

NOTICE AND CALL OF PUBLIC MEETING

GOVERNMENTAL BODY: THE CITY COUNCIL OF CRESCO, IOWA
DATE OF MEETING: DECEMBER 5, 2022
TIME AND PLACE OF MEETING: 5:30 P.M. CITY HALL, 130 N PARK PLACE

PUBLIC NOTICE IS HEREBY GIVEN THAT THE ABOVE MENTIONED GOVERNMENTAL BODY WILL MEET AT THE DATE, TIME AND PLACE SET OUT ABOVE. THE TENTATIVE AGENDA FOR SAID MEETING IS AS FOLLOWS:

ROLL CALL: KRIENER, McCONNELL, FORTUNE, BOUSKA, CARMAN

ACT ON THE CONSENT AGENDA: All items listed under the consent agenda will be enacted by one motion. There will be no separate discussion of these items unless a request is made prior to the time council votes on the motion.

1. Approval of the Agenda
2. Approval of the Claims
3. Approval of Minutes from November 21, 2022
4. Approval of Minutes from November 22, 2022 Worksession
5. Approval of Minutes from November 26, 2022 Statue Dedication
6. Approval of Minutes from December 1, 2022 Worksession
7. Approval of Class C Retail Alcohol License (LC) to Big Daddy Hideaway Corp d/b/a Sweeney's Lounge
8. Approval of Pay Request #3 (Final) for \$4,665.88 to Mehmert Tiling Inc for the Runway Drainage Improvements Project

STAFF REPORTS: There may be action taken on each of the items listed below.

1. Public Works
2. Police
3. Administration
4. Committee Updates

COMMENTS FROM AUDIENCE: *(This portion of the agenda is for comments that are not related to one of the items listed on the agenda. Comments can only be received. No formal action by the Council can be taken. Those making public comments will be asked to state their name and address, and to speak from the podium.)*

BUSINESS: There may be action taken on each of the items listed below.

1. Public Hearing on Proposed Resolution of Necessity for the 7th Street West Reconstruction
2. Resolution with Respect to the Adoption of the Resolution of Necessity Proposed for the 7th Street West Reconstruction
3. Resolution Directing Preparation of Detailed Plans and Specifications, Form of Contract and Notice to Bidders on the 7th Street West Reconstruction

4. Public Hearing to Amend the City of Cresco Code of Ordinances by Adding New Chapter 81 Pertaining to Recreational Vehicles
5. Second Reading of Summary of Proposed Ordinance 501 which Amends the Code of Ordinances of the City of Cresco, Iowa, Pertaining to Recreational Vehicles
6. Request for Sewer Adjustment for Water not Entering the Sanitary Sewer System from Phillip and Kim Ollendieck for Dulcie Ollendieck
7. Request for Sewer Adjustment for Water not Entering the Sanitary Sewer System from Tom Barnes for Howard County Expo
8. Resolution Authorizing the Mayor to Enter into a Professional Services Agreement with WHKS & CO. for the Cresco Wastewater Treatment Plant (WWTP) – Nutrient Reduction Study Supplement

ADJOURN:

THIS NOTICE IS GIVEN AT THE DIRECTION OF THE MAYOR PURSUANT TO CHAPTER 21, CODE OF IOWA AND THE LOCAL RULES OF SAID GOVERNMENTAL BODY. POSTED DECEMBER 2, 2022.

NOTICE TO PROPERTY OWNERS

Notice is hereby given that there is now on file for public inspection in the office of the Council of the City of Cresco, State of Iowa, a proposed Resolution of Necessity, an estimate of costs and plat and schedule showing the amounts proposed to be assessed against each lot and the valuation thereof within District as approved by the Council of the City of Cresco, State of Iowa, for a street, water, sanitary sewer, storm sewer and other public improvements, designated as the 7th Street West Reconstruction, of the types and in the location as follows:

Remove all existing concrete pavement, granular base and concrete curb and gutter on 7th Street West from Highway 9 to 4th Avenue West. The project will replace the existing 4 inch watermain along the corridor with 8 inch watermain. The existing 8" clay sanitary sewer between Highway 9 and Stock Avenue will be reconstructed with 8" PVC sanitary sewer. The existing storm sewer will also be reconstructed and discharged at a new location with a stormwater pond.

