

RESOLUTION NUMBER _____

RESOLUTION APPROVING CONTRACT AND BOND FOR THE
AIRPORT RUNWAY DRAINAGE IMPROVEMENTS PROJECT FOR
THE CITY OF CRESCO, IOWA

Council Member _____ introduced the following Resolution and moved its adoption. Council Member _____ seconded the motion to adopt. The roll was called and the vote was as follows:

AYES: _____

NAYS: _____

ABSENT: _____

Whereupon, the Mayor declared the following Resolution duly adopted:

RESOLUTION APPROVING CONTRACT AND BOND FOR THE AIRPORT
RUNWAY DRAINAGE IMPROVEMENTS PROJECT FOR THE CITY OF CRESCO,
IOWA

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CRESCO, IOWA:

That the construction contract and bond executed for the Airport Runway Drainage Improvements Project for the City of Cresco, Iowa, as described in the plans and specifications and which have been signed by the Mayor and Clerk on behalf of the City and proof of insurance coverage be and the same are hereby approved as follows:

Contractor _____ of _____

Date of Contract: _____

Bond Surety: _____

Date of Bond: _____

PASSED AND APPROVED, this ____ day of _____, 2022.

BY: _____
Mayor David J. Brenno

ATTEST: _____
City Clerk Michelle Elton

CONTRACT

THIS CONTRACT, made and entered into at _____ this _____ day of _____, 2022, by and between the City of Cresco hereinafter called the "Jurisdiction", and Mehmert Tiling Inc., hereinafter called the "Contractor".

WITNESSETH:

The Contractor hereby agrees to complete the work comprising the below referenced improvement as specified in the contract documents, which are officially on file with the Jurisdiction, in the office of the City Clerk, Cresco, Iowa. This contract includes all contract documents. The work under this contract shall be constructed in accordance with the SUDAS Standard Specifications, Current Edition, and as further modified by the supplemental specifications, special provisions and additional requirements. The Contractor further agrees to complete the work in strict accordance with said contract documents, and to guarantee the work as required by law, for the time required in said contract documents, after its acceptance by the Jurisdiction.

This contract is awarded and executed for completion of the work specified in the contract documents for the bid prices proposed by the Contractor in its proposal form submitted in accordance with the Notice to Bidders and Notice of Public Hearing for the following described improvements:

Runway Drainage Improvements at the Cresco Municipal Airport.

The Contractor agrees to perform said work for and in consideration of the Jurisdiction's payment of the bid amount of Ninety Nine Thousand Two Hundred Forty Five dollars (\$99,245.00) which amount shall constitute the required amount of the performance, maintenance, and payment bond. The Contractor hereby agrees to commence work under this contract on or before a date to be specified in a written notice to proceed by the Jurisdiction and to fully complete the project within the time period provided in the Notice to Bidders, subject to the stipulated damages and costs thereafter.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have executed five (5) copies of this Agreement on the date first shown written.

OWNER

Name: City of Cresco
Address: 130 North Park Place
Cresco, Iowa 52136

CONTRACTOR

Name: Mehmert Tiling Inc.
Address: 8635 HWY 9
Lime Springs, IA 52155

By: _____
Signature

Title of Representative

ATTEST

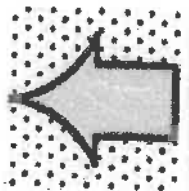
By: _____
Signature

Title

By: B. M. H.
Signature
President
Title of Representative

ATTEST

By: Jessica McClabe
Signature
Assistant
Title



ELWOOD, O'DONOHUE, BRAUN & WHITE, LLP

Attorneys At Law

Christopher F. O'Donohue, P.C. *
Judith M. O'Donohue
Joseph P. Braun
Jeremiah W. White**

Of Counsel
Henry L. Elwood
Jon W. Antes

Lee Elwood (1907-1951)
Dale Elwood (1922-1971)
James E. O'Donohue (1948-1998)
Frank D. Elwood (1939-2001)
Lewis M. Churbuck (1997-2003)
James D. O'Connor (1959-2013)

website) www.elwoodlawfirm.com
(email) cresco@elwoodlawfirm.com

* Attorney and Mediator
** Also Admitted in Minnesota

May 10, 2022

Michele Elton
City Clerk, City of Cresco
130 North Park Place
Cresco, IA 52165

Dear Michelle:

