2905 South Broadway
Rochester, MN 55904-5515
Phone: 507.288.3923
Fax: 507.288.2675
Email: rochester@whks.com
Website: www.whks.com

whks

engineers + planners + land surveyors

October 2, 2013

Ms. Michelle Girolamo
City Clerk
City of Cresco
130 North Park Place
Cresco, IA 52136

RE: Cresco, IA
5th Avenue SW, Vernon Road & Highway 9 Watermain Improvements
Pay Request #3

Dear Michelle:

Enclosed is Pay Request No. 3 for work on the above referenced project. We recommend payment in the amount of $12,551.62 to:

Skyline Construction, Inc.
PO Box 127
Decorah, IA 52101

Please contact me if you have any questions.

Sincerely,

WHKS & co.

Daren D. Sikkink

DDS/wka:7670

cc: Rod Freidhof, City of Cresco w/ enclosures
Jesse Delaney, Skyline Construction w/ enclosures
Bill Angerman, WHKS (file)

S:\Jobs\Cresco\7670(Watermain Looping)\PAY REQUESTS\PR_3.docx

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PARTIAL PAYMENT ESTIMATE
FOR CONSTRUCTION WORK COMPLETED

Project: 5th Avenue SW, Vernon Road & Highway 9 Watermain Improvements
Project No.: 7670
Location: Cresco, IA
Contractor: Skyline Construction, Inc.

Bid Price: $122,213.29
Date: 9/26/2013
Estimate #: 3
% Complete: 107%

Item No.	Description	Contract Quantity	Unit	Unit Price	Quantity Completed Previous Estimates	Quantity Completed This Estimate	Quantity Completed to Date	Total
	(A) 5th Avenue SW Watermain Improvements							
1.	Remove & Replace 6" Concrete Pavement	288	S.Y.	$49.99	184.42	0.00	184.42	$9,219.16
2.	Remove & Replace HMA Pavement	86	S.Y.	$80.09	0	97	97	$7,768.73
3.	Remove & Replace Granular Surfacing	127	S.Y.	$12.99	0	0	0	$0.00
4.	Remove Concrete Walk	7	S	$1.00	0	0	0	$0.00
5.	Remove & Reconstruct 4" Sanitary Service	20	L.F.	$30.00	48	0	48	$1,440.00
6.	Remove Hydrant	2	Each	$150.00	2	0	2	$300.00
7.	Remove Gate Valve	3	Each	$100.00	3	0	3	$300.00
8.	Remove Watermain	50	L.F.	$2.00	60	0	60	$120.00
9.	Topsoil Borrow (LV)	50	C.Y.	$10.00	0	50	50	$500.00
10.	Watermain Fittings	740	lbs	$6.00	798	0	798	$4,788.00
11.	F & I 6" Watermain	48	L.F.	$60.00	55	0	55	$3,300.00
12.	F & I 6" Gate Valve & Box	4	Each	$800.10	4	0	4	$3,200.40
13.	F & I 6" Hydrant	2	Each	$4,000.00	2	0	2	$8,000.00
14.	F & I 8" Watermain	997	L.F.	$20.20	1,067	0	1,067	$21,553.40
15.	F & I 8" Gate Valve & Box	2	Each	$1,000.00	2	0	2	$2,000.00
16.	Reconnect Water Services (does not include curb stop)	3	Each	$1,000.00	3	0	3	$3,000.00
17.	Reconstruct Water Service (includes curb stop)	1	Each	$1,000.00	2	0	2	$2,000.00
18.	F & I 4" Polystyrene Insulation	64	S.F.	$10.00	64	0	64	$640.00
19.	F & I Silt Fence, Preassembled	65	L.F.	$3.00	0	0	0	$0.00
20.	Inlet Protection	1	Each	$200.00	0	0	0	$0.00
21.	Seeding	18,000	S.F.	$0.04	0	18,000	18,000	$720.00
22.	Temporary Seeding	15,000	S.F.	$0.03	0	0	0	$0.00
23.	Dust Control	3	Each	$400.00	0	0	0	$0.00
24.	Temporary Water Service	1	L.S.	$400.00	0	0	0	$0.00
25.	Traffic Control	1	L.S.	$400.00	1	0	1	$400.00
26.	Class 12 Excavation (Trench Rock)	25	C.Y.	$10.00	0	0	0	$0.00
	ADDITIONAL ITEMS							
27.	Concrete Mix Design Change	26	C.Y.	$19.00	26	0	26	$494.00
28.	Concrete Thickness Change	10.50	C.Y.	$115.00	10.50	0	10.50	$1,207.50
							TOTAL (A)	$70,951.19

