



To: Carson City Airport Authority
From: Jim Clague
Date: October 12, 2016

Subject Carson City Airport Authority Meeting for 10-19-2016

The following is a status summary of the projects in which ATKINS is involved:

1. North Apron Reconstruction AIP No. 3-32-0004-30 – Information Item

The entire apron was closed on October 3rd and Phase 4 was paved on October 8th. The apron will remain closed until October 17th to prevent aircraft and vehicles from traversing the pavement during the installation of slotted drains, concrete valley gutters, sawcut control joints, and the installation of the tie-down anchors. Access to the apron will be allowed after October 17th, but portions of the apron will be closed off as necessary to fog seal the pavement, provide striping, and perform other miscellaneous work. The official contract period ends on November 28th, however it is anticipated that construction will be substantially complete on October 27th. The contract period will be suspended on October 27th and will resume again when the poles arrive for the apron lighting, which will be the only remaining work. The poles are scheduled to arrive on November 21st and it is estimated that the installation will require 3 days. Attached is an exhibit of the project and a financial summary as of October 7th.

Table with 5 columns: PHASE, CONTRACT PERIOD, START, FINISH, DAYS USED. Rows include Phase 1 & 2, Phase 3, Phase 4, Fog seal & striping, and a TOTAL row.

2. Airport Master Plan Update – Action Item

Task No. 6 for Atkins to perform an Airport Master Plan Update (AMPU) was approved by the Airport Authority at last month’s meeting for a lump sum amount of \$440,000, contingent on FAA approval and funding. The next step in the process is to obtain an independent fee estimate (IFE) from another airport planning firm to demonstrate to the FAA that the fee is fair and reasonable. Attached is a proposal from TKDA to perform an IFE for a lump sum amount of \$4,000. The cost of the IFE is a reimbursable expense from the FAA grant to prepare the AMPU. However, the expense for the IFE will need to be paid by the Carson City Airport now and the 93.75% reimbursement by the FAA will be made after the grant offer has been executed.

Recommended Motion:
I move to approve the agreement with TKDA for a lump sum amount of \$4,000 to prepare an Independent Fee Estimate for the Airport Master Plan Update at the Carson City Airport.

### **3. 2018-2022 Airport Capital Improvement Program – Informational**

A meeting with the FAA has been scheduled to be held on November 3<sup>rd</sup> to discuss the 2018-2022 ACIP. We will make any necessary revisions to the ACIP and present it to the Airport Authority at the November regular meeting to obtain permission to officially submit it to the FAA.

## **REHABILITATE NORTH APRON**



**CARSON CITY AIRPORT  
REHABILITATE NORTH APRON**

**AIP No. 3-32-0004-30**

**PROJECT SUMMARY**

10/07/16

DESCRIPTION	BUDGETED AMOUNT	CONTRACT AMOUNT	AMOUNT EARNED or SPENT	PERCENT COMPLETE
<b>CONSTRUCTION - GRANITE CONSTRUCTION COMPANY</b>				
Original Contract	\$ 2,352,352	\$ 2,352,352	\$ 1,554,394	66.1%
Change Order No. 1 (revised contract period)	\$ -	\$ -	\$ -	
<b>CONSTRUCTION TOTAL</b>	<b>\$ 2,352,352</b>	<b>\$ 2,352,352</b>	<b>\$ 1,554,394</b>	<b>66.1%</b>
<b>ENGINEERING SERVICES - ATKINS</b>				
Construction Management and Testing Services	\$ 297,500	\$ 297,500	\$ 115,851	38.9%
<b>ENGINEERING TOTAL</b>	<b>\$ 297,500</b>	<b>\$ 297,500</b>	<b>\$ 115,851</b>	<b>38.9%</b>
<b>ADMINISTRATION</b>				
Carson City Airport Authority	\$ 10,245	\$ 10,245	\$ 2,000	19.5%
Single Audit	\$ 10,000	\$ 10,000	\$ -	
<b>ADMINISTRATION TOTAL</b>	<b>\$ 20,245</b>	<b>\$ 20,245</b>	<b>\$ 2,000</b>	<b>9.9%</b>
<b>PROJECT TOTAL</b>	<b>\$ 2,670,097</b>	<b>\$ 2,670,097</b>	<b>\$ 1,672,245</b>	<b>62.6%</b>
<b>FAA SHARE - 93.75%</b>	<b>\$ 2,503,216</b>	<b>\$ 2,503,216</b>	<b>\$ 1,567,730</b>	
<b>CCAA SHARE - 6.25%</b>	<b>\$ 166,881</b>	<b>\$ 166,881</b>	<b>\$ 104,515</b>	

# Carson City Airport Reconstruct North Apron

To: Carson City Airport Authority

From: Brian Fitzgerald - Atkins

Date: September 23, 2016

Report No.: 5



Pouring concrete collar for new drainage feature.