Jim Dietzenbach has now decided that he isn't going to sell condominiums and he wants to remove his property from the Condominium Plat that the City approved a couple of years ago. We have recorded a Statement of Removal and I have dissolved his Condominium Owners Association, but the last step in the puzzle is for the City to approve his Petition to Vacate the Plat. I have enclosed a copy of that along with a Resolution setting up public hearing, the Notice of Public Hearing and the Resolution Approving his Petition to Vacate Plat.

Could you please schedule the public hearing for approximately 30 days out and then return the completed and signed Resolution fixing time and place of hearing to me and I will make sure that it gets published in the newspaper. I would also need you and the Mayor to sign the Notice of Public Hearing so that I can get that published as well. We want to do this so that there is no cost to the City so I will take care of the publication. Please also make sure that your and the Mayor's signatures are notarized on the Resolution setting the public hearing. I then have to have it published 2 times with at least 14 days between the publications. So, if you set the public hearing for sometime around June 20th, that will give me time to get it published.

If you have any questions, please give me a call. Thanks.

• 217 North Elm St.
PO Box 377
Cresco, IA 52136
(563)547-3321
Fax (563)547-3189

101 North Locust Avenue
P.O. Box 310
New Hampton, Iowa 50659
(641) 394-5943
Fax (641) 394-5945

116 North Main Street
PO Box 307
Charles City, IA 50616
(641)228-8054
Fax (641)228-8057

125 North Vine Street
P.O. Box 475
West Union, IA 52175
(563) 422-5631
Fax (563) 422-5632

PETITION TO VACATE PLAT UNDER IOWA CODE SECTION 354.22

COMES NOW the proprietor, James W. Dietzenbach and for Petition To Vacate Plat states:

1. The undersigned is the proprietor of a Plat which has been approved by the City of Cresco for real estate described as:

Lots A, B, C, D and E in Block 24 of Baldwin's Addition to the City of Cresco,
Howard County, Iowa

2. The undersigned now wishes to vacate that official Plat for the reason that he will no longer be selling the property as condominiums and wishes to have the platted property returned to its original legal description of:

Lots 15, 16 and the West 37 ½ Feet of Lot 17, Block 24, Baldwin's Addition to
the City of Cresco.

The property has been removed from the Declaration of Horizontal Property Regime by a Statement of Removal which was recorded November 10, 2020 in Book 2020 at Page 2015 and the Second Avenue Condominium Complex Owners Association has been dissolved pursuant to Articles of Dissolution filed with the Iowa Secretary of State November 12, 2020. The undersigned now wishes to officially vacate the above-described plat and such vacation of plat is authorized by Iowa Code Chapter 354.22.

Dated this 9 day of May, 2022.

ELWOOD, O'DONOHUE, BRAUN & WHITE

By: 

Joseph P. Braun, AT0001120
217 North Elm Street, PO Box 377
Cresco, IA 52136-0377
Telephone: 563-547-3321
Fax: 563-547-3189
Email: cresco@elwoodlawfirm.com


James W. Dietzenbach

STATE OF IOWA, COUNTY OF HOWARD, ss:

Subscribed and sworn to before me this 9th day of May, 2022 by the said James W. Dietzenbach.



Rochelle L. Braun
Notary Public

RESOLUTION NUMBER _____

**RESOLUTION FIXING TIME AND PLACE FOR PUBLIC HEARING ON
PETITION TO VACATE PLAT REGARDING SECOND AVENUE CONDOMINIUM
COMPLEX**

WHEREAS, the City Council has been presented with a Petition to Vacate an Official Plat under Iowa Code Section 354.22 filed by James W. Dietzenbach; and

WHEREAS, Iowa Code Section 354.22 provides that the City shall fix the time and place for public hearing on the Petition and provide notice of the proposed vacation to be published twice with fourteen (14) days between publications, stating the date, time and place of hearing; and

WHEREAS, the hearing on the proposed Vacation of Plat shall be set for _____ o'clock P.M. on the _____ day of _____, 2022 in the City Council Chambers in the City Hall of the City of Cresco, Iowa.

