

## FOR BOARD ACTION

Agenda Item # 8

Meeting Date:

1/29/13

**SUBJECT:** Engineering Services Contract – 4<sup>th</sup> St SE Reservoir Replacement Project

**PREPARED BY:** Doug Rovang, Senior Civil Engineer

### ITEM DESCRIPTION:

Resolution of replacement reservoir site issues is nearing completion, and a contract for professional engineering services for the 4<sup>th</sup> St SE Reservoir Replacement Project has been prepared for consideration by the Utility Board.

Staff recommends that the services of TKDA and WHKS, the engineering firms involved with the reservoir replacement project planning from its beginning, and thus familiar with the various issues and conditions related to the project, be retained to provide project related final design and inspection services.

A copy of the proposed professional engineering services contract is attached, and additional information related to the proposed project status will be provided at the meeting. The contract will be with TKDA in the amount of \$263,800.00 with WHKS as a subconsultant to TKDA.

### FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Funding for these services is included in the 2013 Water Utility budget.

### UTILITY BOARD ACTION REQUESTED:

Staff will be recommending the Utility Board approve the contract for professional engineering services for final design and inspection related to the 4<sup>th</sup> St SE Reservoir Replacement Project, and request the Mayor and City Clerk to execute the contract.

  
General Manager

1-29-13  
Date

ROCHESTER PUBLIC UTILITIES

**ENGINEERING DESIGN AND CONSTRUCTION INSPECTION SERVICES  
FOR  
ALL ACTIVITIES RELATED TO  
  
REPLACEMENT OF 4<sup>TH</sup> ST SE WATER STORAGE RESERVOIR  
  
ROCHESTER, MINNESOTA**

**Project Description and Scope**

Provide all required professional engineering and inspection services related the 4<sup>th</sup> St SE Reservoir Replacement Project which consists of:

- 1) Demolition of existing 1.5 million gallon reservoir located at the intersection of 4<sup>th</sup> St and 10<sup>th</sup> Ave SW;
- 2) Construction of replacement 3.5 million gallon prestressed concrete reservoir at the location of the existing 1.5 million gallon reservoir;
- 3) Construction of appurtenant trunk watermain as shown on the attached Drawing 1;
- 4) Demolition of existing 0.5 million gallon reservoir located adjacent to 4<sup>th</sup> St and 3<sup>rd</sup> Ave SE.

**Deliverables**

Preparation of construction plans and specifications, all necessary environmental reports and technical memorandums, interagency and intradepartmental coordination, utility coordination, involvement activities, preparation of required permit applications, and preparation of plans and specifications for:

- 5) Demolition of existing 1.5 million gallon reservoir located at the intersection of 4<sup>th</sup> St and 10<sup>th</sup> Ave SW;
- 6) Construction of replacement 3.5 million gallon prestressed concrete reservoir at the location of the existing 1.5 million gallon reservoir;
- 7) Construction of appurtenant watermain as shown on the attached Drawing 1;
- 8) Demolition of existing 0.5 million gallon reservoir located adjacent to 4<sup>th</sup> St and 3<sup>rd</sup> Ave SE.

Provide project related bidding and contract documents and bidding assistance, accomplish construction shop drawing reviews, construction and demolition and site work inspection services, and administration of project related contracts.

**Design Services Scope of Work**

**A. Design Services**

Provide engineering and design services for the project through construction bidding. These services will include the following:

1. Provide plan sheets, plan and profile sheets, elevations views, typical cross sections as required to thoroughly communicate construction/demolition requirements for each of the three (3) projects.
2. Produce all drawings in the most recent AutoCAD Release. The drawings will be submitted to RPU in electronic DWG and PDF formats. All hard copies of the drawings will be produced in an 11"x17" format for display purposes.
3. Provide itemized construction cost estimates.
4. Utilize all necessary topographic survey and geotechnical investigation information previously collected for the proposed project sites.

**B. Plan and Specification Preparation Instructions:** Prepare separate complete plan sets (plans and specifications) suitable for bidding as separate projects for: construction of the water storage reservoir (to include demolition of the existing 1.5 million gallon reservoir); trunk watermain; and demolition of the existing 4<sup>th</sup> St SE ground storage reservoir.

1. Complete final 3.5 million gallon water storage reservoir design so as to comply with AWWA Standard D110, "Wire- and Strand-Wound, Circular, Prestressed Concrete Water Tanks", Type III - precast concrete with a steel diaphragm. The water storage reservoir design effort will include but is not limited to foundation analysis and design, site grading plan preparation, demolition of existing 1.5 million gallon reservoir at the site, and water storage reservoir and appurtenances design and all related construction drawings, bidding and contract-related documents. Documents and drawings are to be provided to fully complete the 3.5 million gallon reservoir design project.
2. Complete trunk watermain design to comply with City of Rochester Standards for Street and Utility Construction. Documents and drawings are to be provided to fully complete construction of the trunk watermain.
3. Provide plans to RPU for review and comments at 50%, 90% and 95% stage of design.
4. Provide a detailed construction cost estimate for each of the three elements of the project.
5. Specification booklets are to follow City of Rochester standard format for bidding and construction.
6. Provide twenty (20) – 11" x 17" plan sets and twenty (20) project manuals to RPU for distribution during the bidding and construction phase. Also provide a pdf file of each plan sets and project manual to RPU.
7. Submit project plan sets and manuals to Minnesota Department of Health for review and approval.