Item No.	Description		Unit	Unit Price	Quantity Completed Previous Estimates	Quantity Completed This Estimate	Quantity Completed to Date	Total
	(B) Vernon Road Watermain Improvements							
1.	Remove & Replace 6" Concrete Pavement	30	S.Y.	$70.00	114.30	0.00	114.30	$8,001.00
2.	Remove & Replace HMA	50	S.Y.	$50.00	0	0	0	$0.00
3.	Remove & Replace Concrete Walk	5	S.Y.	$50.00	5	0	5	$250.00
4.	Remove Hydrant	2	Each	$150.00	2	0	2	$300.00
5.	Remove Gate Valve	2	Each	$100.00	2	0	2	$200.00
6.	Remove Gate Valve Box	3	Each	$25.00	3	0	3	$75.00
7.	Remove Watermain	20	L.F.	$2.00	30	0	30	$60.00
8.	Topsoil Borrow (LV)	20	C.Y.	$10.00	0	30	30	$300.00
9.	F & I 4" DIP Watermain	10	L.F.	$125.00	10	0	10	$1,250.00
10.	Watermain Fittings	267	lbs	$8.80	456	0	456	$4,012.80
11.	F & I 4" Gate Valve & Box	1	Each	$800.05	1	0	1	$800.05
12.	F & I 6" DIP Watermain	25	L.F.	$70.00	66	0	66	$4,620.00
13.	F & I 6" Gate Valve & Box	4	Each	$800.10	4	0	4	$3,200.40
14.	F & I 6" Hydrant	2	Each	$4,000.00	2	0	2	$8,000.00
15.	Reconnect Water Services (does not include curb stop)	5	Each	$400.00	5	0	5	$2,000.00
16.	Seeding	10,000	S.F.	$0.20	0	10,000	10,000	$2,000.00
17.	Traffic Control	1	LS	$199.99	1.00	0.00	1.00	$199.99
	ADDITIONAL ITEMS							
18.	Remove & Replace with Structured Fill	61.25	Ton	$15.00	61.25	0.00	61.25	$918.75
19.	Concrete thickness change	6.50	C.Y.	$115.00	6.50	0.00	6.50	$747.50
20.	Remove HMA Pavement only	83	S.Y.	$4.50	0.00	83	83	$373.50
21.	Granular Subbase - Class A	28	C.Y.	$25.00	0.00	28	28	$700.00
							TOTAL (B)	$38,008.99

Item No.	Description	Contract Quantity	Unit	Unit Price	Quantity Completed Previous Estimates	Quantity Completed This Estimate	Quantity Completed to Date	Total
	(C) Iowa Highway 9 Watermain Improvements							
1.	Remove Watermain	15	L.F.	$10.00	15	0	15	$150.00
2.	Topsoil Borrow (LV)	20	C.Y.	$5.00	0	50	50	$250.00
3.	F & I 8" HDPE Watermain	113	L.F.	$22.22	129	0	129	$2,866.38
4.	F & I 12" HDPE Casing by HDD	90	L.F.	$80.80	90	0	90	$7,272.00
5.	F & I 8" DIP Watermain	10	L.F.	$200.00	18	0	18	$3,600.00
6.	Watermain Fittings	464	lbs	$6.55	452	0	452	$2,960.60
7.	F & I 8" Gate Valve & Box	3	Each	$1,000.00	3	0	3	$3,000.00
8.	F & I 4" Polystyrene Insulation	64	S.F.	$6.95	0	0	0	$0.00
9.	F & I Hydrant Protective Posts	4	Each	$300.00	0	0	0	$0.00
10.	Exploratory Excavation	4	Hrs	$10.00	66	0	66	$660.00
11.	Inlet Protection	1	Each	$300.00	0	0	0	$0.00
12.	Seeding	3,000	S.F.	$0.20	0	3,000	3,000	$600.00
13.	Traffic Control	1	LS	$650.00	1.0	0.0	1.0	$650.00
	ADDITIONAL ITEMS							
14.	1" Union coupler	1	Each	$75.00	1	0	1	$75.00
							TOTAL (C)	$22,083.98

Total Work Completed (A+B+C)	$131,044.16
Less 5% Retainage	$6,552.21
Less Previous Payments	$111,940.33
Net Payment this Estimate	$12,551.62

WHKS7670payrqst.#3

WHKS & CO.

