



August 23, 2023

Mr. David Swearingen, P.E.
Public Works Director / City Engineer
City of Arden Hills
1245 Paul Kirkwold Dr.
Arden Hills, Minnesota 55112

Re: Proposal for Engineering Services
South Tower Improvements Project – PW-23-0107

Dear Mr. Swearingen:

In response to your request, we propose to provide Engineering Services in connection with the South Tower Improvements Project, City Project #PW-23-0107, in Arden Hills, MN hereinafter called the Project. Our services will be provided in the manner described in this Proposal subject to the terms and conditions set forth in the attached “General Provisions of Engineer-Architect Agreement” dated July 2009. Hereinafter, Arden Hills is referred to as the CITY.

I. PROJECT DESCRIPTION

In the fall of 2022, the CITY contracted with Badger State Inspection, LLC (BSI) for inspection of the South Tower. As part of that inspection, BSI recommended several improvements to the tower to extend the life of the existing coating system. TKDA proposes to incorporate the recommended improvements into bidding documents.

The CITY is also considering security improvements to the South Tower site. These improvements include perimeter fencing, security cameras, and improvements to better secure access points to the site and infrastructure. TKDA will provide engineering design for the improvements and include the security improvements in the bidding documents for the South Tower improvements.

II. SERVICES TO BE PROVIDED BY TKDA

Based on TKDA's understanding of the Project, we propose to provide the following services:

- A. Project Management and Communications
 - 1. Provide general Project Management of TKDA's services for the Project including communications, maintain the Project work schedule, managing budgets, and invoicing.
 - 2. Internal TKDA design meetings.
 - 3. Attendance at two (2) City Council work sessions.
 - 4. Regular status updates on project progress to the CITY.
- B. QA/QC
 - 1. Conduct internal QA/QC peer reviews during the course of the design.
- C. Plans and Specifications
 - 1. Onsite kick-off meeting and site review.
 - 2. Complete a topographic survey of the South Tower site.
 - 3. Develop 50% plans and cost estimate for improvements to the South Tower to include:
 - a. Structural repairs to bring the tank into compliance with AWWA standards.
 - b. Spot repairs to the interior wet costing.
 - c. Repairs to the interior dry coating.
 - d. Security improvements:
 - i. Security perimeter fencing with signage.
 - ii. Bollards for booster station generator.
 - iii. Bollards for West exterior water tower door.
 - iv. Replace plywood cover of lower-level access with lockable cover.
 - v. Card reader for site access control.

- vi. Intrusion alarms for overhead doors at booster station and water tower.
 - vii. Locking mechanism for interior ladder.
 4. Incorporate comments from the CITY and prepare 90% plans and specifications.
 5. Incorporate comments from the CITY and prepare Issued for Bid Plans and Specifications.
 6. This proposal assumes preparation of three (3) Civil plan sheets, two (2) structural plan sheets, and two (2) electrical plan sheets.
- D. Bidding Assistance
1. Upload bidding documents to QuestCDN.
 2. Respond to bidder questions, and issue addendums as needed.
 3. Attend bid opening tabulation of bids and prepare an award recommendation letter.
 4. Assist with grant applications and manage to fulfillment.
- E. Construction Administration
1. Lead pre-construction meeting and prepare minutes.
 2. Shop drawing review.
 3. Prepare monthly payment applications.
 4. Respond to requests for information (RFIs).
 5. Complete three (3) site visits to review construction progress.
 6. Preparation of final punch list.
 7. Preparation of final payment with close out documentation.

III. ADDITIONAL SERVICES

If authorized in writing by the CITY, we will furnish or obtain from others Additional Services of the types listed below which are not considered as basic services under this Proposal. Additional Services shall be billable on an Hourly Time and Materials basis and such billings shall be over and above any maximum amounts set forth in this Proposal.

- A. Right-of-way or easement acquisition.
- B. Wetland delineation.
- C. Construction inspection.
- D. Construction staking.

IV. CITY'S RESPONSIBILITIES

These responsibilities shall be as set forth in Article 8 of the General Provisions and as further described or clarified hereinbelow:

- A. Designate one individual to act as a representative with respect to the work to be performed, and such person shall have complete authority to transmit instructions, receive information, interpret and define policies, and make decisions with respect to critical elements pertinent to the Project. This individual shall be identified in the signature block area of this Proposal.
- B. Provide TKDA with access to the site as required to perform services listed in SECTION II.
- C. Provide reviews of materials furnished by TKDA in a reasonable and prompt manner so the Project schedule can be maintained.
- D. Provide as-built drawings for South Tower and booster station.