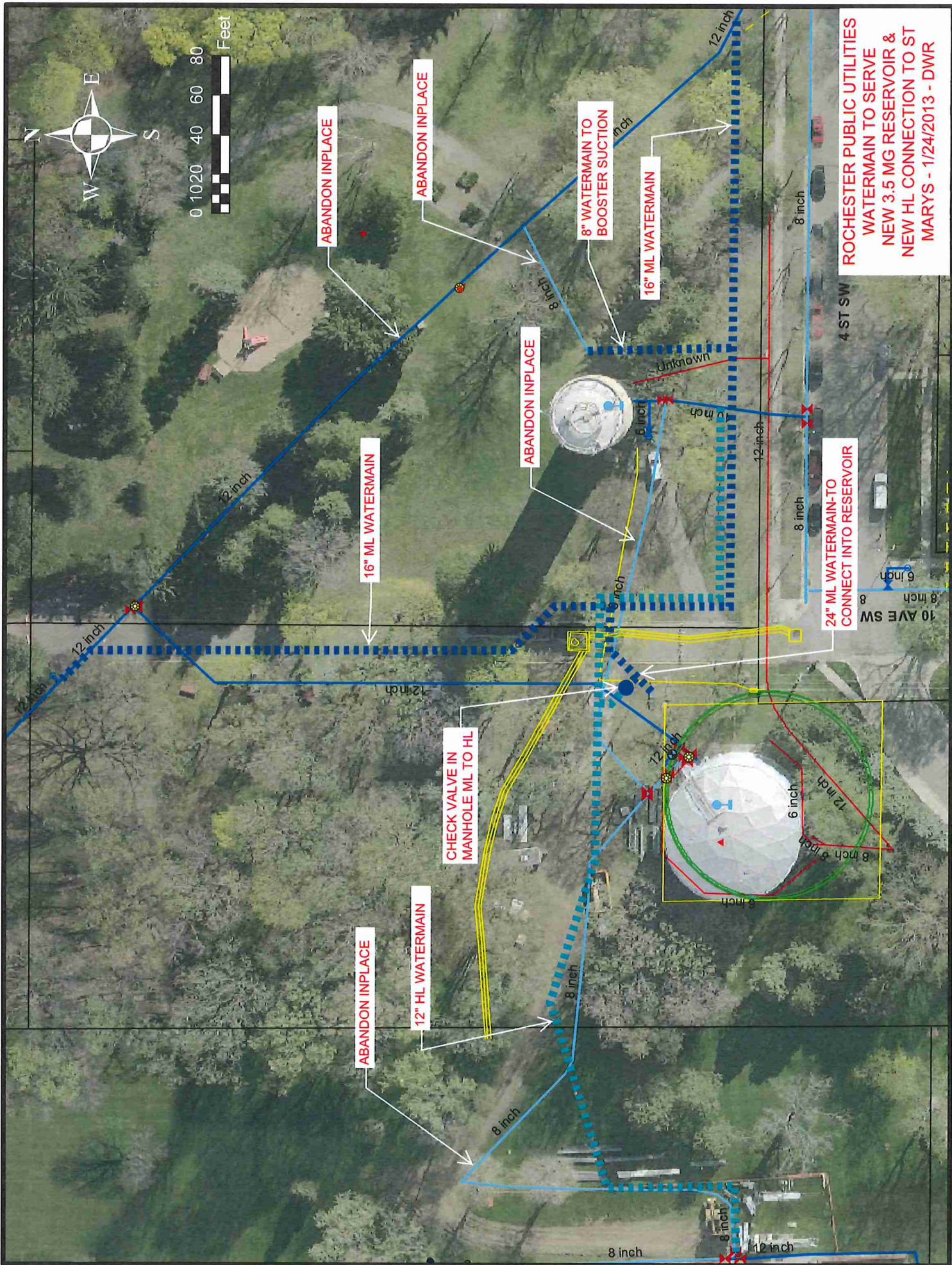
**C. Bidding Services:** RPU will bid the water storage reservoir, trunk watermain, and demolition of the 4<sup>th</sup> St SE reservoir as three (3) separate projects. Provide RPU support during the bidding process with responses to contractors and others as appropriate and other necessary support.

**D. Work Element:** Refer to attached TKDA submittal of January 15, 2013 for itemized "Work Element" costs.

**E. Project Timeline**

Project Design:	February, 2013 – March, 2013	
Bid Process:	April, 2013	(Utility Board action anticipated in late April)
Construction:	July, 2013 – Late November, 2013	(1.5 mil gal reservoir demolition and 3.5 mil gal reservoir construction)
	June, 2013	(Trunk watermain construction)
	Spring 2014	(Complete new reservoir site work and 0.5 mil gal reservoir demolition)





ROCHESTER PUBLIC UTILITIES  
WATERMAIN TO SERVE  
NEW 3.5 MG RESERVOIR &  
NEW HL CONNECTION TO ST  
MARYS - 1/24/2013 - DWR