NOW, THEREFORE, BE IT RESOLVED THAT hearing on the Petition to Vacate Plat is set for the _____ day of _____, 2022 at _____ o'clock P.M. in the City Council Chambers at the City Hall of the City of Cresco, Iowa.

The foregoing resolution was approved by Council Persons _____ and the Mayor there upon declared the Resolution passed and adopted this _____ day of _____, 2022.

By: _____
David Brenno, Mayor

Attest: _____
Michelle Elton, City Clerk

STATE OF IOWA, COUNTY OF HOWARD, ss:

This record was acknowledged before me on this _____ day of _____, 2022, by David Brenno, Mayor and Michelle Elton, City Clerk for the City of Cresco.

Signature of Notary Public

ORDINANCE NO. 494

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CRESCO, IOWA, BY AMENDING PROVISIONS PERTAINING TO WATER RATES

BE IT ENACTED by the City Council of the City of Cresco, Iowa, as follows:

SECTION 1. Chapter 92, Section 02, of the Code of Ordinances of the City of Cresco, Iowa, is repealed and the following adopted in lieu thereof:

92.02 RATES FOR SERVICE. Water service shall be furnished at the following monthly rates within the City:

(Code of Iowa, Section 384.84)

1. Effective July 1, 2022:

- A. First 7,000 gallons used per month @ \$5.71 per 1,000 gallons. (Minimum bill is \$8.57 based on 1,500 gallons.)
- B. Next 60,000 gallons used per month @ \$5.21 per 1,000 gallons.
- C. All over 67,000 gallons used per month @ \$4.77 per 1,000 gallons.

SECTION 2. Chapter 92, Section 03, of the Code of Ordinances of the City of Cresco, Iowa, is repealed and the following adopted in lieu thereof:

92.03 RATES OUTSIDE THE CITY: Water service shall be provided at the following monthly rates, based upon water used and furnished, outside the City limits:

(Code of Iowa, Section 384.84)

1. Effective July 1, 2022:

- A. First 7,000 gallons used per month @ \$11.42 per 1,000 gallons. (Minimum Bill is \$17.13 based on 1,500 gallons.)
- B. Next 60,000 gallons used per month @ \$10.42 per 1,000 gallons.
- C. All over 67,000 gallons used per month @ \$9.54 per 1,000 gallons.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED THIS _____ DAY OF _____, 2022.

Mayor David J. Brenno

ATTEST:

City Clerk Michelle Elton

1st Reading _____

2nd Reading _____

3rd Reading _____

I certify that the foregoing was published as Ordinance No. 494 on the _____ day of _____, 2022.

City Clerk Michelle Elton

ORDINANCE NO. 494

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CRESCO, IOWA, BY AMENDING PROVISIONS PERTAINING TO WATER RATES

BE IT ENACTED by the City Council of the City of Cresco, Iowa, as follows:

SECTION 1. Chapter 92, Section 02, of the Code of Ordinances of the City of Cresco, Iowa, is repealed and the following adopted in lieu thereof:

92.02 RATES FOR SERVICE. Water service shall be furnished at the following monthly rates within the City:

(Code of Iowa, Section 384.84)

1. Effective July 1, 2022:

- A. First 7,000 gallons used per month @ ~~\$5.715.49~~ per 1,000 gallons. (Minimum bill is ~~\$8.578.24~~ based on 1,500 gallons.)
- B. Next 60,000 gallons used per month @ ~~\$5.215.01~~ per 1,000 gallons.
- C. All over 67,000 gallons used per month @ ~~\$4.774.59~~ per 1,000 gallons.

