work Order.

6. COMPENSATION AND METHOD OF PAYMENT

6.1 CLIENT shall compensate RS&H for the Services, any approved Additional Services, and Reimbursable Expenses (as defined below) on the basis set forth in Attachment "B" (entitled Compensation), attached hereto and made a part hereof by reference, or as set forth in the applicable Work Order, as the case may be.

6.2 CLIENT shall pay any sales or similar tax levied by any governmental authority on professional or other services or materials provided under this Agreement.

6.3 RS&H shall invoice CLIENT monthly for all Services rendered and Reimbursable Expenses incurred pursuant to this Agreement, and each invoice shall be due and payable in accordance with the terms of the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et. seq.*).

6.4 Compensation due RS&H under this Agreement is due and payable to its corporate offices, whose address is RS&H, Inc., P.O. Box 4850, Jacksonville, Florida 32201-4850, Attn: Accounting Department, or at such other location as may be specified by RS&H in writing.

6.5 If CLIENT fails to make any payment due RS&H for Services and Reimbursable Expenses in accordance with the terms of the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et. seq.*), interest may accrue on the unpaid balance in accordance with the terms of the Act. In addition, RS&H may, after giving seven (7) days written notice to CLIENT, suspend Services under this Agreement until RS&H has been paid in full all amounts due for Services and Reimbursable Expenses, including all accrued but unpaid interest, without RS&H incurring liability due to such suspension.

6.6 Reimbursable Expenses are defined as actual expenditures made by RS&H, its employees, or its consultants in the interest of the Services or Project, which are supported by documentation or receipts provided to CLIENT, including but not limited to:

Transportation and subsistence of Project personnel, consultants' fees, computer and computer aided drafting and design (CADD) charges, fees paid for securing approval of authorities having jurisdiction of the Project, toll telephone calls and facsimile charges, reproduction and printing charges of all types for Project-specific documents, mailing and shipping charges, equipment and laboratory use fees, photography, model materials, and all other materials and expendable supplies directly used with respect to the Project.

Reimbursable Expenses shall include a ten percent (10%) service charge which shall be added as an administrative charge to RS&H's actual costs for such expenses.

7. AUTHORIZED REPRESENTATIVE

7.1 RS&H's Authorized Representative for this Project is the Project Manager as designated on Attachment "A" or applicable Work Order. All matters and correspondence pertaining to the Project, including submittal of monthly invoices, will be through RS&H's Project Manager.

7.2 Upon execution of this Agreement, CLIENT will designate CLIENT's Authorized Representative for the Project and convey the name of CLIENT's Authorized Representative to RS&H in writing. CLIENT's Authorized Representative shall act on behalf of CLIENT on all matters pertaining to this Project. All matters and correspondence to CLIENT pertaining to the Project will be addressed through CLIENT's Authorized Representative.

7.3 CLIENT's Authorized Representative shall not be changed without prior written notice to RS&H.

8. TERMINATION/SUSPENSION

8.1 This Agreement may be terminated without cause by either party upon fourteen (14) days written notice. In the event of termination, RS&H shall be compensated, as provided herein, for Services performed through the effective date of such written notice of termination, together with Reimbursable Expenses due through the date of termination.

8.2 If the Project is suspended for more than thirty (30) consecutive days, RS&H shall be compensated, as provided herein, for Services performed through receipt of written notice of such suspension, together with Reimbursable Expenses then due. When the Project is resumed, RS&H's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of RS&H's Services.

9. RS&H'S RETENTION AND ACCESS TO RECORDS

RS&H shall maintain for a period of at least seven (7) years following completion of the Services all the documents, deliverables, records (including cost records), design calculations, notes and emails related to the

Project or RS&H's performance hereunder. Upon CLIENT's written request, RS&H shall provide a copy of the requested records at actual cost of duplication to RS&H.

10. USE OF DOCUMENTS AND ELECTRONIC DELIVERABLES

10.1 All documents prepared by RS&H are instruments of service in which RS&H shall retain an ownership and property interest (including the right of reuse at the discretion of RS&H).

10.2 Any modification of the Deliverables hereunder or their reuse on another project by CLIENT without the approval of RS&H shall be at CLIENT'S sole risk and without liability to RS&H.

10.3. Files in electronic format that are furnished by one Party to the other are furnished only for convenience and not for reliance by the receiving party, unless otherwise agreed in writing.

11. INDEMNIFICATION

11.2 RS&H shall indemnify and hold CLIENT and its elected officials, directors, officers and employees harmless from any and all damages, liabilities, suits, actions, claims, demands and judgments to the extent resulting from any negligent acts, errors or omissions or breach of contract of RS&H or its subconsultants related to, or arising out of this Agreement.

12. INSURANCE

12.1 RS&H shall maintain, to the extent reasonably available, the following insurance coverage during the performance of its Services under this Agreement, and shall name CLIENT as an additional, non-contributing insured:

12.1.1	Commercial General Liability (including contractual and fire damage)	
	General Aggregate	\$2M
	Products-Comp/OP Aggregate	\$2M
	Personal and Advertising Injury	\$1M
	Each Occurrence	\$1M
	Medical Expenses per person	\$10,000
12.1.2	Automobile Liability (any auto, hired autos and non-owned autos) Bodily Injury and Property Damage	\$1M CSL
12.1.3	Umbrella/Excess Insurance	\$10M
12.1.4	Workers' Compensation	Statutory
	Employer's Liability (Including Longshore and Harbor Workers Act Coverage, if applicable)	\$1M
		\$1M
		\$1M
12.1.5	Professional Liability Insurance (including errors and omissions and Expanded Pollution Coverage)	
	Per Claim	\$5M
	Aggregate	\$10M

12.2 RS&H shall provide the CLIENT with a Certificate of Insurance indicating that the above-described coverages are in effect, if requested.