<b>Client:</b>	Rochester Public Utilities												<b>Proj. No.:</b>	14976
<b>Project:</b>	3.5 MG Reservoir												<b>Date:</b>	1/15/2013
<b>Division:</b>	Municipal and Facilities Divisions												<b>Prepared By:</b>	VEJ
Task No.	Task Description	Estimated Person Hours Required												Totals
		VEJ	JRS	MRE	BJH	KAP	JAC	RLY	RCS	BCM	FPB	RLG	MAS	
		Sr Reg	Grad	Reg	Reg	Spec	Tech	Sr Reg	Spec	Sr Reg	Reg	Sr Reg	Tech	
1	Meeting & Project Management	60										12		62
2	Reservoir Design	130	160	120	40	160		4	68	6	48	70		804
3	Reservoir Construction Administration	80	40	80	20		36		10		8	10	18	302
4	Water Main Design	1	4											5
5	Water Main Construction Administration		5				2							7
6	Demolition 4th Street Reservoir Design		20			5				28	34	6	10	103
7	Demolition 4th Street Reservoir Cons Adm		8				6			8	6			28
Total Person Hours		261	237	200	60	165	44	4	78	42	96	96	28	1,311
Billing Rate/Hr x Multiplier		\$ 169	\$ 80	\$ 75	\$ 99	\$ 93	\$ 57	\$ 172	\$ 135	\$ 144	\$ 85	\$ 132	\$ 69	
Total Billable for Charged Time		\$ 41,499	\$ 18,960	\$ 15,000	\$ 5,940	\$ 16,345	\$ 2,508	\$ 688	\$ 10,336	\$ 6,048	\$ 8,160	\$ 12,936	\$ 1,932	\$ 139,352
<b>Expenses:</b>														
Travel & Subistence (TS)														\$ 3,480
Miscellaneous (M)														\$ 450
Reproduction & Reprographics (RR)														\$ 500
<b>Outside Services (OS):</b>														
Subconsultant Fees														\$ 114,300
Subconsultant Mark-Up - WH&G														5% \$ 5,716
Total Outside Services (OS)														\$ 120,016
<b>Total Project Fees</b>														\$ 263,797
<b>ROUNDED TO</b>														\$ 263,800

Work Plan Outline	PROJECT TITLE: RPU 3.5 MG Reservoir					DATE:1/17/13
	WHKS					
DESCRIPTION OF PROFESSIONAL SERVICES OR TASKS	Project Principal	Project Engineer	Civil Eng. 1	Eng. Tech 2	Eng. Tech 4	TOTALS
	Staff Assignment by Hours					
Task 1 Meetings and Project Management	24.0	8.0				32.0
Task 2 Reservoir Design	8.0	16.0		12.0		36.0
Task 3 Reservoir Construction Admin. / Observation	16.0	8.0			480.0	504.0
Task 4 Watermain / Site Design	24.0	24.0	160.0	90.0		298.0
Task 5 Watermain / Site Construction Admin. / Observation	24.0	24.0	40.0	32.0	40.0	160.0
Task 6 Demolition 4th Street Reservoir Design	4.0	4.0				8.0
Task 7 Demolition Construction Admin. / Observation	8.0	4.0		16.0	24.0	52.0
TOTAL HOURS	108.0	88.0	200.0	150.0	544.0	1090.0
HOURLY RATES	158.00	108.00	98.00	80.00	100.00	
SUBTOTAL FEE	17,064.00	9,504.00	19,600.00	12,000.00	54,400.00	\$112,568.00
ESTIMATED EXPENSES						\$1,732.00
TOTAL FEE + EXPENSES						\$114,300.00

Estimated Expenses - WHKS

Mileage	\$1,080.00
Postage and Printing	\$500.00
Field Supplies	\$152.00
Subtotal	\$1,732.00

**ROCHESTER PUBLIC UTILITIES  
PROFESSIONAL ENGINEERING SERVICES**

Project Identification: Replacement of 4<sup>th</sup> St SE Water Storage Reservoir

**Accounting Information:**

Year: 2013-2014	Fund:	Project No.:
Total Contract Amount: \$263,800		Job No.:

This Contract is between the City of Rochester, MN (CITY) and TKDA  
("ENGINEER")

Address: TKDA  
444 Cedar Street, Suit 1500  
Saint Paul, MN 55101

WHEREAS, RPU does not have available necessary and / or qualified personnel to conduct the services as described herein; and

WHEREAS, ENGINEER represents that it is licensed and agrees to perform all services described in this Contract.

NOW, THEREFORE it is agreed that ENGINEER will perform the work under this Contract, including the Special and General Conditions and any exhibits or other conditions which are attached and incorporated.

Effective Date: February 10, 2013 Expiration Date: June 30, 2014

IN WITNESS WHEREOF, the parties have executed this contract intending to be bound.

\_\_\_\_\_  
ENGINEER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**Corporate Signature Acknowledgement**

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2013, by \_\_\_\_\_  
(Name)  
the \_\_\_\_\_ of \_\_\_\_\_ and duly authorized to sign on behalf  
(Title) (Company)  
of the corporation

[Notary Seal]

\_\_\_\_\_  
NOTARY PUBLIC



Signature page to contract between City of Rochester, a Minnesota municipal corporation and TKDA (Design Services and Inspection-Replacement of 4<sup>th</sup> St SE Water Storage Reservoir).

