



May 1, 2020

Mr. Ross Beckwith  
City Engineer  
City of West St. Paul  
1616 Humboldt Avenue  
West St. Paul, MN 55118

Re: Proposal for Special Inspections and Construction Materials Testing  
Regional Athletics Center – West Stairs Modification  
West St. Paul, Minnesota

Dear Mr. Beckwith:

WSB is pleased to present this proposal to provide professional services for special inspections and construction materials testing in conjunction with the above referenced project. The following includes a description of our understanding of the project, an outline of the scope of work, and an estimate of charges for these services.

### **PROJECT INFORMATION**

It is our understanding that this project will consist of the re-construction of six sets of stair entrance ways from parking lot level to the Regional Athletics Center. The existing stairways will be completely removed and replaced. As part of the construction process, the adjacent bituminous and concrete flatwork will also be removed and replaced.

In preparing this proposal, we reviewed the following information.

- RFP, Stantec Architecture Inc, dated April 28, 2020
- Architectural Drawings, Stantec Architecture Inc, dated January 21, 2020
- Project Manual, Stantec Architecture Inc, dated January 21, 2020

We were not provided a construction schedule to assist in formulating our proposal.

## **SCOPE OF SERVICES**

We anticipate our work will be provided on a part-time, will-call basis as requested by the Contractor or the Owner. Based on our experience with similar type construction; we anticipate the following inspection and testing services will be required:

### **Soils:**

- Evaluate the suitability of the soils exposed at the base of the excavations for earth supported footing and slabs to support the proposed construction.
- Perform laboratory testing, including standard Proctor tests and sieve analyses on materials imported for fill and backfill.
- Perform density and moisture testing with the nuclear density gauge on any engineered fill and backfill.

### **Concrete:**

- Perform observations of the concrete reinforcement and formwork prior to concrete placement.
- Perform field testing of plastic concrete including air content, slump, temperature and casting of cylinders for compressive strength testing.
- Perform laboratory concrete compressive strength testing on cylinders cast by WSB personnel.

### **Adhesive Anchors:**

- Perform observations of the post-installed adhesive anchor placement to verify embedment, clean-out and adhesive type.

### **Structural Steel:**

- Perform welding inspections.
- Perform high-strength bolting inspections.

### **Bituminous Pavement:**

- Perform drain down testing on the porous pavements after placement.
- Retrieve samples of the hot mix for testing of MnDOT Gyration Mix Properties.

## **ASSUMPTIONS**

In preparing this proposal, we have made the following assumptions:

- We have assumed that inspections of the steel fabrication shops will not be required.
- We are not aware of any full penetration welds on this project that will require testing.

If these assumptions are incorrect, this proposal should be revised. These services can be provided at additional cost.

### **DELIVERABLES AND REPORTING**

WSB utilizes a laboratory information management system (LIMS) for both field and laboratory reporting and document distribution.

Our reporting system is a mobile solution for our technicians and inspectors to electronically replace paper-based information gathering on site for construction materials testing and construction inspection activities. This field data collection software connects field testing and inspection staff with the laboratory or office. This field information management system enables us to allocate, track and capture field related work in real time, and simplifying report review and approval, reducing report turnaround times.

We will submit both field and laboratory test reports electronically through the Construction Hive. The Construction Hive is a cloud-based platform providing applications for the distribution and analysis of information for construction industry participants. It provides a centralized repository of documents and data (testing and inspection) that is available for analytical reporting and integration. Prior to start of the project, we will request email addresses of those who should be provided access to our test reports. As test reports become available, these individuals will receive email alerts when reports are available for review and downloading.

### **COSTS**

Enclosed is the Construction Materials Testing Estimate of Costs for the various phases of the work indicated. WSB recommends that the Estimated Project Cost of **\$10,671.00** be used for budgeting purposes. Nevertheless, fees for the project will depend on the amount of observation and testing requested by the design team and the owner.

If there are additional services necessary for this project that are not included in this proposal, we would be happy to discuss how WSB can assist.

### **SCHEDULE**

WSB is prepared to meet your project schedule. We anticipate that your Contractor will handle coordination of the site services and that we will be given a sufficient amount of advanced notification when tests and inspections are required.

**ACCEPTANCE**

This letter represents our complete understanding of the proposed scope of services. If you are in agreement with the scope of services, proposed fees and enclosed General Contract Provisions, please have an authorized representative of the City sign in the appropriate space below and return one copy to our attention. If you have any questions about this proposal, please feel free to call us or email us.