2905 South Broadway
Rochester, MN 55904-5515
Phone: 507-288-3923

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, by and between City of Cresco, hereinafter referred to as the "Client" and WHKS & Co., hereinafter referred to as "WHKS", is made as follows:

WHEREAS, the Client has a need for certain professional services relating to the project described as Reconstruction of 3rd Street West (Granger Road), and,

WHEREAS, WHKS proposes to furnish the professional services required by the Client for said project,

NOW THEREFORE, the Client hereby agrees to retain and compensate WHKS to perform the professional services in accordance with the terms and conditions of this Agreement and the attached Standard Terms and Conditions.

Scope of Services

WHKS shall perform the following described services for the Client:

Design, bid and construction phase engineering services as described on the attached Scope of Services included in Attachment A.

Basis of Compensation

For the services described above, the Client shall remunerate WHKS as follows:

Task 1-5 Lump Sum Fee of $147,000.
Task 6-7 Billed Hourly with an estimated fee of $104,000 including expenses.

Permit and plan distribution fees to be paid by Client.

Executed this _____ day of _____, 2013.

City of Cresco, IA	**WHKS & CO.**
By: _____	By: _____ William Angerman, P.E.
Title: _____	Title: Vice President

WHKS & CO.

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3RD AVE WEST (GRANGER ROAD) RECONSTRUCTION PROJECT

CITY OF CRESCO

ATTACHMENT A

SCOPE OF WORK

Project Area

The proposed project consists of the complete concrete street reconstruction of 3rd Street West (Granger Road) from Iowa Highway 9 to 12th Avenue West. The project also includes a partial reconstruction of the existing watermain, sanitary sewer and storm sewer within the project limits.

TASK 1 – Project Management and Meetings

Project management includes general project administrative duties including supervision and coordination of the project team, review of project costs and billings, preparation of invoices, and general administrative activities.

Project meetings will be conducted with local Stakeholders, City Staff, the Public Works Committee, and the City Council. Meeting with local Stakeholders will take place in conjunction with two scheduled public meeting work sessions. Meetings with City Staff will be more informal and as needed to discuss specific project items.

The design team will meet with the Public Works Committee two (2) times during the process. The first meeting will discuss the direction of the project and review concerns, possible construction sequence and the community's goals for the project. The Public Works Committee will provide direction for refinement and design development. The second meeting will be held at the conclusion of final design and will be in advance of the formal authorization to bid.

Assist the City with the preparation of the final assessment plat and schedule and attend related Council meeting.

TASK 2 – Survey and Research of Existing Conditions

The design team will conduct a field review of existing conditions and any necessary data collection before the survey and design of the improvements begin. Survey tasks for the project include, necessary topographic surveys, creation of a digital recording of the properties adjoining the project to document a property's existing deficiencies or defects, contact Iowa One-Call for utility location, and

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develop project control and base map for the project. The existing land use and developments along with existing features (utilities, parking, electrical & lighting) will be compiled and reviewed to begin the process. All relevant plans and studies, documenting policies, and actions impacting the project area will be collected and reviewed.

TASK 3 – Preliminary Design

The street and utility preliminary construction plans and documentation will be developed through the utilization of the City Standards, the Iowa Department of Transportation (IDOT) and specialized specifications as necessary.

Preliminary plans for water, sanitary sewer, and storm sewer will be prepared to the 60% level. Opinions of probable construction costs will be generated to review budget items. An outline of the specifications and a storm water hydraulic report will be developed.

Copies of topographic survey base sheets will be provided to all utility companies serving the project area for their review. Electronic files of the base sheets will also be made available. As part of the project, private utility companies will have the opportunity to update and overhaul their existing infrastructure during the construction period. A meeting will occur with the utility owners to discuss the construction process, as it has been determined at this time.