13. CONTROLLING LAW/VENUE/DISPUTE COSTS

13.1 This Agreement, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto shall be governed by, interpreted, construed and enforced in accordance with the laws of Illinois. Venue for any legal disputes arising from, or related to, this Agreement shall be proper only in the Circuit Court of Kane County, Illinois.

13.2 In the event a dispute shall arise under or about this Agreement, then the prevailing party as defined by Illinois law shall be entitled to recover from the non-prevailing party all costs, expenses and reasonable attorneys' fees which may be incurred on account of such dispute.

14. SUCCESSORS AND ASSIGNS

14.1 This Agreement shall be binding upon CLIENT and RS&H and their respective partners, successors, heirs, assigns and legal representatives.

14.2 Neither Party shall assign or transfer any rights under or interest in this Agreement without the prior written consent of the other Party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

15. PRIVILEGED INFORMATION

15.1 RS&H agrees to keep confidential and not to disclose to any person or entity, other than RS&H's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information not previously known to and generated by RS&H or furnished to RS&H and marked "Confidential" by CLIENT. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict RS&H from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for RS&H to defend itself from any suit or claim. RS&H acknowledges and understands that CLIENT is a public body, and is therefore subject to the requirements of the Illinois Freedom of Information Act ("FOIA," 5 ILCS 140/1, *et. seq.*). CLIENT agrees that to the extent documents or records submitted by RS&H do not constitute "public records" or are otherwise exempt under FOIA, they will not be released.

15.2 RS&H agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first notifying CLIENT and securing its consent in writing.

16. NONDISCRIMINATION

RS&H agrees to comply with all local, state, and Federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age.

17. CONTINGENCY FEES

RS&H warrants that it has not employed or retained any company or person other than a bona fide employee working solely for RS&H to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for RS&H any fee,

commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

18. FORCE MAJEURE

Should Services be delayed at any time during the period of this Agreement due to changes ordered in the Services by CLIENT, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond RS&H's control, or by other causes which the CLIENT determines may justify the delay, then an extension for performance of this Agreement may be granted to RS&H by CLIENT through written mutual agreement.

19. STANDARD OF PERFORMANCE

Services provided by RS&H under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same geographic location. RS&H will promptly correct without additional compensation those Services not meeting this standard.

20. NOTICES

Any and all notices required or authorized to be given pursuant to this Agreement shall be given in writing and either hand-delivered, sent by overnight courier service or sent by certified or registered mail, postage prepaid, and return receipt requested, as follows:

If to CLIENT:

City of Aurora
44 E. Downer Place
Aurora, IL 60507
Attention: Ian Wade

If to RS&H:

RS&H, INC.
2580 Foxfield Rd. Suite 301
Saint Charles, IL 60174
Attention: James Shaw, PE

with a copy to:

RS&H, INC.
10748 Deerwood Park Boulevard South
Jacksonville, Florida 32256
Attention: Legal Department

21. ENTIRE AGREEMENT

This Agreement, together with any separately authorized Work Order issued hereunder, constitutes the entire and integrated Agreement between CLIENT and RS&H and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be amended, supplemented, modified or canceled by written instrument signed by an authorized representative of each party.

22. SEVERABILITY

If any provision of this Agreement or any application thereof to any person or circumstance shall, to any extent, be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

23. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which may be executed by one or more of the Parties hereto, but all of which, when delivered and taken together, shall constitute but one Agreement binding upon all of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives, under seal, as of the day and year first above written.

CLIENT

CITY OF AURORA

By: _____

Print Name: _____

Title: _____

ATTEST:

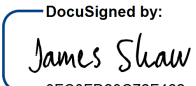
By: _____

Print Name: _____

Title: _____ Secretary

RS&H

RS&H, INC.

DocuSigned by:

 By: _____
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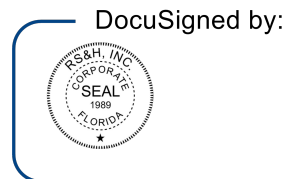
Print Name: James R. Shaw, PETitle: Vice President

ATTEST:

DocuSigned by:

 By: _____
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Melanie L. Nichols
 Assistant Corporate Secretary



Attachment B-Compensation

1130009001

Aurora: Fox River West Dam and Canoe Chute

Total Compensation for all Work Orders under this Master Contract will not exceed \$45,000, unless such upper limit is increased by the City.

Cost for each Work Order shall be mutually agreed by the Client and the Consultant and shall not be exceeded without authorization by the City.

RS&H Inc. will invoice the client in accordance with the master contract at the Direct Labor rates for the individuals providing service to the City under this contract, multiplied by 3.00 which multiplier includes overhead, payroll fringe benefits and profit.

Reimbursable expenses including sub-consultants invoicing, as defined in the Agreement for Professional Services will be invoiced to the city and payable at cost plus a 10% markup for administration and management expenses.