REQUEST FOR COUNCIL ACTION

Date: April 10, 2023 Item No.: 10.d

Department Approval

City Manager Approval

Item Description:

Approve Proposal for Engineering Services for Project 22-22, South

McCarrons Retaining Wall Construction Observation

1 BACKGROUND

2 City staff has worked with TKDA to design a replacement for the large retaining wall on South

- 3 McCarrons Boulevard between Woodruff Avenue and Glenwood Avenue. The wall was originally
- 4 constructed in the early 1990's. The wall has moved and is slowly failing due to a combination of
- 5 poor design and poor construction methods. Based on the analysis done by TKDA, there is no
- 6 immediate danger of the retaining wall failing. Staff continues to monitor the wall.
- 7 The design for the replacement wall includes a soil nail installation method which will minimize
- 8 construction disturbance for the adjacent properties. Staff anticipates construction of the wall during
- 9 the 2023 season. Staff plans to solicit bids in late April and bring bids to Council in May.
- To assist with construction observation for specialized construction methods, TKDA provided the
- 11 City with a proposal for observation services for Project 22-22, South McCarrons Retaining Wall in
- the amount, not to exceed, of \$53,500.

13 POLICY OBJECTIVE

14 It is City policy to keep City-owned infrastructure in good operating condition and to keep systems

operating in a safe condition.

16 **BUDGET IMPLICATIONS**

- The total proposed cost of the proposal by TKDA is \$53,500. The current estimated cost for
- construction of the new wall is \$1,300,000. Additional costs for testing will occur when the wall is
- 19 built.
- 20 All costs for the wall can be funded with municipal state aid funds.

21 RACIAL EQUITY IMPACT SUMMARY

22 There should be no equity impacts associated with this agreement.

23 STAFF RECOMMENDATION

- 24 Staff recommends the Council approve the Proposal for Engineering Services for Project 22-22,
- 25 South McCarrons Retaining Wall construction observation by TKDA.

REQUESTED COUNCIL ACTION

26

- 27 Motion to approve the Proposal for Engineering Services for Project 22-22, South McCarrons
- 28 Retaining Wall construction observation by TKDA.

Prepared by: Stephanie Smith, Assistant City Engineer Attachments: A: Professional Service Agreement

B: TKDA Proposal, dated 3/17/2023

C Location Map

CITY OF ROSEVILLE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made on the ______ day of ______, 2023, between the City of Roseville, a Minnesota municipal corporation (the "City"), and TKDA, a consulting engineering company (the "Contractor", each a "Party" and together the "Parties").

- 1. Scope of Work. The Contractor agrees to provide the professional services described in Exhibit A ("Work") which is attached to this Agreement and incorporated by this reference. All Work provided by Contractor under this Agreement shall be provided in a manner consistent with the level of care and skill ordinarily exercised by professional consultants currently providing similar services.
- 2. Term and Termination. The term of this Agreement will commence on April 30, 2023. Unless extended by written agreement of the Parties, this Agreement will terminate no later than October 27, 2023 or upon completion of the Work, whichever occurs first. This Agreement may be terminated earlier by either Party with or without cause, by delivering, a written notice at least thirty (30) days prior to the date of such termination to the other Party. The date of termination shall be stated in the notice. Upon termination the Contractor shall be paid for services rendered and eligible reimbursable expenses incurred by the Contractor through and until the date of termination. If the City terminates this Agreement for cause, the notice shall so-state, and no further payment shall be due to the Contractor following the delivery of the termination notice.
- 3. Compensation for Work. The City agrees to compensate Contractor the in accordance with **Exhibit B** attached hereto for the Work. Any changes in the Work which may result in an increase to the compensation due the Contractor shall require prior written approval of the City.
- **4. Method of Payment**. Following the conclusion of each calendar month, Contractor must submit an itemized invoice detailing actual hours worked and actual expenses incurred for Work performed under this Agreement during the previous month. Invoices submitted shall be paid in the same manner as other claims made to the City. Invoices shall contain the following:
 - a. For compensation based on hours worked by various individuals, for each individual, their name, job title, the number of hours worked, rate of pay and description of the Work performed. For reimbursable expenses an itemized listing including, as applicable, receipts for such expenses.
 - b. Upon request of the City, Contractor must also provide the City's project number, a progress summary showing the original (or amended) amount of the Agreement, the current billing, past payments, the unexpended balance due under the Agreement.
 - c. A statement dated and signed by the Contractor: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."
- **5. Representatives and Notices**: The below-named individuals will act as the representatives of the Parties with respect to the work to be performed under this Agreement. Any termination

notice issued under this Agreement shall be either hand delivered or sent by U.S. Mail to the below-named individuals:

To City: To Contractor:

City of Roseville TKDA

2660 Civic Center Drive 444 Cedar Street, Suite 1500

Roseville, MN 55113 St. Paul, MN 55101 Attn: Jennifer Lowry Attn: Jim Bellefleuille

- **6. Assignment or Subcontracting**. The Contractor shall not assign or enter into subcontracts for services provided under this Agreement without the written consent of the City. If subcontracts are approved and entered into, the Contractor shall promptly pay any subcontractor involved in the performance of this Agreement as required by, and the Contractor shall otherwise comply with, the State Prompt Payment Act.
- 7. Independent Contractor. All Work provided pursuant to this Agreement shall be provided by Contractor as an independent contractor and not as an employee of the City for any purpose. Any and all officers, employees, subcontractors, and agents of Contractor, or any other person engaged by Contractor in the performance of the Work pursuant to this Agreement, shall not be considered employees of the City. Contractor, its employees, subcontractors, or agents shall not be entitled to any of the rights, privileges, or benefits of the City's employees, except as otherwise stated herein.
- **8. Annual Review**. Following the anniversary date of each year of this Agreement, the City shall have the right to conduct a review of the performance of the Work performed by the Contractor under this Agreement. The Contractor agrees to cooperate in such review and to provide such information as the City may reasonably request. Following each performance review the Parties shall, if requested by the City, meet and discuss the performance of the Contractor relative to the remaining Work to be performed by the Contractor under this Agreement.
- **9. Compliance with Laws and Regulations**. The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations in the performance of the Work.
- 10. Non-Discrimination. During the performance of this Agreement, the Contractor shall not discriminate against any person, contractor, vendor, employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Contractor shall 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 Contractor shall incorporate the foregoing requirements in all of its subcontracts for Work done under this Agreement and will require all of its subcontractors performing such Work to incorporate such requirements in all subcontracts for the performance of the Work. The Contractor further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act.

- 11. Data Practices Act Compliance. Contractor acknowledges that all data provided, produced, or obtained under this Agreement shall be protected, maintained, and administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (the "Act"), and that with regard to such data Contractor must comply with the Act as if it were a government entity. Contractor will immediately report to the City any requests from third Parties for information relating to this Agreement.
- **12. Audit Disclosure**. Under Minn. Stat. § 16C.05, subd. 5, Contractor's books, records, documents, and accounting procedures and practices relevant to this Agreement, including books and records of any approved subcontractors, are subject to examination by the City and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years after the termination of this Agreement.
- 13. Indemnification. The Contractor agrees to defend, indemnify and hold the City, and its mayor, councilmembers, officers, agents, employees, and representatives harmless from and against all liability, claims, damages, costs, judgments, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from any negligent or wrongful act or omission of the Contractor, its officers, agents, employees, contractors and/or subcontractors, pertaining to the performance or failure to perform the Work. Nothing herein shall be construed as a limitation on or waiver of any immunities or limitations on liability available to the City under Minnesota Statutes, Chapter 466, or other law.
- **14. Insurance**. Prior to starting the Work and during the full term of this Agreement, the Contractor shall procure and maintain insurance Contractor shall obtain, at Contractor's expense, as follows:
 - a. Workers Compensation insurance in accordance with Minnesota law;
 - b. Professional Liability Insurance covering any damages caused by an error, omission or any negligent act. AND/OR General Liability Coverage against claims for bodily injury, death, or property damage arising out of Contractor's performance of duties under this Agreement;
 - c. Automobile insurance for owned, hired and non-owned vehicles;
 - d. Coverage shall be sufficiently broad to cover to all duties and obligations undertaken by Contractor in this Agreement including duties related to indemnification;
 - e. Insurance must be on an "occurrence" basis, and, other than Workers Compensation, the limits of such policies must be no less than \$1,000,000 per occurrence and \$1,500,000 aggregate.