Assessment plats and schedules will be prepared for the project. These assessment documents will be presented to the City Council and staff. The project team will assist with conducting the assessment hearing.

TASK 4 – Final Design

Develop the final plans and specifications in the project area. The design and documentation will address or include the following: Final Design and Construction Documents & Specifications for Storm Sewer, Water Main and Sanitary Sewer Improvements consisting of, at minimum, the following, 100% Construction Documents, Engineer's Opinion of Probable Construction Costs, Original copy(s) of all Permits, SWPPP and Erosion & Sediment Control Plan, Agency Coordination, and Permit Applications. This will include storm water, grading and erosion control permits as required by local, state and federal requirements, and Preliminary and Final Geotechnical Investigations as necessary. Permit fees will be paid by the City.

The project team will work with the City to prepare documentation necessary for the bidding and letting of the project.

A storm water pollution prevention plan will be prepared and designed so that storm water runoff from the disturbed areas meets DNR requirements. The erosion and sediment migration will be limited and reduced by use of the best management practices.

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TASK 5 – Bidding & Negotiations

The design team will prepare and distribute plans and specifications to bidders. The design team will answer contractor questions during the bidding phase. Prepare addendums to the contract documents prior to bid letting. Assist in receiving and tabulation of Contractor's proposals, report same to City, and assist in awarding the construction contract.

TASK 6 – Construction Administration

The project team will conduct a preconstruction meeting with City Staff, design team and the selected Contractor. This meeting will also include all utility owners that are located within the project limits.

The project team will review all shop drawings and submittals and copy the City on all approvals. Originals of all shop drawings will be provided to the City. Requests for Information (RFI's) will be processed to provide clarification on any design details that the Contractor has questions about. Pay applications will be prepared, reviewed, and submitted for the Contractor.

The project team will perform post construction closeout services which include preparation of record drawings and project acceptance by the City Council.

TASK 7 – Construction Observation

Provide resident observation during the construction of the Project. Resident observation is a part time function during construction. Duties are to provide on-site evaluations of the Project progress in accordance with the plans and specifications and report said progress to the Engineer. Additionally, the observer maintains a log book recording conditions at the job site, weather, record of visitors, summary of daily activities, actions taken, observations in general and assists in recording data for the eventual preparation of Record Plans. The observer duties do not include construction means, methods, or procedures used by the Contractor. The contractor is solely responsible for construction means methods, procedures, and job-site safety. A walk-thru will be conducted prior to final close-out of the project. This will involve City Staff, Project Managers, Construction Observers, and the Contractor. A list of all items to be finished will be produced and reviewed prior to final acceptance by the City. Fee based on 800 hours of observation including travel time.

Construction staking of underground utilities and streets will be provided under this task.

The testing of the materials will be included in the bid package as a bid allowance to be paid by the Contractor.

The following services are excluded from the scope or are to be completed under a future agreement:

Land Acquisition

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It is anticipated that land for street right of way will not be required from private property owners along the Frontage Road. If right of way acquisition is required along 3rd Street West, it will be determined as part of the preliminary design of this project.

Traffic Signal Design

Work at the intersection of 3rd Street and Iowa Highway 9 may require reconstruction of the existing traffic signals. If reconstruction of the traffic signals is required, an additional task would be required for the traffic signal design.

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STANDARD TERMS AND CONDITIONS FOR PUBLIC SECTOR PROJECTS

1. Scope of Services

Client and WHKS have agreed to a list of services WHKS will provide to Client as listed on the Professional Services Agreement Form.

2. Governing Law

The laws of the State of Iowa will govern this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of that State.

3. Standard of Care

Services provided by WHKS under this Agreement 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 and locality.

4. Integration

This Agreement comprises the final and complete agreement between Client and WHKS. It supersedes all prior communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly. Amendments to this Agreement shall not be binding unless made in writing and signed by both Client and WHKS.

5. Guarantees and Warranties

WHKS shall not be required to sign any documents, no matter by whom requested, that would result in WHKS having to guarantee or warrant the existence of conditions whose existence WHKS cannot ascertain. Client also agrees not to make resolution of any dispute with WHKS or payment of any amount due to WHKS in any way contingent upon WHKS signing any such guarantee or warranty.