The street will be reconstructed as a 36 foot wide concrete street from Highway 9 north 500 feet then taper down to a 31 feet wide concrete street to 4th Avenue West. The roadway will include 6 inch thick concrete with integral curb over 10 inches of granular base. New concrete approaches will be constructed at existing driveway locations within the street right-of-way. Sidewalk pedestrian ramps will be constructed at all intersections to meet the Americans with Disabilities Act.

The location of the improvements is 7th Street West from Highway 9 to 4th Avenue West.

That the proposed District to be benefited and subject to assessment for the cost of such improvements is described as follows:

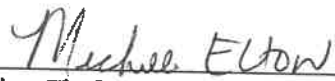
All parcels abutting 7th Street West beginning at the south right-of-way line of Highway 9 and ending at the north right-of-way line of 4th Avenue West as shown on the preliminary assessment plat. The parcels are listed below:

LOT 3 & LOT 4 OF 4 SUBD LOT 3 IR SURV SE
S 125' LOT 2 EX E 150' N 50' SUBD LOT 3 IR SURV SE
E 150' N 50' S 125' LOT 2 SUBD LOT 3 IR SURV SE
LOT 1 OF 2 SUBD LOT 2 SUBD LOT 3 IR SURV SE
LOT 5 OF 4 IR SURV SE
LOT 9 BLK 28 BALDWINS ADDN
LOTS 7 & 8 BLK 28 BALDWINS ADDN
S 1/2 LOTS 11 & 12 BLK 21 BALDWINS ADDN
N 80' LOTS 11 & 12 BLK 21 BALDWINS ADDN
LOT 10 BLK 21 BALDWINS ADDN
LOT 9 & S 35' OF W 1/2 LOT 8 BLK 21 BALDWINS ADDN
W 1/2 LOTS 6, 7 & 8 EX S 35' BLK 21 BALDWINS ADDN
S 80' LOTS 9 & 10 BLK 16 BALDWINS ADDN
LOT 9 & 10 EX S 80' BLK 16 BALDWINS ADDN
LOTS 7 & 8 BLK 16 BALDWINS ADDN

LOT 2 OF 2 & 100' RRROW IR SURV SE & LOT 2 OF 7 SW
LOT 1 & LOT 1 OF 2 EX LT 1 OF 1 OF 2 IRSURV SE (FAIRGROUNDS- RACETRACK ETC)
LOT 3 OF 4 & LOT 4 OF 4 IR SURV SE

The Council will meet at 5:30 P.M., on the 5th day of December, 2022, at the Council Chambers, City Hall, 130 North Park Place, Cresco, Iowa, at which time the owners of property subject to assessment for the proposed improvements, or any other person having an interest in the matter may appear and be heard for or against the making of the improvement, the boundaries of the District, the cost, the assessment against any lot, tract or parcel of land, or the final adoption of a Resolution of Necessity. A property owner will be deemed to have waived all objections unless at the time of Hearing he has filed objections with the Clerk.

This Notice is given by authority of the Council of the City of Cresco, State of Iowa.



City Clerk, City of Cresco, State of Iowa

(End of Notice)

NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

You are hereby notified that the City Council of the City of Cresco, Iowa, will hold a Public Hearing on the 5th day of December, 2022, in Council Chambers at City Hall. At this meeting the Council proposes to add ordinance Chapter 81 pertaining to recreational vehicles.

The ordinance may be viewed at Cresco City Hall during normal office hours or online at www.cityofcresco.com. This hearing will be conducted during a regular Cresco City Council Meeting starting at 5:30 pm.

Any resident of Cresco wishing to be heard concerning the reasons for or objections to the amendment, must appear at said hearing and voice your opinions.

BY ORDER OF THE CITY COUNCIL OF CRESCO, IOWA



City Clerk Michelle Elton

Mayor Brenno called the Cresco City Council meeting to order on November 21, 2022, at 5:30 pm. Council Members Kriener, McConnell, Fortune, Bouska, and Carman were present. No council members were absent.

McConnell made the motion to approve the consent agenda which included approval of the: agenda; claims; minutes from November 7, 2022 meeting; special Class C Retail Alcohol License (BW) (beer/wine) with outdoor service to Fat T's Café LLC; tax abatement under the Urban Revitalization Plan for Troy Cleveland. Fortune seconded and it passed all ayes.