V. PERIOD OF SERVICE

We would expect to start our services promptly upon receipt of your written acceptance of this Proposal and to complete SECTION II services according to the preliminary schedule detailed below. Final dates for Construction Administration will be set by the contractor and are therefore out of TKDA's control. The schedule for this phase of service is provided for the convenience of the CITY and is subject to change.

- Project Initiation - September 2023
- Design – September 2023 through January 2024



- Project Bidding – January through February 2024
- Construction Administration – Summer/Fall 2024

VI. COMPENSATION

Compensation to TKDA for services provided as described in SECTION II of this Proposal shall be on an Hourly Time and Materials basis in an amount not to exceed \$67,183. Our detailed Project Fee Estimate is attached. Payment shall be made in accordance with Article 3 of the attached General Provisions.

The level of effort required to accomplish SECTION II services can be affected by factors which are beyond our control. Therefore, if it appears at any time charges for services rendered under SECTION II will exceed the above, we agree we will not perform services or incur costs which will result in billings in excess of such amount until we have been advised by you additional funds are available and our work can proceed.

VII. CONTRACTUAL INTENT

We thank you for the opportunity to submit this Proposal. We agree this letter and its attachments constitute a contract between us upon a signed copy returned to us. This Proposal will be open for acceptance for 30 days unless the provisions herein are changed by us in writing prior to that time. Please feel free to contact Dan Nesler directly at 651.726.7977 or dan.nesler@tkda.com if you have any questions.

Sincerely,



Dan Nesler, PE
Project Manager



Peter "Rusty" Steitz, PE
Vice President, Facilities Engineering

Attachments: Project Fee Estimate
General Provisions

ACCEPTED FOR CITY OF ARDEN HILLS

By: _____
Signature Printed Name/Title Date

CLIENT DESIGNATED REPRESENTATIVE:

Name/Title Phone Email

DAN:PRS:add:ayo





Project Fee Estimate

Client:		City of Arden Hills											Date:		8/23/2023		
Project:		South Tower Improvements Project											By:		DAN		
Task	Task Description	Estimated Person Hours Required													Total Hours	Total Dollars	
		Project Manager	Asst. PM / Env. Engineer	QA/QC	Grad Civil Engineer	Structural Engineering Lead	Structural Engineer	Electrical Engineering Lead	Electrical Engineer	Electrical Specialist	Civil Engineer	Survey Tech	Admin				
		Nesler D	Hunt M	Meemken B	Frost S	Morse B	Steele E	LiaBraatzen G.	Schaler B.	Nghi T.	Korwin B	Pientka D	Davis A.				
Billing Rate/Hr x Multiplier		\$ 213	\$ 118	\$ 153	\$ 99	\$ 228	\$ 123	\$ 224	\$ 178	\$ 110	\$ 125	\$ 78	\$ 91				
1 Project Management and Communications																	
1.1	Project Kick-off Meeting	1	3												4	\$ 567	
1.2	PM and Schedule Updates	4	8												12	\$ 1,796	
1.3	Internal Design Coordination Meetings	4	6		4		4		4		2			1	25	\$ 3,501	
1.4	City Council Work Session Meetings (2 assumed)	4													4	\$ 852	
1.5	Status updates and progress monitoring	1	8												9	\$ 1,157	
	SUBTOTAL HOURS	14	25	-	4	-	4	-	4	-	2	-	1	54			
	SUBTOTAL COST	\$ 2,982	\$ 2,950	\$ -	\$ 396	\$ -	\$ 492	\$ -	\$ 712	\$ -	\$ 250	\$ -	\$ 91			\$ 7,873	
Expenses:																	
Travel & Subsistence (TS)																	\$ 50
Subtotal Expenses																	\$ 50
Subtotal																	\$ 7,923
2 QA/QC																	
2.1	Internal QA/QC reviews	2	-	4	-	2	-	2	-	-	-	-	-	-	10	\$ 1,942	
	SUBTOTAL HOURS	2	-	4	-	2	-	2	-	-	-	-	-	10			
	SUBTOTAL COST	\$ 426	\$ -	\$ 612	\$ -	\$ 456	\$ -	\$ 448	\$ -	\$ -	\$ -	\$ -	\$ -			\$ 1,942	
Expenses:																	
Travel & Subsistence (TS)																	\$ -
Subtotal Expenses																	\$ -
Subtotal																	\$ 1,942
3 Plans and Specifications																	
3.1	On-site Kick-off Meeting	2	4				3		3						12	\$ 1,801	
3.2	Topographic Survey		2		16							12			30	\$ 2,756	
3.3	50% Plans and Cost Estimate	4	24		24	2	24	2	16	16	4				116	\$ 15,024	
3.4	90% Plans and Specifications	2	16		16		16		24	16	2			4	96	\$ 12,512	
3.5	IFB Plans and Specifications	1	8		8	1	6	1	3	4	1			2	36	\$ 4,505	
	SUBTOTAL HOURS	9	54	-	64	3	49	3	46	36	7	12	6	290			
	SUBTOTAL COST	\$ 1,917	\$ 6,372	\$ -	\$ 6,336	\$ 684	\$ 6,076	\$ 672	\$ 8,224	\$ 3,960	\$ 875	\$ 936	\$ 546			\$ 36,598	
Expenses:																	
Travel & Subsistence (TS)																	\$ 150
Equipment Rentals																	\$ 320
Subtotal Expenses																	\$ 470
Subtotal																	\$ 37,068
4 Bidding Assitance																	
4.1	Load IFB Package to QuestCDN		1											2	3	\$ 300	
4.2	Respond to Bidder Questions		4		2		4		4						14	\$ 1,874	
4.3	Bid Opening	1	2												3	\$ 449	
4.4	Grant Application Assitance	1	12		4									4	21	\$ 2,389	
	SUBTOTAL HOURS	2	19	-	6	-	4	-	4	-	-	-	6	41			
	SUBTOTAL COST	\$ 426	\$ 2,242	\$ -	\$ 594	\$ -	\$ 492	\$ -	\$ 712	\$ -	\$ -	\$ -	\$ 546			\$ 5,012	
Expenses:																	
Travel & Subsistence (TS)																	\$ 50
Subtotal Expenses																	\$ 50
Subtotal																	\$ 5,062
5 Construction Administration																	
5.1	Pre-Construction Meeting	1	4		2				2						9	\$ 1,239	
5.2	Shop Drawings		8			1	4	1	8		2				24	\$ 3,562	
5.3	Monthly Pay Applications		16		4										20	\$ 2,284	
5.4	RFIs	2	12		4		2		4				1	25	\$ 3,287		
5.5	Site Visits (3 assumed)		10				4		6					20	\$ 2,740		
5.6	Prepare Punch List		4				2		2					8	\$ 1,074		
5.7	Final Payment Application and Close out		4		2								2	8	\$ 852		
	SUBTOTAL HOURS	3	58	-	12	1	12	1	22	-	2	-	3	114			
	SUBTOTAL COST	\$ 639	\$ 6,844	\$ -	\$ 1,188	\$ 228	\$ 1,476	\$ 224	\$ 3,916	\$ -	\$ 250	\$ -	\$ 273			\$ 15,038	
Expenses:																	
Travel & Subsistence (TS)																	\$ 150
Subtotal Expenses																	\$ 150
Subtotal																	\$ 15,188
TOTAL																	\$ 67,183

TOLTZ, KING, DUVALL, ANDERSON AND ASSOCIATES, INCORPORATED

General Provisions of Engineer-Architect Agreement

ARTICLE 1. GENERAL

These General Provisions supplement and become part of the Agreement between Toltz, King, Duvall, Anderson and Associates, Incorporated, a Minnesota Corporation, hereinafter referred to as TKDA, and the other Party to the Agreement, hereinafter referred to as CLIENT, wherein the CLIENT engages TKDA to provide certain Engineering, Architectural, and/or Planning services. Either Party to this Agreement may be referred to as a "Party" or collectively as "Parties."

As used herein, the term "Agreement" refers to (1) TKDA's original Engagement Letter or proposal (the "Engagement Letter") which forms the basis for the Agreement; (2) these General Provisions, and (3) any attached Exhibits, as if they were part of one and the same document. With respect to the order of precedence, any attached Exhibits shall govern over these General Provisions and the Engagement Letter shall govern over any attached Exhibits and these General Provisions.

ARTICLE 2. PERIOD OF SERVICE

The term of this Agreement for the performance of services hereunder shall be as set forth in TKDA's Engagement Letter. Any lump sum or estimated maximum payment amounts set forth in the Engagement Letter have been established in anticipation of the orderly and continuous progress of the project in accordance with the schedule set forth in the Engagement Letter or any Exhibits attached thereto.