SECTION 2. Chapter 92, Section 03, of the Code of Ordinances of the City of Cresco, Iowa, is repealed and the following adopted in lieu thereof:

92.03 RATES OUTSIDE THE CITY: Water service shall be provided at the following monthly rates, based upon water used and furnished, outside the City limits:

(Code of Iowa, Section 384.84)

1. Effective July 1, 2022:

- A. First 7,000 gallons used per month @ ~~\$11.4210.98~~ per 1,000 gallons. (Minimum Bill is ~~\$17.1316.47~~ based on 1,500 gallons.)
- B. Next 60,000 gallons used per month @ ~~\$10.4210.02~~ per 1,000 gallons.
- C. All over 67,000 gallons used per month @ ~~\$9.549.18~~ per 1,000 gallons.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED THIS _____ DAY OF _____, 2022.

Mayor David J. Brenno

ATTEST: _____

City Clerk Michelle Elton

1st Reading _____

2nd Reading _____

3rd Reading _____

I certify that the foregoing was published as Ordinance No. 494 on the _____ day of _____, 2022.

City Clerk Michelle Elton

ORDINANCE NO. 495

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CRESCO, IOWA, BY AMENDING PROVISIONS PERTAINING TO SEWER SERVICE CHARGES

BE IT ENACTED by the City Council of the City of Cresco, Iowa, as follows:

SECTION 1. Chapter 99, Section 02, of the Code of Ordinances of the City of Cresco, Iowa, is repealed and the following adopted in lieu thereof:

99.02 RATES FOR SERVICE. Each customer shall pay a sewer service charge for the use of and for the service supplied by the municipal sanitary sewer system based upon the amount and rate of water consumed. Sewer service shall be furnished at the following monthly rates: (Code of Iowa, Section 384.84)

- 1. Effective July 1, 2022:
A. \$9.56 per 1,000 gallons within City limits. (Minimum bill is \$14.34 based on 1,500 gallons.)
B. \$19.12 per 1,000 gallons outside City limits. (Minimum bill is \$28.67 based on 1,500 gallons.)
C. \$8.55 per 1,000 gallons for high volume users that are subject to Industrial Sewer Rental Agreements with the City.
D. \$3.50 per month for Capital Improvement fund for the extension and maintenance of the sewer, storm sewer and water lines.

SECTION 2. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED THIS _____ DAY OF _____, 2022.

Mayor David J. Brenno

ATTEST: _____
City Clerk Michelle Elton

1st Reading _____ 2nd Reading _____ 3rd Reading _____

I certify that the foregoing was published as Ordinance No. 495 on the ___ day of _____, 2022.

City Clerk Michelle Elton

ORDINANCE NO. 495

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CRESCO, IOWA, BY AMENDING PROVISIONS PERTAINING TO SEWER SERVICE CHARGES

BE IT ENACTED by the City Council of the City of Cresco, Iowa, as follows:

SECTION 1. Chapter 99, Section 02, of the Code of Ordinances of the City of Cresco, Iowa, is repealed and the following adopted in lieu thereof:

99.02 RATES FOR SERVICE. Each customer shall pay a sewer service charge for the use of and for the service supplied by the municipal sanitary sewer system based upon the amount and rate of water consumed. Sewer service shall be furnished at the following monthly rates: (Code of Iowa, Section 384.84)

- 1. Effective July 1, 2022:
 - A. ~~\$9,569.19~~ per 1,000 gallons within City limits. (Minimum bill is ~~\$14,3413.79~~ based on 1,500 gallons.)
 - B. ~~\$19,1218.38~~ per 1,000 gallons outside City limits. (Minimum bill is ~~\$28,6727.57~~ based on 1,500 gallons.)
 - C. ~~\$8,557.92~~ per 1,000 gallons for high volume users that are subject to Industrial Sewer Rental Agreements with the City.
 - D. \$3.50 per month for Capital Improvement fund for the extension and maintenance of the sewer, storm sewer and water lines.

SECTION 2. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED THIS _____ DAY OF _____, 2022.

Mayor David J. Brenno

ATTEST: _____
City Clerk Michelle Elton

1st Reading _____ 2nd Reading _____ 3rd Reading _____

I certify that the foregoing was published as Ordinance No. 495 on the ___ day of _____, 2022.