6. Indemnification

WHKS agrees, to the extent permitted by law, to indemnify and hold Client harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by WHKS' negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its subconsultants or anyone for whom WHKS is legally liable.

Client agrees, to the extent permitted by law, to indemnify and hold WHKS harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Client's negligent acts, errors or omissions and those of Client's contractors, subcontractors or consultants or anyone for whom Client is legally liable.

Neither WHKS nor Client shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

7. Billing and Payment Provisions

Invoices shall be submitted by WHKS monthly and are due upon presentation and shall be considered PAST DUE if not paid within thirty (30) calendar days of the invoice date.

If payment is not received by WHKS within thirty (30) calendar days of the invoice date, Client shall pay as interest an additional charge of one and one-quarter percent (1.25%) of the PAST DUE amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

If Client fails to make payments within sixty (60) days from the date of an invoice or otherwise is in breach of this Agreement, WHKS may, at its option, suspend performance of services upon five (5) calendar days' notice to Client. WHKS shall have no liability whatsoever to Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by Client. If Client fails to make payment to WHKS in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination by WHKS.

In the event legal action is necessary to enforce the payment provisions of this Agreement, WHKS shall be entitled to collect from Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by WHKS in connection therewith and, in addition, the reasonable value of WHKS personnel time and expenses spent in connection with such collection action, computed at WHKS current fee schedule and expense policies.

Payment of invoices is in no case subject to unilateral discounting or set-offs by Client, and payment is due regardless of suspension or termination of this Agreement by either party.

8. Ownership of Records

All reports, plans, specifications, field data and notes and other

documents, including all documents on electronic media, prepared by WHKS as instruments of service shall remain the property of WHKS.

Client shall be permitted to retain copies, including reproducible copies, of the plans and specifications for information and reference in connection with Client's use of the completed project. The plans and specifications shall not be used by Client or by others on other similar projects except by agreement in writing by WHKS.

9. Delivery of Electronic Files

In accepting and utilizing any drawings, reports and data on any form of electronic media generated and provided by WHKS, Client covenants and agrees that all such electronic files are instruments of service of WHKS, who shall be deemed the author, and who shall retain all rights under common and statutory laws, and other rights, including copyrights. Client is aware that differences may exist between the electronic files delivered and the respective construction documents due to addenda, change orders or other revisions. In the event of a conflict between the signed construction documents prepared by WHKS and electronic files, the signed construction documents shall govern.

Client and WHKS agree that the electronic files prepared by WHKS shall conform to the current CADD software in use by WHKS or to other mutually agreeable CADD specifications defined in the Agreement. Any changes to the CADD specifications by either Client or WHKS are subject to review and acceptance by the other party. Additional efforts by WHKS made necessary by a change to the CADD specifications or other software shall be compensated for as Additional Services.

The electronic files provided by WHKS to Client are submitted for an acceptance period of 60 days. Any defects Client discovers during this period will be reported to WHKS and will be corrected as part of the Scope of Services. Correction of defects detected and reported after the acceptance period will be compensated for as Additional Services.

Client agrees not to reuse the electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this Agreement. Client agrees not to transfer the electronic files to others without the prior written consent of WHKS, except as required by law. In addition, Client agrees, to the extent permitted by law, to indemnify and hold WHKS harmless from any damage, liability or cost, including reasonable attorney's fees and costs of defense, arising from any changes made by anyone other than WHKS or from any reuse of the electronic files without the prior written consent of WHKS.

Under no circumstance shall delivery of the electronic files for use by Client be deemed a sale by WHKS and WHKS makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall WHKS be liable for any loss of profit or any consequential damages.

10. Changed Conditions

Client shall rely on the judgment of WHKS as to the continued adequacy of this agreement in light of occurrences or discoveries that were not originally contemplated by or known to WHKS. Should WHKS call for contract renegotiation, WHKS shall identify the changed conditions necessitating renegotiation and WHKS and Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.

11. Permits and Approvals

WHKS shall assist Client in applying for those permits and approvals typically required by law for projects similar to the one for which WHKS services are being engaged. This assistance consists of completing and submitting forms as to the results of certain work included in the Scope of Services.