**CITY:**

**City of Rochester, a Minnesota municipal corporation**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: Mayor

[MUNICIPAL SEAL]

Attest: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: City Clerk

Approved as to Form: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: City Attorney

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: General Manager, Rochester Public Utilities

Address: City of Rochester  
c/o Rochester Public Utilities  
4000 East River Road NE  
Rochester, MN 55905  
Phone: (507) 280-1510

Federal Tax ID No.: 41-6005494

STATE OF MINNESOTA)

)SS

COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by

\_\_\_\_\_, \_\_\_\_\_,

\_\_\_\_\_, and \_\_\_\_\_, the Mayor, City Clerk, City Attorney and Rochester Public Utilities General Manager, respectively, of the City of Rochester, a Minnesota municipal corporation, on behalf of the corporation.

[seal]

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

## SPECIAL CONDITIONS

### ARTICLE 1 TERM OF CONTRACT

Effective Date:	February 10, 2013
Work Completion Date:	June 30, 2013
Expiration Date:	June 30, 2014

### ARTICLE 2 SCOPE OF WORK

A. Detailed Scope of Work: Attached

B. Project Deliverables: Attached

### ARTICLE 3 CONSIDERATION OF PAYMENT

Consideration for all services performed by ENGINEER, as defined by this contract, will be paid by CITY on the following basis:

Engineering Services Cost		
3.5 Million Gallon Reservoir (including Demolition of 1.5 Mil Gal Reservoir)	Actual cost and expense based on the attached estimate of costs and fee structure	\$196,378
Trunk Watermain Final	Actual Cost Not to Exceed (negotiated after preliminary analysis is completed)	\$48,934
Demolition of 0.5 Mil Gal Reservoir (4 <sup>th</sup> St SE)	Actual Cost Not to Exceed	\$18,488
<b>TOTAL CONTRACT AMOUNT:</b>		<b>\$263,800</b>

### ARTICLE 4 ENGINEER'S PERSONNEL

ENGINEER'S Authorized Agent, or Key Personnel:

Name: Verne Jacobsen  
Title: Project Manager  
Address: 444 Cedar Street, Suit 1500  
Saint Paul, MN 55101  
Phone: 651-292-4484  
Email: [verne.jacobsen@tkda.com](mailto:verne.jacobsen@tkda.com)  
Responsibility: Project Manager

If ENGINEER'S Authorized Agent changes at any time during this Contract, ENGINEER must immediately notify CITY.

### ARTICLE 5 RPU'S AUTHORIZED AGENT / PROJECT MANAGER

CITY'S Authorized Agent, or Project Manager will be:

Name: Douglas Rovang  
Title: Senior Civil Engineer  
Address: 4000 East River Rd NE  
Phone: 507-280-1605  
Email: [droving@rpu.org](mailto:droving@rpu.org)  
Responsibility: Project Management

RPU'S Authorized Agent will have authority to accept or reject ENGINEER'S services and deliverables. If such services and deliverables are acceptable and satisfactory, the RPUS Authorized Agent will certify each invoice submitted for payment by the ENGINEER.

## **GENERAL CONDITIONS**

### **ARTICLE 1 TERM OF CONTRACT**

- A. This Contract will be effective upon the date set in the Special Conditions, or upon execution and approval by the appropriate CITY officials, pursuant to City of Rochester Home Rule Charter, and the appropriate ENGINEER officials, whichever event occurs later. This Contract will remain in effect until the Expiration Date set in the Special Conditions, or until all obligations set forth in this Contract have been fulfilled, whichever event occurs first.
- B. For delays encountered that are beyond ENGINEER's control, and upon written request from ENGINEER, the CITY's Authorized Agent may extend the Work Completion Date, as set forth in the Special Conditions of this Contract. The length of such time extension will be determined by the CITY's Agent.
- C. It will be ENGINEER's responsibility to reasonably notify CITY's Authorized Agent, in writing, if ENGINEER has reason to believe the project will not be completed as scheduled. CITY's Authorized Agent will have the authority to adjust the schedule and final cost associated with such delays, in writing, within the terms of the Contract.

### **ARTICLE 2 GOVERNING LAW, JURISDICTION, AND VENUE**

- A. This Contract will be interpreted pursuant to Minnesota Law. Any citation to federal or state law incorporates the language of that law into this Contract as if fully set forth herein. Venue for all legal proceedings arising out of this Contract, or breach, will be in the applicable state or federal court with competent jurisdiction in Olmsted County, Minnesota.

### **ARTICLE 3 TERMS OF GENERAL CONDITIONS**

- A. Any and all provisions of these General Conditions will remain in force unless they are specifically and deliberately canceled or modified, in writing, by the Special Conditions of this Contract.
- B. To the extent of any inconsistencies between the Special Conditions and these General Conditions, the Special Conditions will control. Minnesota Law supersedes any of the Special Conditions or General Conditions set forth in this Contract.