Public Works Director Widell reported: (a) T&W Grinding will grind the leaf pile at the yardwaste site in the next few weeks; (b) Water Department participated in a zoom training for the mandatory lead service line inventory that will be required by the DNR; (c) everyone is busy preparing for winter; (d) sludge hauling should be done next week.

Police Chief Ruroden had nothing to report.

City Clerk Elton reported (a) reminder the public hearing for the 7th Street West project will be December 5, 2022; (b) a special council meeting is scheduled for November 22nd; (c) budget worksession with department heads will be December 1st starting at 1 pm; (d) we have invested in a 12-month CD and a 6-month CD to take advantage of better interest rates; (e) monthly financial reports were submitted. We are 33% of the way into the fiscal year and revenues are at 36% while expenditures are at 28% so we are right on budget currently.

McConnell reported the Park Board met and fitness center memberships have increased by 23. They are planning a co-ed softball tournament in July. There are 85 students enrolled in the basketball rec program.

Kriener reported that he and McConnell drove to Ossian to inspect their sidewalk project and took several pictures. They have some questions for the engineers and got a better understanding of how the project may look.

Mayor Brenno asked for comments from the audience and there were none.

Elizabeth Thyer from Gardiner & Company presented the Auditor's Report for fiscal year ending June 30, 2022. They issued an unmodified opinion which means they believe the financial statements are fairly presented based on tests and samples.

Council discussed the proposed Downtown Crosswalk Reconstruction Special Assessment Project. Bouska presented an option to allow a reduction for sidewalk assessments for sidewalks that have been replaced within the past five years as suggested by WHKS. The credit would be pro-rated based on the year the replacement was done and would require written proof of the date of the sidewalk replacement. The assessment for all sidewalks is 90% paid by property owners. The assessment would be decreased to 50% if it was replaced in 2021, 60% in 2020, 70% in 2019, 80% in 2018 and the full 90% for replacements in 2017 or before. Fortune made the motion to approve the resolution with respect to the adoption of the resolution of necessity proposed for the Downtown Crosswalk Reconstruction with an amendment to reduce the sidewalk assessment as stated above for properties that had replaced their sidewalks in the past five years. Bouska seconded and it passed all ayes.

Carman made the motion to approve the resolution directing preparation of detailed plans and specifications, form of contract and notice to bidders on the Downtown Crosswalk Reconstruction. Bouska seconded and it passed all ayes.

Carman made the motion to approve the recommendation of the Library Board to appoint Cindy Kath for a term expiring 6/30/2025. McConnell seconded and it passed all ayes.

Bouska made the motion to set the public hearing to amend the City of Cresco Code of Ordinances by adding new chapter 81 pertaining to recreational vehicles. Carman seconded and it passed all ayes.

Mayor Brenno performed the first reading of proposed Ordinance 501 which amends the Code of Ordinances of the City of Cresco, Iowa, pertaining to recreational vehicles. Carman made the motion to approve the first reading of summary of proposed Ordinance 501. Bouska seconded and it passed all ayes.

Carman made the motion to approve the resolution reactivating and renaming a fund within the city's accounts Fund 319 – 7th St W Reconstruction Project Fund. McConnell seconded and it passed all ayes.

Bouska made the motion to approve the resolution accepting work for the Cresco Pickleball Court Project. McConnell seconded and it passed all ayes.

McConnell made the motion to approve the resolution authorizing transfer of funds for FY 2023 – November transfers. Kriener seconded and it passed all ayes.

Bouska made the motion to change the January Council Meeting dates to the 2nd and 4th Mondays in January 2023 due to the New Year's holiday. The meetings will be on January 9th and January 23rd. Kriener seconded and Kriener, Fortune, Bouska, and Carman voted aye. McConnell voted nay. The motion passed by majority vote.

Carman moved to adjourn at 6:07 pm. Kriener seconded and it passed all ayes. The next regular Cresco City Council meeting will be December 5, 2022, at 5:30 pm at Cresco City Hall.