Unforeseen circumstance – previously damaged manhole cover



Light pole foundation auger moving into position



Finished light pole foundation and junction box

# Carson City Airport Reconstruct North Apron

To: Carson City Airport Authority

From: Brian Fitzgerald - Atkins

Date: September 23, 2016

Report No.: 5



Cement treated base operations



Phase 3 cement treated base curing



New gate controller junction box installed



New chain link fence post installed at property line

# Carson City Airport Reconstruct North Apron

To: Carson City Airport Authority

From: Brian Fitzgerald - Atkins

Date: September 30, 2016

Report No.: 6



Daily safety meeting prior to beginning work



Backfilling around newly installed fence and access gate



Saw cutting for concrete valley gutter



Airport Access Road awaiting pavement

# Carson City Airport Reconstruct North Apron

To: Carson City Airport Authority

From: Brian Fitzgerald - Atkins

Date: September 30, 2016

Report No.: 6



Cutting clean edge between phases



Installing new barb wire on existing fence



Typical paving operations



Dust Devil prior to paving operations

# Carson City Airport Reconstruct North Apron

To: Carson City Airport Authority

From: Brian Fitzgerald - Atkins

Date: September 30, 2016

Report No.: 6



Rolling and compacting into the evening



Airport Access Road paved



Taking pavement samples for testing



Paving operations near the FBO Fuel facility

# Carson City Airport Reconstruct North Apron

To: Carson City Airport Authority

From: Brian Fitzgerald - Atkins

Date: October 7, 2016

Report No.: 7



Pulverizing Phase 4



Sawcutting for slotted drain



Placing slotted drains



Placing sealant on the newly cement treated Phase 4

# Carson City Airport Reconstruct North Apron

To: Carson City Airport Authority

From: Brian Fitzgerald - Atkins

Date: October 7, 2016

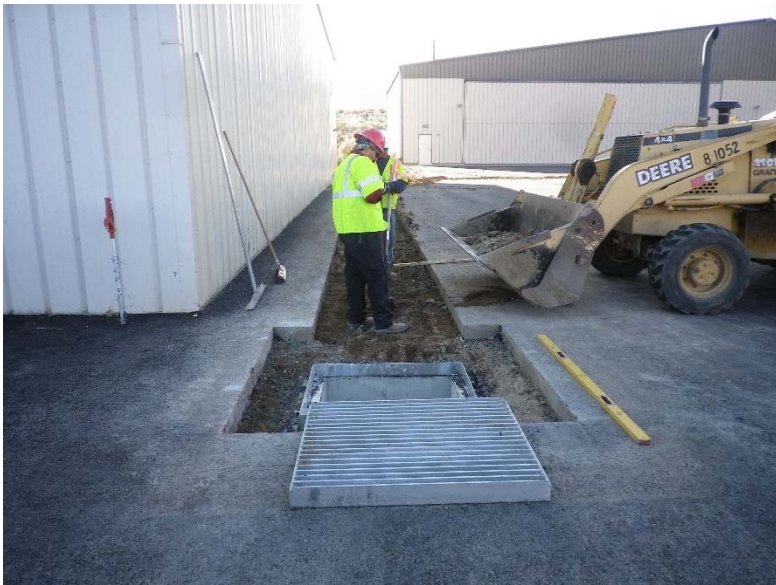
Report No.: 7



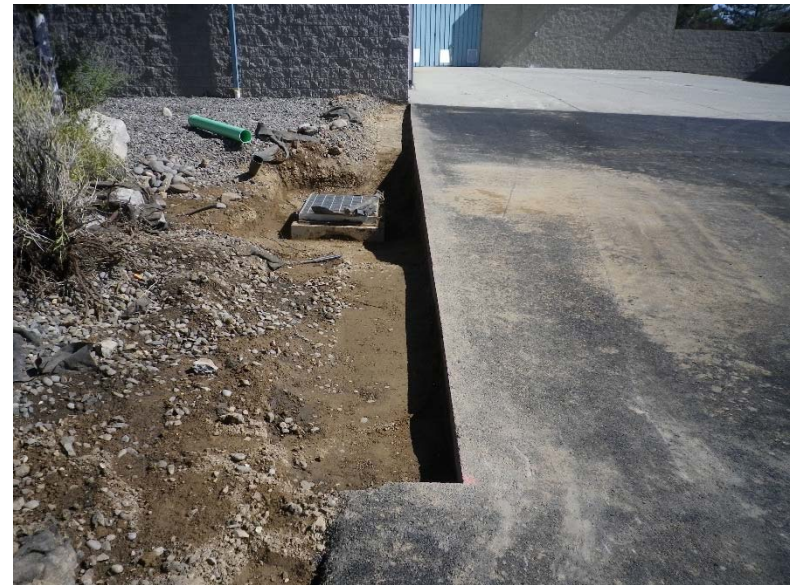
Final touches on the new automatic airport access gate