This fee proposal is valid for ninety (90) days from the creation date noted in the header. WSB may reissue a revised proposal upon request if the indicated time period has lapsed. Should the scope of work change in nature or be expanded to include additional services, we reserve the right to renegotiate the fees with you. Once we begin work on this project any counteroffers will not be accepted.

WSB appreciates the opportunity of being considered for this project and we look forward to providing our professional services to you.

Sincerely,

**WSB**



Emily DeSchepper  
Project Coordinator  
612.289.3048  
edeschepper@wsbeng.com



Joe Carlson, PE  
Project Manager  
612.499.8416  
joecarlson@wsbeng.com

Enclosures: Construction Materials Testing Estimate of Costs  
General Contract Provisions 11.01.16

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**ACCEPTED BY: City of West. St. Paul**

The City of West St. Paul hereby accepts this WSB proposal for Construction Materials Testing and Special Inspection as outlined above and according to the general contract provisions enclosed.

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Construction Materials Testing Estimate of Costs

**City of West St. Paul**  
**Regional Athletics Center**  
**West Stairs Modification**  
 May 1, 2020

CMT Unit	Service Description	Estimated Units	Hourly or Unit Cost	Total Unit Cost
<b>Aggregate and Soils</b>				
<i>Field Testing</i>				
CMT03	Excavation Observations <i>2 trips at 3.00 hours each</i>	6.00 hours	\$ 81.00	\$ 486.00
CMT02	Compaction Testing of Fill and Backfill <i>2 trips at 2.00 hours each</i>	4.00 hours	\$ 72.00	\$ 288.00
3510	Nuclear Density Testing <i>6 tests on aggregate base</i>	6 tests	\$ 16.00	\$ 96.00
2130	Trip Charge	4 trips	\$ 30.00	\$ 120.00
<i>Laboratory Testing</i>				
3025	Sieve Analysis through no. 200 Sieve <i>1 tests on aggregate base 1 tests on choker aggregate 1 tests on filter aggregate</i>	3 tests	\$ 135.00	\$ 405.00
3260	Standard Proctor <i>1 tests on aggregate base</i>	1 tests	\$ 135.00	\$ 135.00
<b>Subtotal</b>				\$ 1,530.00
<b>Asphalt Pavements</b>				
<i>Field Testing</i>				
CMT03	Porous Pavement Drain Down Testing <i>1 trips at 4.00 hours each</i>	4.00 hours	\$ 81.00	\$ 324.00
CMT01	Sample Pick Up <i>2 trips at 1.25 hours each</i>	2.50 hours	\$ 54.00	\$ 135.00
2130	Trip Charge	3 trips	\$ 30.00	\$ 90.00
<i>Laboratory Testing</i>				
4090	MnDOT Gyratory Mix Properties	2 tests	\$ 495.00	\$ 990.00
<b>Subtotal</b>				\$ 1,539.00
<b>Concrete Reinforcement</b>				
CMT03	Concrete Reinforcement Observations <i>Footings 2 trips at 1.00 hours each Walls 2 trips at 1.00 hours each Slabs 2 trips at 1.00 hours each Stairs 2 trips at 1.00 hours each</i>	8.00 hours	\$ 81.00	\$ 648.00
2130	Trip Charge	8 trips	\$ 30.00	\$ 240.00
<b>Subtotal</b>				\$ 888.00
<b>Concrete</b>				
<i>Field Testing</i>				
CMT02	Testing of Concrete <i>Footings 2 pours at 1.75 hours each Walls 2 pours at 1.75 hours each</i>	19.25 hours	\$ 72.00	\$ 1,386.00