12. Suspension of Services

If the project is suspended for more than thirty (30) calendar days in the aggregate, WHKS shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the project is suspended for more than ninety (90) calendar days in the aggregate, WHKS may, at its option, terminate this Agreement upon giving notice in writing to Client.

13. Termination

Either Client or WHKS may terminate this Agreement at any time with or without cause upon giving the other party seven (7) calendar days prior written notice. Client shall within thirty (30) calendar days of termination pay WHKS for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of the Agreement.

14. Unauthorized Changes

In the event Client, Client's contractors or subcontractors or anyone for whom Client is legally liable makes or permits to be made any changes to any reports, plans, specifications or other contract documents prepared by WHKS without obtaining WHKS' prior written consent, Client shall assume full responsibility for the results of such changes. Therefore, Client agrees to waive any claim against WHKS and to release WHKS from any liability arising directly or indirectly from such changes.

Client also agrees, to the extent permitted by laws, to indemnify and hold WHKS harmless from any

damage, liability or cost, including reasonable attorneys' fees and costs of defense, arising from such changes.

15. Jobsite Safety

Neither the professional activities of WHKS nor the presence of WHKS or its employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the construction work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. WHKS and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

16. Additional Services

Services which are requested by Client or are required as part of the Project, but are not included in the Scope of Services, are considered Additional Services.

WHKS will notify Client in writing when Additional Services will be needed. WHKS and Client will agree on the extent of the Additional Service(s) required and will agree on the method and amount of the compensation for performance of said agreed upon Additional Services.

WHKS will not perform Additional Services which will result in additional cost to Client without documented verbal or written authority of Client.

In the event WHKS is requested or required to participate in any dispute resolution procedure which involves any aspect of the Project, Client agrees to compensate WHKS for the reasonable value of WHKS' personnel time and expenses spent in connection with such procedures computed at WHKS' then current fee schedule and expense policies.

17. Dispute Resolution

In an effort to resolve any conflicts that arise, Client and WHKS agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

18. Third Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or WHKS. WHKS' services under this Agreement are being performed solely for Client's benefit, and no other entity shall have any claim against WHKS because of this Agreement or the performance or nonperformance of services hereunder.

19. Extension of Protection

Client agrees to extend any and all liability limitations and indemnifications provided by Client to WHKS to those individuals and entities WHKS retains for performance of the services under this Agreement, including but not limited to WHKS officers and employees and their heirs and assigns, as well as WHKS subconsultants and their officers, employees, heirs and assigns.

20. Timeliness of Performance

WHKS will perform the services described in the Scope of Services with due and reasonable diligence consistent with sound professional practices.

21. Delays

WHKS is not responsible for delays caused by factors beyond WHKS' reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of Client to furnish timely information or approve or disapprove of WHKS' services or work product promptly, or delays caused by faulty performance by Client or by contractors of any level. When such delays beyond WHKS' reasonable control occur, Client agrees WHKS is not responsible for damages, nor shall WHKS be deemed to be in default of this Agreement.

22. Right to Retain Subconsultants

WHKS may use the services of subconsultants when, in the sole opinion of WHKS, it is appropriate and customary to do so. Such persons and entities include, but are not limited to, aerial mapping specialists, geotechnical consultants and testing laboratories. WHKS' use of other consultants for additional services shall not be unreasonably restricted by Client provided WHKS notifies Client in advance.

23. Assignment

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

24. Severability and Survival

Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

25. Hazardous Materials

It is acknowledged by both parties that WHKS' Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event WHKS or any other party encounters asbestos or hazardous or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of WHKS services,

WHKS may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the jobsite is in full compliance with applicable laws and regulations.

26. Joint Participation

The parties have participated jointly in the negotiation and preparation of all agreements between the parties. Each party has had an opportunity to obtain the advice of legal counsel and to review and comment upon this instrument. Accordingly, no rule of construction shall apply against any party or in favor of any party. This instrument shall be construed as if the parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against one party and in favor of another.

27. Record Documents

If required in the Professional Services Agreement, WHKS shall, upon completion of the Work, compile for and deliver to the Client a reproducible set of Record Documents that are based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor or other third parties. These Record Documents may show certain significant changes from the original design made during construction. Because these Record Documents are based on unverified information provided by other parties, which the Consultant is entitled to assume as reliable, the Consultant does not warrant their accuracy.

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