Mayor David J. Brenno

City Clerk Michelle Elton

Following is a list of claims approved for payment:

PAYROLL CHECKS		80,898.35	POWERPLAN	Parts	138.38
ACCESS SYSTEMS	Copier	234.06	RACOM	Srvc	5,083.21
ALLIANT	Elect	1,121.07	RELIANCE LIFE	Ins	138.80
AUDITOR OF STATE	Fee	425.00	RUPPERT	Supp	288.06
BAKER&TAYLOR	Books	1,190.71	SAM'S	Supp	2,506.15
BC/BS	Ins	37,445.88	SANDRY FIRE	Supp	68.15
BOB'S ELEC	Srvc	249.75	SCHUMACHER	Srvc	168.82
BROWN SUPPLY	Supp	2,586.00	SOLUTIONS	Srvc	264.00
CARDMEMBER SRVC	Supp	1,565.86	SPAHN&ROSE	Supp	136.74
CARQUEST	Supp	14.69	STATE HYGIENIC	Analys	1,183.50
CITY LAUNDERING	Srvc	181.60	STOREY KEN	Supp	364.67
CITY OF CRESCO	Ins	4,217.38	TEL-COMM SRVC	Srvc	75.00
CITY OF CRESCO	Prog	30.00	TREAS,IA	Taxes	6,771.95
CITY OF CRESCO	Ufill	26.41	TWIN RIVERS ENG	Srvc	6,400.00
CR HTG&VTG	Srvc	259.75	UNITYPOINT	Srvc	42.00
CR SHOPPER	Ads	248.00	VISA	Supp	4,140.83
CR TPD	Notices	375.48	UNIVERSAL	Movie	480.69
DELUXE ECHOSTAR	Movie	80.00	WARNER BROS	Movie	377.91
EMERG APPARATUS	Rprs	353.73	SONY	Movie	250.00
FAREWAY	Supp	19.98	VOBR, RHONDA	Mileage	28.12
FOLEY'S CONST	Srvc	3,050.20	WHKS	Engr	<u>7,413.92</u>
GARDINER+CO	Audit	3,975.00	GENERAL		152,536.47
ELTON, MICHELLE	Mileage	65.63	EV CHARGING STATION		56.25
HACH	Chems	159.97	FIRE STATION BLDG		387.27
HAWKEYE SAN	Gb/Rc	48,264.00	OFFICE EQUIPMENT		264.00
HAWKINS	Chems	80.00	STREET TRUST		1,802.16
IA DIV LABOR	Fee	75.00	THEATRE TRUST		350.00
IA FIN AUTH	Int	2,143.75	CRESCO COMM FIRE		2,089.73
IA POETRY	Book	12.75	ROAD USE TAX		13,336.32
IROC	Srvc	850.00	EMPLOYEE BENEFITS		9,614.48
IVANKOVICH, MICHAEL	Prog	350.00	DWNTN CROSSWALKS		1,743.17
KWIK TRIP	Gas	5,520.23	WATER		22,290.37
LT MECHANICAL	Rprs	150.00	SEWER OPERATIONS		30,633.33
MEDIACOM	Phone	318.70	SEWER SINKING		2,143.75
MIENERGY	Elec	8,338.16	CAPITAL IMPROVE		5,871.54
MOORE, JORDYN	Mileage	290.00	YARDWASTE		<u>2,104.74</u>
O'DONNELL INS	Ins	3,086.00	Total Expenditures		243,118.84
OVERDRIVE	Fee	27.50	Revenue 11/8-11/21/22		231,941.26
PETTY CASH	Postage	91.94			
PLUNKETT'S	Srvc	530.15			

Mayor Brenno called the Cresco City Council special meeting to order on November 22, 2022, at 5:00 pm. Council Members Kriener, McConnell, Fortune, Bouska, and Carman were present. No council members were absent.

Mayor Brenno asked for comments from the audience. Hawkeye Sanitation owner Ross Merritt and Attorney Paul Gamez informed council they would be available for questions after the closed session.

Bouska made the motion to go into closed session at 5:02 pm pursuant to Iowa Code 21.5 (1) (c) to discuss strategy with counsel regarding potential litigation. McConnell seconded and it passed all ayes.

McConnell made the motion to go back into open session at 5:47 pm. Carman seconded and it passed all ayes. No formal action was taken during the closed session.

City Attorney John Anderson, on behalf of the City Council, requested that Hawkeye Sanitation present a proposal to address issues with the current agreement regarding the recycling center and commercial garbage collection. Attorney Gamez and Ross Merritt agreed to draft a proposal and submit it to the Council.