City Clerk Michelle Elton

RESOLUTION NUMBER _____

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
A PROFESSIONAL SERVICES AGREEMENT WITH WHKS & CO. FOR THE
7TH STREET WEST RECONSTRUCTION PROJECT**

The City Council of the City of Cresco met in regular session on May 16, 2022 at 5:30 P.M. Council Member _____ moved the adoption of the foregoing Resolution Authorizing the Mayor to enter into a PROFESSIONAL SERVICES AGREEMENT with WHKS & Co. for professional services relating to the project described as the 7th Street West Reconstruction Project. Council Member _____ seconded said motion. A roll call vote was requested by the Mayor and said roll call vote resulted as follows:

Ayes: _____
Nays: _____
Absent: _____

Thereupon, the Mayor declared said Resolution duly passed and announced that the agreement dated _____, between the City of Cresco and WHKS & Co. is approved and that the Mayor is authorized to execute the agreement on behalf of the City of Cresco.

PASSED AND APPROVED THIS 16TH DAY OF MAY, 2022.

BY: _____
Mayor David J. Brenno

ATTEST: _____
City Clerk Michelle Elton



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 **7th Street West Reconstruction** .

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 Exhibit A.

Basis of Compensation

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

Items 1-5 - Lump Sum Fee of \$190,000 including Expenses. Permit fees to be billed separately

Items 6-7 - Billed Hourly with an Estimated Fee of \$130,000 including expenses.

Expenses billed at actual cost and mileage at the current published IRS rate per mile. External expenses include an administrative charge of 10 percent.

Executed this _____ day of May, 2022

City of Cresco

By: _____

Printed Name: _____

Title: _____

WHKS & co.

By: _____

Printed Name: William Angerman

Title: Exec. Vice President, COO



Exhibit A to Professional Services Agreement

A. Project Description

The project consists of the preparation of plans and specifications, and construction services for a project to reconstruct 7th Street West between Iowa Highway 9 and 4th Avenue West. The roadway will be reconstructed with integral curb concrete pavement. The project includes the reconstruction of all existing watermain under the roadway and the reconstruction of 850 feet of sanitary sewer. A sinkhole located on County land at the fairgrounds will be capped and the storm sewer discharging to this location will be re-routed. New storm sewer will be installed throughout the project and discharged at a new location northeast of the Airport. A new stormwater management system will be constructed at this location if permitted due to the proximity of the runway. The project will reference Iowa DOT standard specifications and SUDAS Standards.

B. Scope of Services Provided Under This Agreement:

1. Project Management and Meetings

- Perform general project administrative duties including supervision and coordination of the project team, review of project costs and billings, prepare invoices using Consultant's standard forms, preparation of status reports, and general administrative activities.
- Hold kick-off meeting with Client to discuss the project and review the scope.
- Advise the Client of the necessity of obtaining Special Engineering Services as described in Paragraph C., and act as the Client's representative in connection with any such services not actually performed by WHKS.
- Attend two (2) meetings for the project.

2. Topographic Survey and Research of Existing Conditions

- Perform site topographical surveys to support new facilities, exclusive of boundary surveys for land and easement acquisition.
- Develop project control and base map for the project.
- Locate the existing underground utilities as located by the Iowa One Call locate system.
- Collect, obtain and review relevant information from the Client.

3. Feasibility Study

- Update the feasibility study for 7th Street West Improvements. The report will include the following:
 - i. Summary of existing conditions
 - ii. Recommendations of street structure, width, and cross sections, streets and utility design, alignments, water system improvements, wastewater system improvements, required permits, and anticipated schedule.
 - iii. Perform a preliminary hydraulic analysis and model.
 - iv. An Engineer's Opinion of Probable Construction Costs
- Provide two (2) bound copies of the report.