### **ARTICLE 4 TERMS OF PAYMENT**

- A. Subject to the provisions of the Special and General Conditions, all services performed and deliverables satisfactorily supplied by ENGINEER pursuant to this Contract will be paid by CITY. Compensation will be in accordance with the Special Conditions, ARTICLE 3, "Consideration of Payment".
- B. If it appears at any time that ENGINEER will exceed the Total Contract Amount stated in the Special Conditions of this Contract, ENGINEER must notify CITY's Authorized Agent in writing in a timely manner. ENGINEER may not be compensated for work performed in excess of the Total Contract Amount without a written, and fully executed, amendment to the Contract. Any work performed beyond that, which is provided for in this Contract without a prior written amendment signed by CITY, may be deemed voluntary and ENGINEER may not be entitled to compensation for the extra work.
- C. If ENGINEER claims any instructions, latent conditions, or conditions exist that cause extra cost under this Contract, ENGINEER must make claim for any extra cost incurred in writing 20 Calendar days after such instruction or observance of conditions. Latent conditions are conditions not anticipated by the Special Conditions of this Contract. Any claim made after this time may be refused and no claim will be valid unless so made. Any work performed under an amendment to this Contract that has not been properly approved and executed by the parties will be performed at ENGINEER's own risk.
- D. Reimbursement for travel and subsistence expenses actually and necessarily incurred by ENGINEER as a result of performance of this Contract must not exceed the amount defined in the Special Conditions. ENGINEER will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Mn/DOT Travel Regulations".

## **ARTICLE 5    PROCEDURE FOR PAYMENT**

- A. Payments will be made by CITY within 30 days of ENGINEER's presentation of invoices and progress reports, properly prepared, for services performed in accordance with this contract. CITY shall notify ENGINEER in writing within 30 days of ENGINEER's presentation of invoices if they believe the progress reports were not properly prepared or the services were not properly performed in accordance with the contract.
- B. Invoices for payment must be submitted by ENGINEER monthly to the CITY's Authorized Agent in the form prescribed by CITY. A sample invoice format is attached to this General Conditions. Invoices must identify the cost for the services performed and delivered for the billing period and must satisfy the requirements listed below:

### **For lump sum and other contracts:**

1. Each invoice must contain the following information: CITY contract invoice number (sequentially numbered), billing address if different from business address, and ENGINEER's original signature attesting that the invoiced services and costs are new and that no previous charge for those services and deliverables has been included in any prior invoice.
2. The original of each invoice and progress report must be sent to the CITY's Authorized Agent for review and payment.

### **For other contracts only:**

3. Direct non-salary costs allocable to the work under this Contract, and defined in the Special Conditions of this Contract, must be itemized and supported with invoices or billing documents to show that such costs are properly allocable to the work. Direct non-salary costs are any costs not that are not the salaried costs directly related to the work of the ENGINEER. Supporting documentation must be provided in a manner that corresponds to each direct cost.
4. ENGINEER must provide, upon request of the CITY's Authorized Agent, the following supporting documentation:
  - a. Direct salary costs of employees' time directly chargeable for the services performed under this Contract. This must include a payroll cost breakdown identifying the name of the employee, classification, actual rate of pay, hours worked, and total payment for each invoice period; and
  - b. Signed time sheets or payroll cost breakdown for each employee listing dates and hours worked. Computer generated printouts of labor costs for the project must contain the project number, each employee's name, hourly rate, regular and overtime hours, and the dollar amount charged to the project for each pay period.
- C. If ENGINEER is authorized by CITY to use or uses any subcontractors, ENGINEER must include all the above supporting documentation in any subconsultant's Contract, and ENGINEER must comply with Minnesota Statutes Section 16A.1245, requiring timely payment by ENGINEER of subcontractors, penalties for late payments, and defining costs the subcontractor must be awarded if the subcontractor prevails in a lawsuit.
- D. ENGINEER must require subcontractors' invoices to follow the same form and contain the same information as set forth above.

## **ARTICLE 6    CONDITIONS OF PAYMENT**

- A. All services and deliverables provided by ENGINEER under this Contract will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The ENGINEER endeavors to comply with the following:
1. All current applicable federal, state, and local laws, ordinances, rules, and regulations.
  2. All current state standards, policies, and practices.
- B. ENGINEER will not receive payment for work performed in violation of federal, state, or local laws, ordinances, rules, or regulations.
- C. All deliverables covered by progress payments made by CITY will become the sole property of CITY. This provision must not be construed as relieving ENGINEER from sole responsibility for services and deliverables upon which

payments have been made or the restoration of any damaged work or as waiving the right of CITY to require the fulfillment of all of the terms of this Contract. The CITY will indemnify ENGINEER for claims resulting from any reuse of design beyond the scope of this contract. The CITY shall grant the ENGINEER a non-exclusive license, to the extent of the CITY's rights in such data, to use the Engineering Data for other purposes. ENGINEER waives all claims against the CITY in any way from any reuse of the Engineering Data.

- D. Nothing in this Contract must be construed in any way to relieve ENGINEER from its obligation to complete the services and/or deliverables described in this Contract for a sum not to exceed that is set forth in the Special Conditions.

## **ARTICLE 7 ASSIGNMENT**

- A. ENGINEER may neither assign nor transfer any rights or obligations under this Contract without prior written authorization from the CITY's Authorized Agent. The written authority will in no way relieve ENGINEER from the primary responsibility for performance of the services and deliverables specified in this Contract.