Kriener made the motion to go into closed session at 6:23 pm pursuant to Iowa Code 21.5 (1) (c) to discuss strategy with counsel regarding potential litigation. McConnell seconded and it passed all ayes.

Fortune made the motion to go back into open session at 7:04 pm. Bouska seconded and it passed all ayes. No formal action was taken during the closed session.

Bouska moved to adjourn the Council Meeting at 7:04 pm. Carman seconded and it passed all ayes. The next regular Cresco City Council meeting will be December 5, 2022, at 5:30 pm at Cresco City Hall.

Mayor David J. Brenno

City Clerk Michelle Elton

The Cresco City Council met on November 26, 2022, at 12:00 pm for a special ribbon cutting and dedication ceremony for a new bronze statue in front of City Hall. Council Members Kriener, McConnell, and Bouska were present. Council members Fortune and Carman were absent.

Mayor Brenno thanked the Bohle family for donating the statue in memory of Mark Bohle, former Mayor and active community member of Cresco. Approximately 65 Bohle family members as well as Chamber representatives were present for the dedication. The ceremony ended about 12:20 pm.

The next regular Cresco City Council meeting will be December 5, 2022, at 5:30 pm at Cresco City Hall.

Mayor David J. Brenno

City Clerk Michelle Elton

Mayor Brenno called the Cresco City Council special meeting to order on December 1, 2022, at 1:00 pm. Council Members Kriener, McConnell, Bouska, Fortune, and Carman were present. No council members were absent.

The City Department Heads each presented their FY 2023/2024 budget requests to Council. Council will consider all of the requests.

Carman moved to adjourn the Council Meeting at 4:52 pm. Bouska seconded and it passed all ayes. The next regular Cresco City Council meeting will be December 5, 2022, at 5:30 pm at Champlin Hall.

Mayor David J. Brenno

City Clerk Michelle Elton



State of Iowa

Alcoholic Beverages Division

Applicant

NAME OF LEGAL ENTITY	NAME OF BUSINESS(DBA)	BUSINESS		
Big Daddy Hideaway Corp.	Sweeney's Lounge	(563) 547-3422		
ADDRESS OF PREMISES	PREMISES SUITE/APT NUMBER	CITY	COUNTY	ZIP
212 S Elm St		Cresco	Howard	52136-0000
MAILING ADDRESS	CITY	STATE	ZIP	
212 South Elm Street	Cresco	Iowa	52136-0000	

Contact Person

NAME	PHONE	EMAIL
Cooper Sweeney	(563) 547-3422	coopersweeney.14@gmail.com

License Information

LICENSE NUMBER	LICENSE/PERMIT TYPE	TERM	STATUS
LC0021677	Class C Retail Alcohol License	12 Month	Submitted to Local Authority

TENTATIVE EFFECTIVE DATE	TENTATIVE EXPIRATION DATE	LAST DAY OF BUSINESS
Jan 12, 2023	Jan 11, 2024	

SUB-PERMITS

Class C Retail Alcohol License

PRIVILEGES



State of Iowa

Alcoholic Beverages Division

Status of Business

BUSINESS TYPE

Corporation

Ownership

• Individual Owners

NAME	CITY	STATE	ZIP	POSITION	% OF OWNERSHIP	U.S. CITIZEN
Cooper Sweeney	Cresco	Iowa	52136	owner	100.00	Yes

Insurance Company Information

INSURANCE COMPANY

Illinois Casualty Co

POLICY EFFECTIVE DATE

Jan 12, 2023

POLICY EXPIRATION DATE

Jan 11, 2024

DRAM CANCEL DATE

OUTDOOR SERVICE EFFECTIVE DATE

OUTDOOR SERVICE EXPIRATION DATE

BOND EFFECTIVE DATE

TEMP TRANSFER EFFECTIVE DATE

TEMP TRANSFER EXPIRATION DATE

CONSTRUCTION PROGRESS REPORT

Project Description: Runway Drainage Improvements
Cresco Municipal Airport
Cresco, Iowa

Date of Contract: June 1, 2022

Estimate No.: 3

Completion Date:

Contractor: Mehmert Tiling, Inc.
8635 Highway 9
Lime Springs, IA 52155

Owner: City of Cresco, Iowa

Base Contract Price	\$99,245.00	Construction Completed (See Attached Tab)	\$93,317.64
Change Order #1	-\$10,230.00		
Change Order #2	-\$1,600.00		
Change Order #3	\$5,902.64	Stored Materials	\$0.00
		Total Amount Earned	\$93,317.64
		Less 0% Retainage	\$0.00
		Subtotal	\$93,317.64
		Less Previous Payment	\$88,651.76
Total Contract Amount	\$93,317.64	AMOUNT DUE THIS ESTIMATE	\$4,665.88

Requested by Contractor:


Mehmert Tiling, Inc.