Installing new slotted drain



Preparing for valley gutter to new drainage inlet



New drainage inlet

# **AIRPORT MASTER PLAN UPDATE**



4377 Commercial Way #208  
Spring Hill, FL 34606  
813.480.9900  
tkda.com

September 23, 2016

Email: [cxp-mgr@att.net](mailto:cxp-mgr@att.net)

Mr. Tim Rowe  
Airport Manager  
Carson City Airport Authority  
2600 College Parkway, No. 6  
Carson City, Nevada 89706

Re: **Revised** Proposal for Independent Fee Review  
Airport Master Plan Study  
Carson Airport (CPX)

Dear Mr. Rowe:

In response to your request, we propose to provide an Independent Fee Review for the anticipated Carson Airport Master Plan Study, 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 Carson City Airport Authority is referred to as the CLIENT.

## I. PROJECT DESCRIPTION

As part of the procurement process for professional services, the Federal Aviation Administration (FAA) as documented under Advisory Circular 150/5100-14E, *Architectural, Engineering and Planning Consultant Services for Airport Grant Projects*, an Airport Sponsor must have an Independent Fee Estimate (IFE) prepared to comply with 3 CFR §200.323 and Table 3-67 of FAA Order 5100.38. At the request of the CLIENT, TKDA's Aviation Group will prepare an IFE for the proposed Project based upon the information provided within the scope of services, information provided by the Atkins' Senior Project Manager, Mr. Jim Clague PE, as well as our understanding and experience on similar projects.

## II. SERVICES TO BE PROVIDED BY TKDA

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

- A. A project fee estimate for the Master Plan Study and including estimated man-hours by similarly experienced personnel, anticipated subconsultant participation, if any, as well as Project direct costs.
- B. A short supplemental document that outlines our assumptions and analysis.
- C. A letter to the CLIENT.
- D. Any supporting documentation as needed.

### III. CLIENT'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 a blank copy of the Exhibit B, Project Man-hour Estimates for the Master Plan Study and with personnel classes specifically identified (i.e., Project Manager, AGIS Manager, Planner, and Technician).
- C. Provide reviews of materials furnished by TKDA in a reasonable and prompt manner so that the Project schedule can be maintained. This includes CLIENT Notice to Proceed.

### IV. 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 within three weeks thereafter.

### V. COMPENSATION

Compensation to TKDA for services provided as described in SECTION II of this Proposal shall be in the Lump Sum amount of \$4,000. Payment shall be made in accordance with Article 3 of the attached General Provisions.

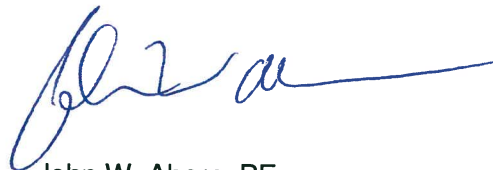
### VI. CONTRACTUAL INTENT

We thank you for the opportunity to submit this Proposal. We agree that this letter and attachments constitute a contract between us upon its signature by an authorized official of the Carson City Airport Authority and the return of a signed copy to us. This Proposal will be open for acceptance for 45 days, unless the provisions herein are changed by us in writing prior to that time.

Sincerely,



Tricia M. Fantinato  
Project Manager



John W. Ahern, PE  
Vice President, Aviation

TMF:JWA:sfs  
ATTACHMENT: GENERAL PROVISIONS



Mr. Tim Rowe  
Carson City Airport Authority  
**Revised** Proposal for Independent Fee Review  
September 23, 2016  
Page 3

ACCEPTED FOR CARSON CITY AIRPORT AUTHORITY

By: \_\_\_\_\_  
(signature) Printed Name/Title Date

CLIENT'S DESIGNATED REPRESENTATIVE:

\_\_\_\_\_  
Name/Title Phone Email



# 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 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.