## **ARTICLE 8 SUBCONTRACTS**

- A. ENGINEER must require all subcontractor contracts to contain all appropriate terms and conditions of this Contract, including Articles 11, 12, 14-17, and 19-33, as they apply to the subcontractor. The use of subcontractors does not relieve the ENGINEER from performing and delivering the work stated in this Contract.
- B. A copy of any and all subcontractor contracts must be sent to the CITY's Authorized Agent after execution of the subcontractor contract and prior to work starting under the subcontractor contract.

## **ARTICLE 9 AMENDMENTS, CHANGE ORDERS, MERGER, COUNTERPARTS, AND WAIVER**

- A. Amendments to this Contract will be considered only for unforeseen work or services that were excluded in the Scope of Work, entitled "Detailed Scope of Work," and that are considered essential to the work. Any written claim made by ENGINEER for extra work or costs under this Contract that has been approved by the CITY's Authorized Agent must be evidenced by an amendment to this Contract. Amendments must be in writing and executed and approved by the same parties and officials who executed and approved the original Contract, or their successors in office. ENGINEER must notify CITY's Project Manager in writing if ENGINEER will be delayed in any way from completing the project under this Contract.
- B. The work to be done in connection with this Contract may be changed at the request of CITY, with the mutual concurrence of ENGINEER. Any change will be clearly and fully defined in writing, and approved by both parties. Change orders must be consistent with the basic purpose of this Contract and within the general Scope of Services identified in the Special Conditions. Changes in the Total Contract Amount or the Contract Expiration Date are not permitted in a change order.
- C. This contract constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Contract. ENGINEER, by the signature below of its authorized representative, hereby acknowledges that the ENGINEER has read this Contract, understands it and agrees to be bound by its terms and conditions.
- D. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same contract.

## **ARTICLE 10 COMPLIANCE WITH LICENSES, PERMITS, AND OTHER REGULATIONS**

- A. ENGINEER shall procure all licenses, permits, or other rights necessary to fulfill its obligations under this Contract in compliance with all applicable federal and state laws.

## **ARTICLE 11 DATA PRACTICES AND INTELLECTUAL PROPERTY**

- A. ENGINEER must comply with the Minnesota Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by CITY in accordance with this Contract and as it applies to all data created, gathered, generated, or acquired in accordance with this Contract.
- B. Any reports, studies, photographs, negatives, or other documents prepared by ENGINEER in the performance of its obligations under this Contract will be the exclusive property of CITY. ENGINEER must remit all such materials to CITY upon completion or cancellation of this Contract. The CITY will indemnify ENGINEER for claims resulting from any reuse of such materials beyond the scope of this contract. The City shall grant the ENGINEER a non-exclusive license, to the extent of the CITY's rights in such data, to use the Engineering Data for other purposes. ENGINEER waives all claims against the CITY resulting in any way from any reuse of the Engineering.
- C. Unless otherwise directed by CITY, the originals of reports, drawings and plans; and legibly reproducible copies of work sheets, field notes, computations, and other project data must be relinquished to CITY:
  - 1. Upon written notice of completion or cancellation of this Contract.
  - 2. Upon written notification by CITY.
  - 3. Prior to final payment by CITY to ENGINEER for this Contract.

## **ARTICLE 12 LIABILITY (Identified in Articles 13 and 14 of this Agreement)**

- A. General - Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the project, and the ENGINEER's fee for the Services, and in consideration of the promises contained in this Contract, CITY and ENGINEER agree to allocate and limit such liabilities in accordance with this Article.
- B. Indemnification - ENGINEER and CITY each agrees to defend, indemnify, and hold harmless each other, its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by its negligent acts errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of ENGINEER and CITY, they shall be borne by each party in proportion to its own negligence.
- C. Survival - Upon completion of all services, obligations, and duties provided for in this Contract, or if this Contract is terminated for any reason, the terms and conditions of this Article shall survive.

## **ARTICLE 13 WORKERS' COMPENSATION**

- A. Any and all employees of ENGINEER, including its subcontractors, or other persons while engaged in the performance of any work or services required by ENGINEER under this Contract, will not be considered employees of CITY. Any and all claims that may arise under the Workers' Compensation Act of Minnesota on behalf of said employees, or other persons while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of ENGINEER's employees, or other person while so engaged on any of the work or services to be rendered, will in no way be the obligation or responsibility of CITY. Pursuant to Minnesota Statutes 176.182, acceptable evidence of compliance with Workers' Compensation insurance coverage requirements must be presented to CITY before CITY may enter into a contract with ENGINEER.

## **ARTICLE 14 INSURANCE**

- A. A certificate of insurance for each type of insurance required under this Contract must be filed with the CITY's Authorized Agent within 30 days of execution of this Contract and prior to commencement of any work under this Contract. Each policy must contain a 30-day notice of cancellation, or nonrenewal, to all named and additional insured.
- B. ENGINEER must maintain and furnish satisfactory evidence of the following insurance policies:
  - 1. ENGINEER must furnish satisfactory evidence of insurance from loss by any means of all data furnished to ENGINEER by CITY, and for partially completed data for which CITY has made payment.



