

**AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN**

**TKDA  
AND  
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the “Effective Date”), by and between the City of Duluth, hereinafter referred to as City, and TKDA located at 11 E. Superior St., Suite 420, Duluth, MN 55802, hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services for a Predesign Study for Net Zero Fire Hall #11, (the “Project”); and

WHEREAS, Consultant has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, Consultant submitted a proposal to provide services for the Project (the “Proposal”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the City desires to utilize Consultant’s professional services for the Project;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

**I.     Services**

Consultant will provide services related to the Project as described in Consultant’s Proposal (the “Services”). Consultant agrees that it will provide its services at the direction of the Property and Facilities Manager (“Manager”). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

**II.    Fees**

It is agreed between the parties that Consultant’s maximum fee for the Project and Services shall not exceed the sum of forty thousand and 00/00 dollars (\$40,000.00) inclusive of all travel and other expenses associated with the Project, payable from Fund 450-030-5520; Resolution No. 17-0087R passed on March 13, 2017. All invoices for services rendered shall be submitted monthly to the attention of the Manager. The City shall pay Consultant within 45 days of receipt of invoices. Payment of expenses is subject to the City’s receipt of reasonable substantiation/back-up supporting such expenses.

### III. General Terms and Conditions

#### 1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

#### 2. Assignment

Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City. The Primary Professional(s) assigned to this project will be Kenneth D. Johnson (the "Primary Professional"). The Primary Consultant shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Primary Professional. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Professional in connection with Consultant's obligations hereunder.

#### 3. Data and Confidentiality, Records and Inspection

- a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or assist Consultant wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
- c. Consultant agrees that all work created by Consultant for the City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work ("City Property"). Consultant further agrees that to the extent the work is not a "work made for hire" Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will

be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Consultant shall ensure that upon reasonable request and notice, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Consultant Representations

Consultant represents and further hereby agrees that the City is entitled to rely upon the following representations:

- a. Consultant and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable

laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.

- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which it is bound.
- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.
- f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by July 31, 2017, unless terminated earlier as provided for herein.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement.

Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

To the extent allowed by law, Consultant shall indemnify and hold City and its employees, officers, and agents harmless from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims arising out of the Consultant's a) breach of this Agreement or b) its negligence or misconduct or that of its employees, agents or contractors in performing services hereunder. Nothing herein requires the Consultant to indemnify the City for losses or liabilities arising solely from the City's negligence or misconduct. This Section shall survive the termination of this Agreement for any reason.

8. Insurance

Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. General Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, shall be in a company approved by the city of

Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. **City of Duluth shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming himself and City of Duluth. **Upon execution of this Agreement**, Consultant shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.

- b. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- d. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

9. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

**City:** City of Duluth  
1532 W. Michigan St.  
Duluth MN 55806  
Attn: Erik Birkeland

**Consultant:** TKDA  
11 E. Superior St., Suite 420  
Duluth, MN 55802  
Attn: Kenneth Johnson

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes,

acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.



IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

## CITY OF DULUTH

By:

Mayor

Attest:

City Clerk

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

Countersigned:

City Auditor

Date \_\_\_\_\_

Approved as to form:

Assistant City Attorney

Date

## TKDA

By:

Company Representative

Its:

Title of Representative

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

**EXHIBIT A**

Consultant's Proposal

## EXHIBIT A



11 East Superior Street, Suite 420  
Duluth, MN 55802  
218.724.8578  
tkda.com

January 25, 2017

ebirkeland@duluthmn.gov

Mr. Erik Birkeland  
Property & Facilities Manager  
City of Duluth  
1532 West Michigan Street  
Duluth, Minnesota 55806

Re: Proposal for Architectural Services  
Predesign Study for City of Duluth Net Zero Fire Hall #11

Dear Mr. Birkeland:

In response to your request, we propose to provide Architectural Services in connection with the Predesign Study for City of Duluth Net Zero Fire Hall #11, hereinafter called the Project. Our services will be provided in the manner described in this Proposal subject to the terms and conditions in a mutually-agreeable City of Duluth contract. Hereinafter, the City of Duluth is referred to as the CLIENT.

### I. PROJECT DESCRIPTION

The CLIENT has requested a Proposal for the preparation of a Predesign Study for City of Duluth Net Zero Fire Hall #11. The existing fire hall is old and functionally inadequate. It has numerous deferred maintenance issues and does not address the safety and long term health of the fire fighters utilizing the facility. The CLIENT believes a strategy for Net Zero energy usage in a new fire hall will address these functional deficiencies and result in lower operational costs and protect the long term health of the fire fighters utilizing the facility.