ARTICLE 3. COMPENSATION TO TKDA

A. Compensation to TKDA for services shall be as designated in the Engagement Letter. The CLIENT shall make monthly payments to TKDA within 30 days of date of invoice.

B. The CLIENT will pay the balance stated on the invoice unless CLIENT notifies TKDA in writing of the particular item that is alleged to be incorrect within 15 days from the date of invoice, in which case all undisputed items shall be paid and amounts in dispute shall become due upon an adjudicated resolution or upon agreement of the parties. All accounts unpaid after 30 days from the date of original invoice shall be subject to a service charge of 1-1/2% per month, or the maximum amount authorized by law, whichever is less. TKDA shall be entitled to recover all reasonable costs and disbursements, including reasonable attorneys' fees, incurred in connection with collecting amounts owed by CLIENT. In addition, TKDA may, after giving seven days' written notice to the CLIENT, suspend services under this Agreement until TKDA has been paid in full for all amounts then due for services, expenses and charges. CLIENT agrees that it shall waive any and all claims against TKDA and that TKDA shall not be responsible for any claims arising from suspension of services hereunder.

ARTICLE 4. EXTRA WORK

If TKDA is of the opinion that any work it has been directed to perform is beyond the Scope of this Agreement, or that the level of effort required exceeds that estimated due to changed conditions and thereby constitutes extra work, it shall notify the CLIENT of that fact. Upon written notification to CLIENT, TKDA shall be entitled to additional compensation for same, and to an extension of time for completion absent timely written objection by CLIENT to additional services.

ARTICLE 5. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

Either Party has the right to terminate this Agreement upon seven days' written notice for convenience of either CLIENT or TKDA. In addition, the CLIENT may at any time reduce the scope of this Agreement. Such reduction in scope shall be set forth in a written notice from the CLIENT to TKDA. In the event of unresolved dispute over change in scope or changed conditions, this Agreement may also be terminated upon seven days' written notice as provided above.

In the event of a termination or reduction in scope of the project work, TKDA shall be paid for the work performed and expenses incurred on the project work and for any completed and abandoned work for which payment has not been made, computed in accordance with the provisions of the Engagement Letter and payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with TKDA's subconsultants, costs of producing copies of file materials and other related close-out costs.

ARTICLE 6. DISPOSITION OF PLANS, REPORTS AND OTHER DATA

All documents, including reports, drawings, calculations, specifications, CADD materials, computer software or hardware or other work product prepared by TKDA pursuant to this Agreement are TKDA's Instruments of Service and TKDA retains all ownership interests in said Instruments of Service, including copyrights. Any use or reuse of such Instruments of Service, except for the specific purpose intended, by the CLIENT or others without written consent, verification, or adaptation by TKDA will be at the CLIENT's risk and full legal responsibility. In this regard, the CLIENT will indemnify and hold harmless TKDA from any and all suits or claims of third parties arising out of such use or reuse which is not specifically verified, adapted, or authorized by TKDA.

Copies of documents that may be relied upon by the CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by TKDA's Engineer or Architect. Files in electronic format furnished to the CLIENT are only for convenience of the CLIENT. Any conclusion or information obtained or derived from such electronic files

will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. In the event electronic copies of documents are made available to the CLIENT, the CLIENT acknowledges that the useful life of electronic media may be limited because of deterioration of the media, obsolescence of the computer hardware and/or software systems or other causes outside of TKDA's control. Therefore, TKDA makes no representation that such media will be fully usable beyond 30 days from date of delivery to CLIENT.

If requested, at the time of completion or termination of the work, TKDA shall make available to the CLIENT at CLIENT's expense copies of the Instruments of Service upon (i) payment of amounts due and owing for work performed and expenses incurred under this Agreement, and (ii) fulfillment of the CLIENT's obligations under this Agreement.