- f. Policies must be held by insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless otherwise agreed to by the City in writing.
- g. Contractor must provide a copy of: (i) a certification of insurance satisfactory to the City, and (ii) if requested, the Contractor's insurance declaration page, riders and/or endorsements, as applicable, which evidences the compliance with this Paragraph, must be filed with the City prior to the start of Contractor's Work. Such documents evidencing insurance shall be in a form acceptable to the City and shall provide satisfactory evidence that the Contractor has complied with all insurance requirements.
- 15. Ownership of Documents. All plans, diagrams, analysis, reports and information generated in connection with the performance of this Agreement (the "Information") shall become the property of the City, but the Contractor may retain copies of such documents as records of the services provided. The City may use the Information for any reasons it deems appropriate without being liable to the Contractor for such use. The Contractor shall not use or disclose the Information for purposes other than performing the Work contemplated by this Agreement without the prior consent of the City.
- **16.** Conflicts. No salaried officer or employee of the City and no member of the City Council of the City shall have a financial interest, direct or indirect, in this Agreement. The violation of this provision shall render this Agreement void.
- 17. Waiver. Any waiver by either Party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement or either Parties' ability to enforce a subsequent breach.
- 18. Governing Law. This Agreement shall be controlled by the laws of the State of Minnesota. Any disputes, controversies, or claims arising under this Agreement shall be heard in the state or federal courts of Minnesota and the Parties waive any objections to jurisdiction.
- 19. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original.
- **20. 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 shall not affect the remaining provisions of this Agreement.
- 21. Entire Agreement. Unless stated otherwise in this, the entire agreement of the Parties is contained in this Agreement. This Agreement supersedes all prior 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 shall be valid only when expressed in writing and duly signed by the Parties, unless otherwise provided herein.

IN WITNESS WHEREOF, the undersigned Parties have entered into this Agreement as of the date set forth above.

CITY OF ROSEVILLE	TKDA
By: Mayor	By: Its:
By:City Manager	By:

EXHIBIT A

WORK

The Contractor shall perform the following Work at the location shown below:

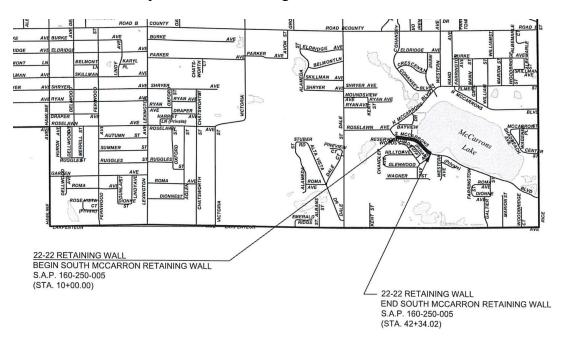


EXHIBIT B

COMPENSATION



Project Fee Estimate

Client:		City of Roseville										9	3/16/2023
Projec	t:	South McCarrons Blvd Retaining Wall C	Retaining Wall Construction Support										JJB
				Esti	mate	d Perso							
Task	Task Description		PM Sr Reg Eng		Structural			Admin		Total		Total	
					Sr. Reg Eng		Grad		Гесh	Hours		Dollars	
			\$	230	\$	149	\$	100	\$	90			
3	Progres	ss reports and invoicing (7 Months)		8							8	\$	1,840
В	BID ASSIST	ANCE											
1	Respor	nd to Bidder Questions		4		2					6	\$	1,218
C	CONSTRUC	TION MANAGEMENT TEAM ASSISTANCE											
1	Review	Shop Drawing Submittals		8		8		4			20	\$	3,432
2	Constru	uction Observation & Reports (12 wks)		12		48		240		12	312	\$	34,992
3	Pre-cor	nstruction joint site inspecction						8			8	\$	800
4	Attend	SNW pre-construction meeting		2		2		2		1	7	\$	1,048
5	Attend	weekly construction meeting		12		In C.2		In C.2			12	\$	2,760
6	Respor	nd to RFI's		2		8					10	\$	1,652
		SUBTOTAL HOURS		64		70		256		18	408		
		SUBTOTAL LABOR COST	\$	14,720	\$	10,430	\$	25,600	\$	1,620		\$	52,370
Expens	es:												
Trave	el							1300	mil	es @	\$0.655	\$	1,114
Total	Project											\$	53,484
Total	Not to Exc	ceed Project Fees (Rounded)										\$	53,500