President
Title

11/4/22
Date

Recommended by Engineer:


Clapsaddle-Garber Associates, Inc.

Project Manager
Title

11/4/22
Date

Approved by Owner:

City of Cresco, Iowa

Title

Date

Prepared by:
CGA Consultants
Marshalltown, Iowa 50158

CGA Project No. 4499.06

A		B		C		E		F		G		H		I		J		K		L		M		N		O	
Project Name: Runway Drainage Improvements PW: 4488.06		Description of Work		Units	Qty	Unit Price	Contract Price	Total City Payroll Application	Total \$ Revenue Application	Amount Title Permitted	\$ Amount 75% Permitted	Total Qty to Date	Total \$ Completed to Date	% (2/7)	Balance to Finish (P.L.)	Balance to Finish (P.L.)	Retainage (L - 0) (P)										
1		Base Bid		LS	1	\$ 22,500.00	\$ 22,500.00	0.00	\$	1.00	\$ 22,500.00	0.90	\$ 22,500.00	100%	\$	\$ 1,125.00											
2		Trenched 8" HDPE Subdrain		LF	532	\$ 23.98	\$ 12,757.36	0.00	\$	632.00	\$ 12,757.36	532.00	\$ 12,757.36	100%	\$	\$ 637.87											
3		Knife-In 8" HDPE Subdrain		LF	1,800	\$ 11.76	\$ 21,204.00	0.00	\$	1800.00	\$ 21,204.00	1800.00	\$ 21,204.00	100%	\$	\$ 1,060.20											
4		Subdrain Cleanouts		EA	7	\$ 970.00	\$ 6,790.00	0.00	\$	7.00	\$ 6,790.00	7.00	\$ 6,790.00	100%	\$	\$ 339.50											
5		Subdrain Outlets		EA	3	\$ 355.00	\$ 1,065.00	0.00	\$	3.00	\$ 1,065.00	3.00	\$ 1,065.00	100%	\$	\$											
6		Full Depth Placement Patch		SY	210.36	\$ 148.00	\$ 31,133.28	0.00	\$	310.36	\$ 31,133.28	210.36	\$ 31,133.28	100%	\$	\$ 53.25											
7		Permanet Manholes, Whites		SF	2,424	\$ 2.00	\$ 4,848.00	0.00	\$	2424.00	\$ 4,848.00	0.00	\$ 4,848.00	100%	\$	\$ 1,556.66											
8		Credit for Running the Tie to the West of the Lights		LS	1	\$ (1,500.00)	\$ (1,500.00)	0.00	\$	1.00	\$ (1,500.00)	1.00	\$ (1,500.00)	100%	\$	\$ 242.40											
9		Credit to Replace 8" Flex Dual Wall with 6" Flex Dual Wall		LS	1	\$ (3,200.00)	\$ (3,200.00)	0.00	\$	1.00	\$ (3,200.00)	1.00	\$ (3,200.00)	100%	\$	\$											
10		Credit to Replace 8" Dual Wall with 6" Dual Wall		LS	1	\$ (660.00)	\$ (660.00)	0.00	\$	1.00	\$ (660.00)	1.00	\$ (660.00)	100%	\$	\$											
11		Credit to Replace 6" Flex Dual Wall with 6" Single Wall		LS	1	\$ (1,800.00)	\$ (1,800.00)	0.00	\$	1.00	\$ (1,800.00)	1.00	\$ (1,800.00)	100%	\$	\$											
12						\$	\$	0.00	\$	0.00	\$	0.00	\$	100%	\$	\$											
13						\$	\$	0.00	\$	0.00	\$	0.00	\$	100%	\$	\$											
				Contract Totals		\$	\$ 93,317.64	0.00	\$	\$	\$ 93,317.64	0.00	\$ 93,317.64	100%	\$	\$ 4,665.88											