Slabs	2 pours	at	1.75 hours each			
Stairs	2 pours	at	1.75 hours each			
Curb/Gutter	1 pours	at	1.75 hours each			
Flatwork	2 pours	at	1.75 hours each			
CMT01	Sample Pickup			10.00 hours	\$ 54.00	\$ 540.00
	8 trips	at	1.25 hours each			
2130	Trip Charge			20 trips	\$ 30.00	\$ 600.00
<b>Laboratory Testing</b>						
2040	Concrete Curing and Compressive Strength Testing			44 cylinders	\$ 27.00	\$ 1,188.00
	11 sets	at	4 cylinders each			
<b>Subtotal</b>						\$ 3,714.00
<b>Adhesive Anchors</b>						
CMT03	Field - Inspection & Observation			6.00 hours	\$ 81.00	\$ 486.00
	2 trips	at	3.00 hours each			
2130	Trip Charge			2 trips	\$ 30.00	\$ 60.00
<b>Subtotal</b>						\$ 546.00
<b>Structural Steel</b>						
CMT04	Field - Inspection and Testing, Bolts/Welds			10.00 hours	\$ 99.00	\$ 990.00
	2 trips	at	5.00 hours each			
2130	Trip Charge			2 trips	\$ 30.00	\$ 60.00
<b>Subtotal</b>						\$ 1,050.00
<b>Project Supervision, Review and Management</b>						
CMT80	Project Engineer/Manager			4.00 hours	\$ 117.00	\$ 468.00
CMT70	Project Assistant			10.00 hours	\$ 81.00	\$ 810.00
CMT90	Project Administrator			2.00 hours	\$ 63.00	\$ 126.00
<b>Subtotal</b>						\$ 1,404.00

### Inspection and Testing Project Summary

Aggregate and Soils	\$ 1,530.00
Asphalt Pavements	\$ 1,539.00
Concrete Reinforcement	\$ 888.00
Concrete	\$ 3,714.00
Adhesive Anchors	\$ 546.00
Structural Steel	\$ 1,050.00
Project Supervision, Review and Management	\$ 1,404.00
<b>Estimated Total</b>	<b>\$ 10,671.00</b>

**EXHIBIT A  
GENERAL CONTRACT PROVISIONS**

**ARTICLE 1 – PERFORMANCE OF THE WORK**

Consultant shall perform the services under this Agreement in accordance with the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.

**ARTICLE 2 – ADDITIONAL SERVICES**

If the Client requests that the Consultant perform any services which are beyond the scope as set forth in the Agreement, or if changed or unforeseen conditions require the Consultant to perform services outside of the original scope, then, Consultant shall promptly notify the Client of cause and nature of the additional services required. Upon notification, Consultant shall be entitled to an equitable adjustment in both compensation and time to perform.

**ARTICLE 3 – SCHEDULE**

Unless specific periods of time or dates for providing services are specified in a separate Exhibit, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond Consultant's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, or other natural disasters or acts of God; fires, riots, war or other emergencies; any action or failure to act in a timely manner by any government agency; actions or failure to act by the Client or the Client's contractor or consultants; or discovery of any hazardous substance or differing site conditions. If the delays outside of Consultant's control increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to a reasonable adjustment in schedule and compensation.

**ARTICLE 4 – CONSTRUCTION  
OBSERVATION**

If requested by Client, Consultant shall visit the project during construction to become familiar

with the progress and quality of the contractors' work and to determine if the work is proceeding, in general, in accordance with plans, specifications or other contract documents prepared by Consultant for the Client. The Client has not retained the Consultant to make detailed inspections or to provide exhaustive or continuous project review and observation services.

Consultant neither guarantees the performance of any Contractor retained by Client nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with the construction documents. Client acknowledges Consultant will not direct, supervise or control the work of contractors or their subcontractors, nor shall Consultant have authority over or responsibility for the contractors' means, methods, or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety. Job Site Safety shall be the sole responsibility of the contractor who is performing the work.

For Client-observed projects, the Consultant shall be entitled to rely upon and accept representations of the Client's observer. If the Client desires more extensive project observation or full-time project representation, the Client shall request such services be provided by the Consultant as an Additional Service. Consultant and Client shall then enter into a Supplemental Agreement detailing the terms and conditions of the requested project observation.

**ARTICLE 5 – OPINIONS OF PROBABLE  
COST**

Opinions, if any, of probable cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs, collectively referred to as "Cost Estimates," provided for are made or to be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified professional design firm. The parties acknowledge, however, that the Consultant does not have control over the cost

of labor, material, equipment or services furnished by others or over market conditions or contractor's methods of determining their prices, and any evaluation of any facility to be constructed or acquired, or work to be performed must, of necessity, be viewed as simply preliminary. Accordingly, the Consultant and Client agree that the proposals, bids or actual costs may vary from opinions, evaluations or studies submitted by the Consultant and that Consultant assumes no responsibility for the accuracy of opinions of Cost Estimates and Client expressly waives any claims related to the accuracy of opinions of Cost Estimates. If Client wishes greater assurance as to Cost Estimates, Client shall employ an independent cost estimator as part of its Project responsibilities.