ARTICLE 7. CLIENT'S ACCEPTANCE BY PURCHASE ORDER

In lieu of or in addition to execution of the Engagement Letter, the CLIENT may authorize TKDA to commence services by issuing a purchase order by a duly authorized representative. Such authority to commence services or purchase order shall incorporate by reference the terms and conditions of this Agreement. In the event the terms and conditions of this Agreement conflict with those contained in the CLIENT's purchase order, the terms and conditions of this Agreement shall govern. Notwithstanding any purchase order provisions to the contrary, no warranties, express or implied, are made by TKDA. In order to implement the intent of Parties to this Agreement, the Parties agree that the Engagement Letter, these General Provisions, and any Exhibits constitute the entire Agreement between them. The Parties further agree that the preprinted terms and conditions of any CLIENT-generated purchase order issued to request work pursuant to this Agreement will not apply to the work, regardless of whether TKDA executes the purchase order in acceptance of the work.

ARTICLE 8. CLIENT'S RESPONSIBILITIES

A. To permit TKDA to perform the services required hereunder, the CLIENT shall supply, in proper time and sequence, the following at no expense to TKDA:

1. All necessary information regarding its requirements as necessary for orderly progress of the work.
2. Designate in writing a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, and interpret and define CLIENT's policies with respect to TKDA's services.
3. Furnish, as required for performance of TKDA's services (except to the extent provided otherwise in the Engagement Letter or any Exhibits attached thereto), data prepared by or services of others, including without limitation, soil borings, probing and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data not covered in the Engagement Letter or any Exhibits attached thereto.
4. Provide access to, and make all provisions for TKDA to enter upon publicly or privately owned property as required to perform the work.
5. Act as liaison with other agencies or involved parties to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
6. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by TKDA, obtain advice of an attorney, insurance counselor or others as CLIENT deems necessary for such examination, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of TKDA.
7. Give prompt written notice to TKDA whenever the CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of TKDA's services or any defect in the work of Construction Contractor(s), subconsultants or TKDA.
8. Initiate action, where appropriate, to identify and investigate the nature and extent of asbestos, petroleum and/or pollution in the project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. For purposes of this Agreement, "pollution" and "pollutant" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including petroleum, smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Hazardous Materials means any substance, waste, pollutant or contaminant (including petroleum) now or hereafter included within such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended. Waste further includes materials to be recycled, reconditioned or reclaimed. CLIENT further agrees it

will, where appropriate, endeavor to identify, remove and/or encapsulate asbestos products, petroleum, pollutants or Hazardous Materials located in the project area prior to accomplishment by TKDA of any work on the project.

If TKDA encounters, or reasonably suspects that it has encountered, asbestos or pollution in the project, TKDA shall cease activity on the project and promptly notify the CLIENT, who shall proceed as set forth above. Unless otherwise specifically provided in the Engagement Letter, the services to be provided by TKDA do not include identification of asbestos or pollution, and TKDA has no duty to identify or attempt to identify the same within the area of the project.

With respect to the foregoing, CLIENT acknowledges and agrees that TKDA is not a user, handler, generator, operator, treater, storer, transporter or disposer of asbestos, petroleum, Pollutant, or other Hazardous Materials which may be encountered by TKDA on the project. CLIENT agrees to hold harmless, indemnify and defend TKDA and TKDA's officers, subconsultant(s), subcontractor(s), employees and agents from and against any and all claims, lawsuits, 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 asbestos, petroleum or other Hazardous Materials or waste on the site. This indemnification is intended to apply only to existing conditions present at the site prior to TKDA's commencement of services, and does not apply to conditions that arise subsequent to TKDA's commencement of services that are caused or created by TKDA.

9. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the project, such legal services as the CLIENT may require or TKDA may reasonably request with regard to legal issues pertaining to the project including any that may be raised by contractor(s), such auditing service as CLIENT may require to ascertain how or for what purpose any contractor has used the monies paid under the construction contract, and such inspection services as CLIENT may require to ascertain that contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
10. Provide "record" drawings and specifications for all existing physical plants or facilities which are pertinent to the project.
11. Act promptly to approve all pay requests, Supplemental Agreements, or requests for information by TKDA as set forth herein.
12. Require all Utilities with facilities in the CLIENT's right-of-way 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.
13. Provide other services, materials, or data as may be set forth in the Engagement Letter or any Exhibits attached thereto.

B. TKDA shall be entitled to rely on the accuracy and completeness of information furnished by the CLIENT. If TKDA finds that any information furnished by the CLIENT is in error or is inadequate for its purpose, TKDA shall promptly notify the CLIENT.