Prepared by
Crescodie-Garber Associates, Inc.
Marshalltown, Iowa

Council Member _____ introduced the following Resolution entitled "RESOLUTION WITH RESPECT TO THE ADOPTION OF THE RESOLUTION OF NECESSITY PROPOSED FOR THE 7TH STREET WEST RECONSTRUCTION" and moved that it be adopted. Council Member _____ seconded the motion to adopt. The roll was called, and the vote was:

AYES: _____

NAYS: _____

Whereupon, the Mayor declared the following Resolution duly adopted:

RESOLUTION WITH RESPECT TO THE ADOPTION OF THE
RESOLUTION OF NECESSITY PROPOSED FOR THE 7TH
STREET WEST RECONSTRUCTION

WHEREAS, this Council has proposed a Resolution of Necessity for the 7th Street West Reconstruction, has given notice of the public hearing thereon as required by law; and

WHEREAS, the public hearing has been held, all persons offering objections have been heard and consideration given to all objections and is pending before this Council; and

WHEREAS, this is the time and place set as provided for the taking of action on the proposed Resolution of Necessity;

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

Section 1. That the proposed Resolution of Necessity described above is hereby:

- Adopted, without amendment, and all objections filed or made having been duly considered are overruled.
- Adopted as amended by the Schedule of Amendments attached hereto as Exhibit A, and made a part hereof by reference. All objections filed or made having been duly considered are overruled.
- Deferred for later consideration to a Council meeting to be held on _____ day of _____, _____, at _____ .M, at this meeting place, with jurisdiction retained for further consideration and action at the adjourned meeting.
- Abandoned.

Section 2. That all written requests for agricultural deferment by property owners must be filed within ten (10) days following the date of adoption of this Resolution.

PASSED AND APPROVED this 5th day of December, 2022.

Mayor

ATTEST:

City Clerk

Council Member _____ introduced the following Resolution entitled "RESOLUTION DIRECTING PREPARATION OF DETAILED PLANS AND SPECIFICATIONS, FORM OF CONTRACT AND NOTICE TO BIDDERS ON THE 7TH STREET WEST RECONSTRUCTION" and moved that it be adopted. Council Member _____ seconded the motion to adopt. The roll was called, and the vote was:

AYES: _____

NAYS: _____

Whereupon, the Mayor declared the following Resolution duly adopted:

RESOLUTION DIRECTING PREPARATION OF DETAILED
PLANS AND SPECIFICATIONS, FORM OF CONTRACT AND
NOTICE TO BIDDERS ON THE 7TH STREET WEST
RECONSTRUCTION

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

That William K. Angerman, P.E., Engineer, is hereby ordered and directed to prepare and file with the Clerk detailed plans and specifications for the construction of the 7th Street West Reconstruction.

BE IT FURTHER RESOLVED that the Engineer is hereby ordered and directed to prepare and file with the Clerk a Notice to Bidders and form of contract for the construction of the 7th Street West Reconstruction.

PASSED AND APPROVED this 5th day of December, 2022.

Mayor

ATTEST:

City Clerk

SUMMARY OF ORDINANCE NO. 501

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF CRESCO BY ADDING NEW CHAPTER 81 PERTAINING TO RECREATIONAL VEHICLES

Below is a summary of ORDINANCE 501. A full copy of said Ordinance may be obtained between 8 am and 4:30 pm weekdays at City Hall, 130 North Park Place, Cresco, IA 52136 or on the City's website at www.cityofcresco.com.

SECTION 1. The Code of Ordinances of Cresco, Iowa is hereby amended by adding a new Chapter 81, Recreational Vehicles, as summarized below:

Recreational vehicles and tents shall be used for vacation or recreation purposes and not used as a place of human habitation for more than seven (7) days in any three (3) month period.

Permanent habitation in recreational vehicles and tents is prohibited.

Mobile homes are only allowed in an approved mobile home park.

Recreational vehicles shall not be parked upon the boulevard or front yard for more than forty-eight (48) consecutive hours.

Recreational vehicles, and small utility or boat trailers may be stored in a rear yard, provided that no living quarters are maintained.

Violations may be considered a municipal infraction. The procedures for enforcement of the civil offense shall be governed by Chapter 4 of this Code of Ordinances.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

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 AND APPROVED THIS _____ DAY OF _____, 20__.