4. Preliminary and Final Design

- Prepare preliminary and final plans and specifications to show the character and scope of work to be performed by contractors on the Project.
- Geotechnical Engineering services will be performed by a subcontractor to WHKS under this contract. Geotechnical services to include soil borings and geotechnical evaluation.
- Prepare forms of notice for bids, contractor's proposal, construction agreement, payment bond and performance bond for approval by the Client, subject to prior review and approval by Client's Attorney, Bond Counsel, and/or Fiscal Agent.
- Prepare opinion of probable construction cost on completed plans and specifications.
- Furnish one (1) original signed copies of the plans, specifications, and other contract documents as required to the Client.
- Furnish plans and specifications to bidders through the use of a web based plan room.
- Answer contractor's questions during the bidding phase.
- Prepare addendums to the contract documents prior to bid letting, if necessary.
- Assist in the receiving and tabulation of Contractors' proposals and assist in awarding construction contract.
- A Storm Water Pollution Prevention Plan (SWPPP) will be prepared.
- Prepare and submit applicable construction permit application packages to Iowa Department of Natural Resources and Iowa Department of Transportation.

5. Assessment Assistance

- Assist with preparation of the assessment documents and assist with conducting the assessment hearings.
- Conduct public meetings with affected property owners. Two meetings are included.

6. Construction Administration

- Provide construction administration assistance during construction. Contract administration assistance activities conducted during project construction include clarification of design details, periodic visits to the construction site to observe the progress of work, review of shop drawings, review periodic payment estimates for completed construction work and recommend payments for processing, prepare change orders when required, and prepare the final summary of construction costs.
- Conduct a preconstruction meeting with Client, Contractor and Utility Owners.
- Provide construction staking.
- Prepare record drawings from Contractor provided "mark-ups" at the completion of the construction.
- Provide construction updates to the Client.

7. Construction Observation

- Provide resident project observation services 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 eventual preparation of Record Drawings. The observer duties do

not include construction means, methods, procedures, and job-site safety. Fee based on 840 hours of observation and travel time.

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

C. Special Engineering Services:

Special Engineering Services are those services not listed above, but which may be required or advisable to accomplish the Project. Special Engineering Services shall be performed when authorized by the Client for additional fees, to be determined at the time authorized.

Special Engineering Services include:

1. Land surveying and platting
2. Easement research, plats or descriptions
3. Negotiation for easements or land acquisition
4. Permits other than those identified above
5. Funding assistance, including grant and/or loan applications
6. Wetland Delineations or mitigation plans
7. Attendance at additional meetings (other than those listed above)

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.

Revised 02/23/07

Revised: 04/29/09

RESOLUTION NUMBER _____

RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN ENGAGEMENT AGREEMENT WITH ALHERS & COONEY, PC REGARDING THE MUNICIPAL SEWER SYSTEM AND INDUSTRIAL SERVICE AGREEMENTS

WHEREAS, the City of Cresco requests advice for updating the Wastewater Service Agreement for industrial wastewater customers and related matters pertaining to enforcement of treatment agreements.

NOW, THEREFORE, BE IT RESOLVED THAT the Mayor is authorized and directed to sign the Engagement Agreement with Ahlers & Cooney, PC in Des Moines, Iowa.

Council Person _____ moved the adoption of the foregoing Resolution and Council Person _____ seconded said Motion. Following discussion, a roll call vote was requested by Mayor and said roll call resulted as follows:

Ayes: _____
Nays: _____
Absent: _____

Thereupon, the Mayor declared said Resolution duly passed and announced that the Engagement Agreement between the City of Cresco and Ahlers & Cooney, PC is approved and that the Mayor is authorized to execute the agreement on behalf of the City of Cresco.

PASSED AND APPROVED THIS _____ DAY OF _____, 2022.