### II. SERVICES TO BE PROVIDED BY TKDA

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

#### A. ARCHITECTURAL PROGRAMMING OF NEW FACILITY

1. Meet with the CLIENT to ascertain the programmatic needs of the facility.
2. Document the functional programmatic spaces required in the new facility.
3. Describe costs and benefits of a new, or renovated building.

#### B. CONCEPTUAL DESIGN

1. Prepare Site Plan, Floor Plan, and Section.
2. Develop Exterior Image.
3. Prepare preliminary square foot opinion of costs.
4. The CLIENT will provide energy modeling and net zero strategies to be incorporated into the conceptual design.

5. Prepare one PDF and three hard copies of the final Predesign Study incorporating the above elements.

C. PROJECT MANAGEMENT

Manage TKDA's services for the Project through the completion, including developing and maintaining the work schedule, preparing meeting minutes, documenting communications (i.e., telephone, fax, email, etc.), documenting review comments and providing responses for plan submittals, and updating the Project scope to meet budget as necessary.

III. ADDITIONAL SERVICES

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

- A. Energy modeling or strategies not provided by the CLIENT.
- B. Mechanical Engineering.
- C. Electrical Engineering.
- D. Structural Engineering.
- E. Civil Engineering.
- F. Site Survey or soil borings.
- G. Evaluation of the existing building condition.
- H. Professional renderings or models.
- I. Schematic Architectural Design, Design Development, Contract Documents, Bidding or Construction Phase Services.

IV. CLIENT'S RESPONSIBILITIES

These responsibilities include, but are not limited to, the following:

- 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.
- B. Provide TKDA with site access required to perform services listed in SECTION II above.
- C. Provide existing drawings.
- D. Provide site survey drawing.
- E. Provide reviews of materials furnished by TKDA in a reasonable and prompt manner so that the Project schedule can be maintained.

Mr. Erik Birkeland  
City of Duluth  
Proposal for Architectural Services  
Predesign Study for City of Duluth Net Zero Fire Hall #11  
January 25, 2017  
Page 3

V. PERIOD OF SERVICE

We would expect to start our services promptly upon execution of mutually-agreeable City of Duluth contract and complete SECTION II services within 12 weeks from the date of authorization to proceed.

VI. COMPENSATION

Compensation to TKDA for services provided as described in SECTION II of this Proposal shall be on an Hourly Time and Materials basis in an amount not to exceed \$40,000.

VII. CONTRACTUAL INTENT

We thank you for the opportunity to submit this Proposal. We agree that your issuance of a contract will be our notice to proceed. This Proposal will be open for acceptance for 60 days, unless the provisions herein are changed by us in writing prior to that time.

Sincerely,

  
Kenneth D. Johnson, AIA  
Project Manager

  
DJ Heinle, AIA  
Vice President, Architecture

KDJ:DJH:prd



## 2017 SCHEDULE OF HOURLY BILLING RATES

<u>Classification</u>	<u>Range of Hourly Billing Rates*</u>
Senior Registered Engineer, Architect, Landscape Architect, Senior Scientist, Senior GIS Analyst or Senior Planner	\$ 108.00 to \$ 250.00
Engineering, Architectural, Planning, or GIS Specialist II	\$ 96.00 to \$ 213.00
Engineering, Architectural, Planning, or GIS Specialist I	\$ 68.00 to \$ 133.00
Registered Engineer, Architect, Landscape Architect, Planner, GIS Analyst, Professional Land Surveyor, Scientist, or Certified Interior Designer	\$ 74.00 to \$ 165.00
Graduate Engineer, Planner, Interior Designer, Scientist, GIS Analyst, or Land Surveyor	\$ 57.00 to \$ 94.00
Architectural Designer or Landscape Architectural Designer	\$ 57.00 to \$ 94.00
Technician III	\$ 57.00 to \$ 108.00 **
Technician II	\$ 57.00 to \$ 82.00 **
Technician I	\$ 34.00 to \$ 65.00 **

In addition to the hourly charges, TKDA shall be reimbursed for the following direct expenses when incurred in the performance of the work:

1. Vehicle mileage at current IRS rate per mile.
2. Outside professional and technical services with costs defined as the amount billed TKDA plus 10%.
3. Identifiable reproduction and reprographic costs.

\* Rates effective until December 31, 2017.

\*\* For hours worked over 40 hours per week individuals are paid one and one-half times the above rates.