2. **Workers' Compensation Insurance:** ENGINEER will provide Workers' Compensation insurance for all ENGINEER employees and, in case any work is subcontracted, ENGINEER will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of CITY of Minnesota, and including Coverage B, Employer's Liability, at limits not less than \$100,000.00 bodily injury by disease per employee; \$500,000.00 bodily injury by disease aggregate; and \$100,000.00 bodily injury by accident. Evidence of subcontractor's insurance shall be filed with the ENGINEER.
3. **Commercial General Liability:** ENGINEER will maintain insurance protecting ENGINEER from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage including loss of use which may arise from operations under this Contract whether such operations be by ENGINEER or by a subcontractor or by anyone directly or indirectly employed under this Contract. Unless otherwise specified within this Contract, ENGINEER's insurance minimum amounts will be as follows:
  - a. \$1,000,000.00 - per occurrence
  - b. \$1,000,000.00 - annual aggregate

In addition, the following coverages should be included:

- a. Bodily Injury and Property Damage
  - b. Products and Completed Operations Liability
  - c. Blanket Contractual Liability
  - d. Name CITY as an Additional Insured
4. **Commercial Automobile Liability:** ENGINEER will maintain insurance protecting ENGINEER from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services, as well as from claims for property damage including loss of use which may arise from operations under this Contract whether such operations were by ENGINEER or by subcontractor or by anyone directly or indirectly employed under this Contract. Unless otherwise specified within this Contract, the ENGINEER insurance minimum amounts will be as follows:

\$1,000,000.00 - per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned  
Name CITY as an Additional Insured

5. **Professional Liability Insurance:**

Unless otherwise specified within this Contract, ENGINEER insurance minimum amounts will be as follows:

\$1,000,000.00 - per claim  
\$1,000,000.00 - annual aggregate

This policy will provide coverage for all claims ENGINEER will become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to ENGINEER's professional services required under this Contract.

6. For work on railroad property, ENGINEER must obtain Railroad Protective Liability Insurance in accordance with Mn/DOT Specification 1708.2 (1995 Edition) or any subsequent changes or modifications to this specification.

C. ENGINEER must:

1. Include legal defense fees in addition to its liability policy limits, with the exception of Professional Liability Insurance above; and
2. Obtain insurance policies from an insurance company having an "AM BEST" rating of A-VIII or better.

- D. CITY reserves the right to immediately rescind this Contract if ENGINEER is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against ENGINEER. Upon written request by the CITY's Authorized Agent, all insurance policies shall be open to inspection, and copies of policies may be requested.

#### **ARTICLE 15 DELIVERABLE STANDARDS**

- A. CITY will have the authority to disapprove or reject services or deliverables that are defective. ENGINEER will be responsible for the accuracy of the work under this Contract and must make timely revisions, or corrections without compensation resulting from errors and omissions on the part of ENGINEER. The services or deliverables provided to CITY by ENGINEER must be of such quality that they are suitable for their intended purpose.
- B. ENGINEER's services and compensation under this Contract have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Contract, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
- C. If in this Contract specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If CITY has requested changes in the scope, extent, or character of the Project; the time of performance of ENGINEER's services shall be adjusted equitably.
- D. Neither party will be held responsible for delay or failure to perform when such delay or failure is due to any of the following, unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, unusually severe weather, or delays or defaults caused by public carriers, provided the defaulting party gives written notice as soon as possible to the other party of its inability to perform.
- E. For purposes of this Contract the term "day" means a calendar day of 24 hours.

#### **ARTICLE 16 ANTITRUST**

- A. ENGINEER assigns to CITY any and all claims for overcharges as to services and deliverables provided in connection with this Contract resulting from alleged antitrust violations, which arise under the antitrust laws of the United States and state of Minnesota.

#### **ARTICLE 17 OFFICIALS NOT TO BENEFIT**

- A. Without prior written consent of CITY, ENGINEER must not employ any professional or technical personnel who are or have been at any time during the time period of this Contract in the employ of CITY, except retired CITY employees, without written consent from CITY.
- B. ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ENGINEER, to solicit or secure this Contract, and that ENGINEER has not paid or agreed to pay any company or person, other than a bona fide employee working for ENGINEER, any fee, commissions, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of making of this Contract.

#### **ARTICLE 18 CANCELLATION**

- A. This Contract may be canceled by CITY within 30 days, at any time, with or without cause, upon written notice to the ENGINEER. In the event of such cancellation ENGINEER will be entitled to payment, determined on pro rata basis, for services and deliverables performed or delivered.
- B. In the event CITY cannot or does not obtain funding, or funding cannot be continued at a level sufficient to allow for the purchasing of the services and deliverables contained herein, this Contract may be canceled within 30 days, at CITY's option, by written notice of cancellation delivered in person, by mail, or facsimile to ENGINEER at the address specified in this Contract. CITY will not be obligated to pay for any services and deliverables provided by ENGINEER after such notice of cancellation.