BY: _____
Mayor David J. Brenno

ATTEST: _____
City Clerk Michelle Elton



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Timothy J. Whipple
515.246.0379
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May 13, 2022

Via E-Mail

Michelle Elton
City Clerk
130 N Park Place
Cresco, IA 52136
cityhall@cityofcresco.com

RE: City of Cresco, Iowa - Engagement Agreement

Dear Ms. Elton:

This letter will confirm that this firm has agreed to represent the City of Cresco, Iowa, acting by and through its City Council (the "City") in connection with its municipal sewer system and industrial service agreements, including:

- Advise the City and assist with the preparation of a form of Wastewater Service Agreement for the City to use with its industrial wastewater customers;
- Advise the City regarding the City's wastewater ordinance in connection with the City's industrial users, and in particular, enforcement regarding discharge violations;
- Advise the City regarding DNR Treatment Agreements in connection with the City's industrial users;
- Advise the City regarding notice of violation letters;
- Matters relating to the above items;

in each instance as and to the extent referred to us by the officers of the City and agreed to in writing. Any additional legal services, except those services incidental to and necessarily included in connection with this representation, must be reflected in separate correspondence. I will be chiefly responsible for providing the legal services in this matter. I may obtain the assistance of other attorneys or paralegals in the firm, including attorney Steven Nadel.

Limited Scope of Representation: The scope of our representation does not include advice or services regarding accounting, tax, financial matters, engineering or business management, and related non-legal matters and advice. If you wish for us to consult with other professionals retained by you regarding this matter, we will communicate with you, in writing, to confirm the scope of such consultations prior to initiating the same.

Our services are billed hourly, at the rate in effect at the time services are performed. The firm periodically reviews and adjusts billing rates, usually on an annual basis with increases

May 13, 2022

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effective January 1. At present my billing rate effective January 1, 2022, is \$325 per hour and Steven Nadel's rate is \$430 per hour. I may also call upon others in the firm to assist us from time to time. This may involve attorneys with specialized knowledge and skill, associate attorneys or legal or administrative assistants. Work performed by other attorneys and legal assistants will be billed at their hourly rate in effect at the time the services are performed. You will be billed on a monthly basis for all services rendered and all expenses advanced.

The firm will advance usual and necessary expenses incurred in connection with your representation if the individual amounts do not exceed \$250. If an expense exceeds that amount, the firm will forward the provider's statement directly to you for payment. Your monthly statement will contain an itemized list of the services performed and expenses incurred. Should you have any questions about the statement, please call. The firm reserves the right to withdraw from your representation if each monthly statement is not paid within 60 days of issuance.

As you are aware, our firm represents many political subdivisions, as well as several joint-action agencies and other companies and individuals. It is possible that, during the time we are representing the City, one or more of our present or future clients will have transactions with the City. It is also likely that we may be asked to represent, in an unrelated matter, our other clients. We do not believe such representation, if it occurs, will adversely affect our ability to represent the City as provided in this letter, either because such matters will be sufficiently different from the City representation so as to make such representations not adverse, or because the potential for such adversity is remote or minor, and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of our City representation. We do reserve the right (and the City, by accepting our representation on these terms, consents thereto) to continue to represent, or to represent in the future, other clients on matters where the City interests may be adverse, but that do not have a substantial relationship to any matter on which we are representing the City.

In the interest of facilitating our services to you, we may send documents, information or data electronically or via the Internet or store electronic documents or data via computer software applications hosted remotely or utilize cloud-based storage. Your confidential electronic documents or data may be transmitted or stored using these methods. We may use third party service providers to store or transmit these documents or data. In using these electronic communication and storage methods, we employ reasonable efforts to keep such communications, documents and data secure in accordance with our obligations under applicable laws, regulations, and professional standards; however, you recognize and accept that we have no control over the unauthorized interception or breach of any communications, documents or data once it has been transmitted or if it has been subject to unauthorized access while stored, notwithstanding all reasonable security measures employed by us or by our third party vendors. By your acceptance of this letter, you consent to our use of these electronic devices and applications and submission of confidential client information to or through third party service providers during this engagement.

If these arrangements are acceptable with you, please present this letter to the City Council for approval, and then sign one copy of this letter and return it to me via US mail.

May 13, 2022
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The firm appreciates the opportunity to serve as your counsel in connection with this matter. We look forward to working with you.

Sincerely,

AHLERS & COONEY, P.C.

By: /s/ *Timothy J. Whipple*

Timothy J. Whipple

TJW:jm

Accepted:

City of Cresco, Iowa *

By _____ Date: _____

*Approved by action of the City Council on _____, 2022.