March 17, 2023

Submitted via email: stephanie.smith@cityofroseville.com

Ms. Stephanie Smith Assistant City Engineer City of Roseville, Minnesota 2660 Civic Center Drive Roseville, MN 55113

Re: Proposal for Engineering Services

South McCarron's Retaining Wall Construction Support

Roseville, Minnesota

Dear Ms. Smith:

In response to your Request for Proposal TKDA is pleased to submit this Proposal to provide Engineering Services in connection with the South McCarron's Boulevard Retaining Wall Construction Support in Roseville, Minnesota, 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, the City of Roseville is referred to as the CLIENT.

I. PROJECT DESCRIPTION

The CLIENT will be advertising for bids for the construction of the soil nail retaining wall along South McCarron's Boulevard between Glenwood Avenue and Woodruff Avenue in Roseville. The CLIENT contracted with TKDA in 2021 for the evaluation of the failing in-place wall and in 2022 for preparation of plans and special provisions for the wall.

The CLIENT requests services from TKDA to provide inspection assistance to the CLIENT's construction management team.

II. KEY PERSONNEL

TKDA has the knowledge and experience inspecting retaining walls and soil nail walls on State Aid projects. We will provide services with our team of experienced professionals as follows:



Joe Mueller, PE has over 16 years of experience in various bridge and wall type designs and on-site field inspections and engineering related support during construction activities. Joe will serve as the Lead Inspector. He has experience working with the State Aid for Local Transportation office and has experience working on many different City and County projects. He regularly performs construction observation and administration for structural engineering projects.



Jim Bellefeuille, PE has over 36 years of experience designing bridges and walls for MnDOT, counties, cities, Class 1 railroads, and Metro Transit. He has a variety of construction related projects ranging from 2½ years as Assistant Field Engineer during the construction of the Wabasha Street Bridge over the Mississippi River, to two years as Assistant Engineer during demolition of the Xcel Energy Highbridge Coal Fired Generating Plant. Jim will be Project Manager and provide bid assistance for questions that may arise during bidding and review shop drawings.



Zack McElduff, EIT has over two years of experience in TKDA's bridge group designing bridges and retaining walls. Zack recently completed the MnDOT certification classes for construction inspection and will assist Joe during construction.





Sydney Bortscheller, EIT (IL) has over three years of experience, with one year in TKDA's bridge group designing bridges and retaining walls. Sydney assisted with the preparation of the South McCarron's wall plans and is very familiar with the planned construction. She will be the primary field support assisting Joe and the CLIENT during construction.

III. SERVICES TO BE PROVIDED BY TKDA

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

A. PROJECT MANAGEMENT

TKDA will hold a kick-off meeting with the CLIENT via Microsoft Teams to establish the lines of communication, confirm Project scope, review existing information for the existing retaining wall, receive Project data and develop the Project schedule.

B. BID ASSISTANCE

Provide responses to CLIENT for questions that may arise during bidding.

C. CONSTRUCTION MANAGEMENT TEAM ASSISTANCE

- 1. Review shop drawings:
 - a. Contractor Experience on Soil Nail Walls
 - b. Materials
 - c. Contractor soil nail wall plans and design computations
 - d. Construction Submittals
 - e. Architectural Concrete Texture (Rock Face)
 - f. Architectural Surface Finish (Multi Color)
 - g. Anti-graffiti Coatings
- 2. Provide construction observation and daily reports during the soil nail wall and cast-in-place concrete facing construction, assumed average of 24 hours per week.
- 3. With the Contractor, jointly inspect the site to observe and document the pre-construction condition of the site, existing structures and facilities.
- 4. Attend the soil nail wall pre-construction meeting.
- 5. Attend weekly coordination / progress meetings.
- 6. Provide responses to CLIENT on RFI's.

D. TKDA DELIVERABLES

- Daily construction observation report.
- · Responses to bidder questions.
- Shop drawing reviews.
- Responses to RFI's.

E. SCHEDULE

Construction Administration

TBD

IV. ADDITIONAL SERVICES

If authorized in writing by CLIENT, TKDA will furnish or obtain from others Additional Services of the types listed below which are not considered as basic services under this proposal:

- A. Changes in scope during construction.
- B. Site visits requested during construction beyond what is described in Task D.