## **ARTICLE 19 ERRORS OR OMISSIONS**

- A. ENGINEER will be responsible for the accuracy of the work and must promptly make necessary revisions or corrections resulting from ENGINEER's negligent acts, errors, or omissions without additional compensation. Acceptance of the work by CITY will not relieve ENGINEER of the responsibility for subsequent correction of any errors or omissions or for clarification of any ambiguities.
- B. At any time during construction or any phase of work performed by others based on data provided by ENGINEER, ENGINEER must confer with CITY when necessary for the purpose of interpreting the information secured and/or to correct any errors and/or omissions made by ENGINEER. ENGINEER must prepare any and all plans or data needed to correct the errors and/or omissions without added compensation, even though final payment may already have been received by ENGINEER. ENGINEER must give immediate attention to these changes so there will be minimal delay to the project.
- C. If negligent acts, errors, or omissions are made by ENGINEER in any phase of the work, the correction of which may require additional field or office work, ENGINEER will be promptly notified by CITY and will be required to perform such additional work as may be necessary to correct these negligent acts, errors, or omissions without undue delay and without additional cost to CITY. If the ENGINEER is aware of any negligent acts, errors, or omissions made in any phase of the work, the corrections of which may require any additional field or office work, ENGINEER must promptly perform such additional work as may be necessary to correct these negligent acts, errors, or omissions without undue delay and without additional cost to CITY.
- D. ENGINEER will be responsible for any damages incurred as a result of its negligent acts, errors, or omissions and for any loss or cost to repair or remedy ENGINEER's errors, omissions or negligent acts. Acceptance of the work by CITY will not relieve ENGINEER of the responsibility for subsequent correction of any such negligent acts, errors, or omissions, or of liability for loss or damage resulting therefrom.
- E. ENGINEER must respond to CITY's notice of any errors and/or omissions within reasonable time and give immediate attention to these corrections to minimize any delays to the ENGINEER.

## **ARTICLE 20 DISPUTE RESOLUTION**

- A. **Arbitration.** Any dispute, controversy or claim arising out of or relating to this Contract or the relationship between the parties shall be settled by non-binding arbitration in accordance with Construction Industry Rules of the American Arbitration Association ("AAA"). Such arbitration shall be conducted in the city of Minneapolis, Minnesota or such other location as the parties may mutually agree. The arbitration shall be conducted by one (1) arbitrator within thirty (30) days after one party has delivered written notice to the other party requesting arbitration of a stated dispute, each party shall select one arbitrator and the selected arbitrators shall select a third arbitrator in accordance with the AAA Rules. The decision of the arbitrator(s) shall be final and accorded full faith and credit and entitled to recognition and enforcement by the federal and state courts of the United States.

## **ARTICLE 21 FEDERAL CLAUSES**

If Federal Funds are involved with this Contract, the following additional conditions apply:

- A. Compliance with Regulations. The subconsultant shall comply with Regulations relative to non-discrimination in Federally assisted programs of the Department of Transportation, hereinafter referred to as "DOT", Title 49, Code of Federal Regulations, Part 2, as they may be amended from time to time hereinafter referred to as the "Regulations", which are herein incorporated by reference and made part of this contract.
- B. Non-discrimination. The subconsultant, with regard to the work performed by it during this contract, shall not discriminate on the grounds of race, color, national origin, sex, disabilities, or veteran's status in the selection and retention of subconsultants, subcontractors, including procurement of materials and leases of equipment. The subconsultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- C. Solicitations for Subcontracts, including procurement of materials and equipment. In all solicitations either by competitive bidding or negotiation made by the subconsultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the ENGINEER of the contractor's obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, national origin, sex, disabilities or veteran's status.
- D. Information and Reports. The subconsultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the ENGINEER, sponsor, or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of the subconsultant is in the exclusive possession of another who fails or refuses to furnish this information, the subconsultant shall so certify to the ENGINEER, sponsor, or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the subconsultant's noncompliance with the non-discrimination provisions of this contract, the CITY shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the subconsultant under the contract until the subconsultant complies, and/or,
  2. Cancellation, termination or suspension of the contract, in whole or in part.
- F. Policy. It is the policy of the DOT that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. (Consequently, the MBE requirements of 49 CFR Part 23 apply to this contract and the subconsultant hereby agrees to abide by these requirements.)
- G. DBE Obligation. The subconsultant agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard, all contractors shall take all necessary and responsible steps in accordance with 49 CFR Part 23 to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, sex, disability, or veteran's status in the award and performance of this DOT assisted contract.

**INVOICE**

City Project Number M4-57, (J7737)

To: James M. Loehr  
Department of Public Works  
201 4<sup>th</sup> Street SE, Room 108  
Rochester, MN 55902-3740

Estimated Completion: \_\_\_\_\_ %

Period Ending: \_\_\_\_\_  
Invoice Date: \_\_\_\_\_

INVOICE NO. \_\_\_\_\_

Re: CITY Contract No. M, J7737  
Contract Expiration Date: Dec. 31, 2009

Project Description: 50<sup>th</sup> Avenue NW High Level Water Tower  
And Trunk Watermain

	TOTAL CONTRACT AMOUNT	TOTAL BILLING TO DATE	AMOUNT PREVIOUSLY BILLED	BILLED THIS INVOICE
1. DIRECT COSTS for Professional Services:				
2. OTHER DIRECT COSTS: (Attach support documentation)				
3. SUBCONTRACTORS: (Attach support documentation)				
NET EARNINGS TOTALS:				
TOTAL AMOUNT DUE THIS INVOICE:				



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the contract for professional engineering services with TKDA in the amount of two-hundred-sixty-three-thousand-eight-hundred dollars (\$263,800), and to request the Mayor and the City Clerk to execute the contract for

Final design and inspection services related to the 4<sup>th</sup> St SE Reservoir Replacement Project

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of January, 2013.

---

President

---

Secretary