#### **ARTICLE 6 – REUSE AND DISPOSITION OF INSTRUMENTS OF SERVICE**

All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service and Consultant retains all ownership interests in Instruments of Service, including copyrights. The Instruments of Service are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic format furnished to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Consultant makes no representations as to long term compatibility, usability or readability of electronic files.

If requested, at the time of completion or termination of the work, the Consultant may make available to the Client the Instruments of Service upon (i) payment of amounts due and owing for work performed and expenses incurred to the date and time of termination, and (ii) fulfillment of the Client's obligations under this Agreement. Any use or re-use of such Instruments of Service by the Client or others without written consent, verification or adaptation by the Consultant except for the specific purpose intended will be at the Client's risk and full legal responsibility and Client expressly releases all claims against Consultant arising from re-use of the Instruments of Service

without Consultant's written consent, verification or adaptation.

The Client will, to the fullest extent permitted by law, indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorneys' fees, and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of these Instruments of Service by the Client or any person or entity that acquires or obtains the reports, plans and specifications from or through the Client without the written authorization of the Consultant. Under no circumstances shall transfer of Instruments of Service be deemed a sale by Consultant, and Consultant makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. Consultant shall be entitled to compensation for any consent, verification or adaptation of the Instruments of Service for extensions of the Project or any other project.

#### **ARTICLE 7 – PAYMENTS**

Payment to Consultant shall be on a lump sum or hourly basis as set out in the Agreement. Consultant is entitled to payment of amounts due plus reimbursable expenses. Client will pay the balance stated on the invoice unless Client notifies Consultant in writing of any disputed items within fifteen (15) days from the date of invoice. In the event of any dispute, Client will pay all undisputed amounts in the ordinary course, and the Parties will endeavor to resolve all disputed items. All accounts unpaid after thirty (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. Consultant reserves the right to retain instruments of service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or instruments of service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney fees, incurred in connection with collecting amounts owed by Client. In addition, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until it receives full payment for all amounts then due for services, expenses and charges. Payment methods, expenses and rates may be more fully described in Exhibit C and Exhibit E.

## **ARTICLE 8 – SUBMITTALS AND PAY APPLICATIONS**

If the Scope of Work includes the Consultant reviewing and certifying the amounts due the Contractor, the Consultant's certification for payment shall constitute a representation to the Client, that to the best of the Consultant's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in general accordance with the Documents issued by the Consultant. The issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Client to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Contractor shall remain exclusively responsible for its Work.

If the Scope of Work includes Consultant's review and approval of submittals from the Contractor, such review shall be for the limited purpose of checking for conformance with the information given and the design concept. The review of submittals is not intended to determine the accuracy of all components, the accuracy of the quantities or dimensions, or the safety procedures, means or methods to be used in construction, and those responsibilities remain exclusively with the Client's contractor.

## **ARTICLE 9 – HAZARDOUS MATERIALS**

Notwithstanding the Scope of Services to be provided pursuant to this Agreement, it is understood and agreed that Consultant is not a user, handler, generator, operator, treater, arranger, storer, transporter, or disposer of hazardous or toxic substances, pollutants or contaminants as any of the foregoing items are defined by Federal, State and/or local law, rules or regulations, now existing or hereafter amended, and which may be found or identified on any Project which is undertaken by Consultant.

The Client agrees to indemnify Consultant and its officers, subconsultant(s), employees and agents from and against any and all claims, losses, 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 hazardous or toxic substances, pollutants or contaminants of any kind, except that this clause shall not apply to such liability as may arise out of Consultant's sole negligence in the performance of services under this Agreement arising from or relating to hazardous or toxic substances, pollutants, or contaminants specifically identified by the Client and included within Consultant's services to be provided under this Agreement.

## **ARTICLE 10 – INSURANCE**

Consultant has procured general and professional liability insurance. On request, Consultant will furnish client with a certificate of insurance detailing the precise nature and type of insurance, along with applicable policy limits. Additional Insurance requirements are listed in Exhibit D.