V. CLIENT RESPONSIBILITIES

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

TKDA® | 444 Cedar Street Suite 1500 | Saint Paul, MN 55101

651.292.4400 • tkda.com

Ms. Stephanie Smith, PE | City of Roseville Proposal for Engineering Services South McCarron's Retaining Wall Construction Support March 17, 2023 Page 3

- A. Designate one (1) individual to act as a representative with respect to the work to be performed. 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.
- B. Construction management outside what is outlined in Task D.

VI. PERIOD OF SERVICE

We would expect to start our services promptly upon receipt of a Purchase Order and Notice to Proceed, and to complete all services by October 27, 2023 subject to the Contractor's construction schedule.

VII. COMPENSATION

Compensation to TKDA for services provided as described herein shall be on an Hourly Time and Materials basis for the not-to-exceed amount of \$53,500 plus reimbursable expenses.

Our fee assumes the following:

- Verification soil nails installed in a single 8 hour day.
- Production soil nails installed in eight 8 hour days.
- Proof testing of soil nails in a single 8 hour day.
- Drainage media/system and shotcrete in four 8 hour days.
- CIP Wall facing and caps in 29 days at 4 hours per day.
- Special surface finish, multi-color, and anti-graffiti coating over ten days at 2 hours per day.
- Final cleanup by October 17, 2023.

The level of effort required to accomplish SECTION II services can be affected by factors beyond our control. Therefore, if it appears at any time charges for services rendered under SECTION II will exceed the above, TKDA agrees 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.

VIII. CONTRACTUAL INTENT

We thank you for the opportunity to submit this Proposal. If acceptable, please issue a Purchase Order authorizing us to proceed. 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 contact Jim Bellefeuille directly at 612.810.0646 or james.bellefeuille@tkda.com if you should have any questions.

We appreciate the opportunity to serve you on your project.

Sincerely,

James J. Bellefeuille, PE

Project Manager

Andrew V. Wagstrom, PE

Vice President

Attachment: Fee Spreadsheet

General Provisions

c: Lindsey Lawrence-TKDA

JRM:AJW:Imf:sfs

Ms. Stephanie Smith, PE | City of Roseville Proposal for Engineering Services South McCarron's Retaining Wall Construction Support March 17, 2023 Page 4

ACCEPTED FOR THE CITY OF ROSEVILLE		
By:(signature)	Printed Name/Title	Date
CLIENT'S DESIGNATED REPRESENTATIVE:		
Name/Title	Phone	Email





Project Fee Estimate

Client:		City of Roseville										(1)	3/16/2023	
Projec	ject: South McCarrons Blvd Retaining Wall Construction Support										JJB			
			Esti	mate										
Task	Task Description		PM		Structural				Admin	Total		Total		
					Sr. Reg Eng		Grad		Tech		Hours		Dollars	
			\$	230	\$	149	\$ 100		\$ 90					
3	Progres	ss reports and invoicing (7 Months)		8							8	\$	1,840	
В	BID ASSIST	ANCE												
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4	Attend	SNW pre-construction meeting		2		2		2		1	7	\$	1,048	
5	Attend	weekly construction meeting		12		In C.2		In C.2			12	\$	2,760	
6	Respon	nd to RFI's		2		8					10	\$	1,652	
		SUBTOTAL HOURS		64		70		256		18	408			
		SUBTOTAL LABOR COST	\$	14,720	\$	10,430	\$	25,600	\$	1,620		\$	52,370	
Expense	es:													
Travel 1300 miles @ \$0.655								\$0.655	\$	1,114				
Total Project									\$	53,484				
Total	Not to Exc	ceed Project Fees (Rounded)										\$	53,500	

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. In the event 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 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:

- All necessary information regarding its requirements as necessary for orderly progress of the work.
- 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.
- Provide access to, and make all provisions for TKDA to enter upon publicly or privately owned property as required to perform the work.
- 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.
- 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.
- 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.
- 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 end 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.



Wall Project

Data Sources and Contacts:

*Ramsey County (SIS Base Map (4/05/22)

*City of Roseville Engineering Department
For further information regarding the contents of this map conta
City of Roseville, Engineering Department,
2660 Civic Center Drive, Roseville MN

DECLARED.

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