ARTICLE 9. OPINIONS OF COST

Opinions of probable project cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for in the Engagement Letter or any Exhibits attached thereto, are made on the basis of TKDA's experience and qualifications and represent TKDA's judgment as an experienced and qualified design professional. It is recognized that TKDA does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices, and that any evaluation of any facility to be constructed, or acquired, or work to be performed on the basis of TKDA's cost opinions, must of necessity, be speculative until completion of construction or acquisition. Accordingly, TKDA does not guarantee that proposals, bids or actual costs will not substantially vary from opinions, evaluations or studies submitted by TKDA to CLIENT hereunder. TKDA assumes no responsibility for the accuracy of opinions of probable project costs or construction costs, and provides these estimates for the sole convenience of the CLIENT for the purposes of general project budgeting.

ARTICLE 10. CONSTRUCTION PHASE SERVICES

CLIENT acknowledges that it is customary for the Architect or Engineer who is responsible for the preparation and furnishing of Drawings and Specifications and other construction-related documents to be employed to provide professional services during the Construction Phases of the project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute of or-equal items of materials and equipment proposed by bidders and contractor(s), (3) in connection with review of shop drawings and sample submittals, and (4) as a result of and in response to TKDA's detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. CLIENT agrees that if TKDA is not employed to provide such professional services during the Construction Phases of the project, TKDA will not be responsible for, and CLIENT shall indemnify and hold TKDA (and TKDA's professional associates and consultants) harmless from, all claims,

damages, losses and expenses including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by CLIENT or others. Nothing contained in this paragraph shall be construed to release TKDA (or TKDA's professional associates or consultants) from liability for failure to perform in accordance with professional standards any duty or responsibility which TKDA has undertaken or assumed under this Agreement.

ARTICLE 11. INSURANCE

TKDA shall procure and maintain insurance for protection from claims against it under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees, and from claims against it for damages because of injury to or destruction of property.

Also, TKDA shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by any negligent act, error, or omission for which TKDA is legally liable.

Certificates of insurance will be provided to the CLIENT upon request.

ARTICLE 12. ASSIGNMENT

This Agreement, being intended to secure the personal service of the individuals employed by and through whom TKDA performs work hereunder, shall not be assigned, sublet or transferred without the written consent of TKDA and the CLIENT. Any assignment of the Agreement, or claims arising under or relating to the Agreement without the written consent of both Parties shall be null and void.

ARTICLE 13. CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota.

ARTICLE 14. SEVERABILITY

Any provision or portion thereof in this Agreement which is held to be void or unenforceable under any law shall be deemed stricken, and all remaining provisions shall continue to be valid and binding between CLIENT and TKDA.

ARTICLE 15. WAIVER OF CONSEQUENTIAL DAMAGES

CLIENT and TKDA waive consequential damages for claims, disputes or other matters in question arising out of or relating to TKDA's services under this Agreement. This mutual waiver of consequential damages applies and survives termination of this Agreement.

ARTICLE 16. LIMITATION OF LIABILITY

In recognition of the relative risks of CLIENT and TKDA relating to the work, CLIENT agrees, to the extent permitted by law, that TKDA's liability to the CLIENT or anyone claiming through CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes including, but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied, of TKDA or its officers, directors, partners, employees, agents, or consultants, or any of them, shall not exceed the total insurance proceeds paid or available on behalf of or to TKDA by its insurers in settlement or satisfaction of CLIENT's claims against TKDA under the terms and conditions of TKDA's insurance policies applicable thereto.

ARTICLE 17. CONFLICT RESOLUTION

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and TKDA agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation as a precondition to any formal legal proceedings.

ARTICLE 18. CONFIDENTIALITY

TKDA agrees to keep confidential and not to disclose to any person or entity, other than TKDA's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information furnished to TKDA and marked CONFIDENTIAL by the CLIENT. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict TKDA 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 TKDA to complete services under the Agreement or defend itself from any suit or claim.

ARTICLE 19. UNDERGROUND UTILITIES

If authorized in the Engagement Letter, TKDA and/or its authorized subconsultant will conduct the research that in its professional opinion is necessary and will prepare a plan indicating the locations intended for subsurface penetrations with respect to assumed locations of underground improvements. Such services by TKDA or its subconsultant will be performed in a manner consistent with the ordinary standard of care. The CLIENT recognizes that the research may not identify all underground improvements and that the information upon which TKDA relies may contain errors or may not be complete.

The CLIENT agrees, to the fullest extent permitted by law, to waive all claims and causes of action against TKDA and anyone for whom TKDA may be legally liable, for claims by CLIENT or its contractors for delay or additional compensation relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by TKDA.