## **ARTICLE 11 – TERMINATION OR SUSPENSION**

If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than sixty (60) days through no fault of Consultant, Consultant shall be entitled to either terminate its agreement upon seven (7) days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. In the event of termination Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

This Agreement may be terminated by either party upon thirty (30) days' written notice without cause. Consultant shall upon termination only be entitled to payment for the work performed up to the Date of termination. In the event of termination, copies of plans, reports, specifications, electronic drawing/data files (CADD), field data, notes, and other documents whether written, printed or recorded on any medium whatsoever, finished or unfinished,

prepared by the Consultant pursuant to this Agreement and pertaining to the work or to the Project, (hereinafter "Instruments of Service"), shall be made available to the Client upon payment of all amounts due as of the date of termination. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.

#### **ARTICLE 12 – INDEMNIFICATION**

The Consultant agrees to indemnify and hold the Client harmless from any damage, liability or cost to the extent caused by the Consultant's negligence or willful misconduct.

The Client agrees to indemnify and hold the Consultant harmless from any damage, liability or cost to the extent caused by the Client's negligence or willful misconduct.

#### **ARTICLE 13 – WAIVER OF CONSEQUENTIAL DAMAGES**

The Consultant and Client waive claims against each other for consequential damages arising out of or relating to this contract. This mutual waiver includes damages incurred by the Client for rental expenses, for loss of use, loss of income, lost profit, project delays, financing, business and reputation and for loss of management or employee productivity or of the services of such persons; and (2) Damages incurred by the Consultant for principal office expenses including the compensation for personnel stationed there, for losses of financing, business and reputation and for loss of profit except anticipated profit arising directly from the Work. The Consultant and Client further agree to obtain a similar waiver from each of their contractors, subcontractors or suppliers.

#### **ARTICLE 14 – WAIVER OF CLAIMS FOR PERSONAL LIABILITY**

It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors.

#### **ARTICLE 15 – ASSIGNMENT**

Neither Party to this Agreement shall assign its interest in this agreement, any proceeds due under the Agreement nor any claims that may arise from services or payments due under the Agreement without the written consent of the other Party. Any assignment in violation of this provision shall be null and void. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Consultant or Client. This Agreement is for the exclusive benefit of Consultant and Client and there are no other intended beneficiaries of this Agreement.

#### **ARTICLE 16 – 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 Consultant 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 17 – CONFIDENTIALITY**

The Consultant agrees to keep confidential and not to disclose to any person or entity, other than the Consultant's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information furnished to the Consultant 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 the Consultant 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 the Consultant to complete services under the Agreement or defend itself from any suit or claim.

**ARTICLE 18 – AVAILABLE INSURANCE PROCEEDS AND LIMITATION OF LIABILITY**

Consultant maintains professional liability insurance with a liability limit of not less than \$2,000,000 per claim. The Consultant's total liability to Client shall not exceed the total available insurance policy limits per claim available to Consultant under its professional liability insurance policy. Client hereby agrees that to the fullest extent permitted by law, the Consultant's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to or arising from this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty (Client's Claims) shall not exceed the total policy limits available to Consultant under its professional liability insurance policy for settlement or satisfaction of Client's Claims under the terms and conditions of the Consultant's professional liability insurance policy applicable hereto.

Notwithstanding the language above, Client agrees that with regard to any claim arising from or relating to Consultant's provision of geotechnical engineering services, construction materials testing, special inspections, and/or environmental engineering services, including but not limited to environmental site assessments, that Consultant's liability for any claims asserted by or through Client shall be limited to \$50,000.

Client and Consultant each further agree that neither will be responsible for any incidental, indirect, or consequential damages (including loss of use or loss of profits) sustained by the other, its successors or assigns. This mutual waiver shall apply even if the damages were foreseeable and regardless of the theory of recovery plead or asserted.

**ARTICLE 19 – CONTROLLING LAW**

This Agreement is to be governed by the laws of the State of Minnesota. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, including but not limited to claims for negligence or breach of warranty, that is not settled by nonbinding mediation shall be settled by the law of the state of Minnesota.

**ARTICLE 20 – LOCATION OF UNDERGROUND IMPROVEMENTS**

Where requested by Client, Consultant will perform customary research to assist Client in locating and identifying subterranean structures or utilities. However, Consultant may reasonably rely on information from the Client and information provided by local utilities related to structures or utilities and will not be liable for damages incurred where Consultant has complied with the standard of care and acted in reliance on that information. The Client agrees to waive all claims and causes of action against the Consultant for claims by Client or its contractors relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by the Consultant.