Mayor David J. Brenno

ATTEST: _____

City Clerk Michelle Elton

1st Reading Summary: 11/21/22 2nd Reading Summary: _____ 3rd Reading Summary: _____

I certify that the foregoing was published as Summary of Ordinance No. 501 on the _____ day of _____, 20__.

City Clerk Michelle Elton

ORDINANCE NO. 501

TRAFFIC AND VEHICLES

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF CRESCO BY
ADDING NEW CHAPTER 81 PERTAINING TO RECREATIONAL VEHICLES**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF CRESCO AS FOLLOWS:

SECTION 1. NEW CHAPTER. The Code of Ordinances of Cresco, Iowa is hereby amended by adding a new Chapter 81, Recreational Vehicles, as follows:

CHAPTER 81

RECREATIONAL VEHICLES

81.01 Purpose

81.02 Definitions

81.03 Permitted Uses

81.04 Tents

81.05 Exception for Extended Habitation

81.06 Violations a Municipal Infraction

81.01 PURPOSE. The purpose of this chapter is to regulate the use of recreational vehicles in the City of Cresco for the protection of the public convenience, health, safety, and welfare.

81.02 DEFINITIONS. For use in this chapter the following terms are defined:

1. "Recreational vehicle" shall mean a vehicle or structure so designed and constructed in such a manner as will permit occupancy thereof as sleeping quarters for one or more persons, or the conduct of any business or profession, occupation, or trade.
2. A recreational vehicle may be towed or self-propelled on its own chassis or attached to the chassis of another vehicle and designed or used for occupancy, recreational, or sporting purposes.
3. Recreational vehicles shall include, but shall not be limited to, travel trailers, pick-up campers, camping trailers, mobile homes, motor coach homes, converted trucks and buses, and boats and boat trailers.

81.03 PERMITTED USES.

1. Recreational vehicles shall be used for vacation or recreation purposes and not used as a place of human habitation for more than seven (7) days in any three (3) month period within the City, unless in a designated public campground(s) where other rules and regulations may govern the use these properties.
2. Recreational vehicles for purposes of permanent habitation shall not be allowed anywhere in the City.
3. The parking of a mobile home shall not be allowed in any district, except in an approved mobile home park.
4. Recreational vehicles shall not be allowed to be parked upon the boulevard or front yard for more than forty-eight (48) consecutive hours.

5. Recreational vehicles, small utility or boat trailers, with or without a boat, may be stored in a rear yard, provided that no living quarters shall be maintained or any business conducted in connection therewith while such trailer is parked or stored.

81.04 TENTS.

1. Recreational overnight tent camping, not for a fee or other payment, in privately owned yards, lots, or other tracts of land within the City of Cresco is limited to a maximum of two tents.
2. Tents shall be used for vacation or recreational purposes and not used as a place of human habitation for more than seven (7) days in any three (3) month period.
3. Tent camping for purposes of permanent human habitation shall not be allowed.

81.05 EXCEPTION FOR EXTENDED HABITATION. The City Council by resolution may extend the seven (7) days in any three (3) month period human habitation limits imposed on recreational vehicles and tents as enumerated in sections 81.03 and 81.04 of this code of ordinances for extenuating circumstances. Extenuating circumstances may be, but not limited to, the constructing of a new home, or the repair and rehabilitation of an existing dwelling in the City; whereby the person or persons of a dwelling unit in the City cannot inhabit it for a period of time until construction, repairs or rehabilitation is completed.

81.06 VIOLATIONS A MUNICIPAL INFRACTION. A violation of the provisions of this chapter may also be considered a municipal infraction, as provided in *Code of Iowa* Section 364.22. If a municipal infraction citation is served, the procedures for enforcement of the civil offense shall be governed by Chapter 4 of this Code of Ordinances.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

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.

ADOPTION OF ORDINANCE NO. 501

Council Member _____ moved the adoption of the foregoing Ordinance and Council Member _____ seconded said motion. Thereupon the Mayor called for a roll call vote and the following Council members voted in favor of the adoption of the foregoing Ordinance:

And the following Council members voted against the adoption of the foregoing Ordinance:

The Mayor thereupon declared the Ordinance passed and adopted by affirmative vote by the Council and Ordinance No. 501 is approved and adopted this _____ day of _____, 20__.

CITY OF CRESCO

By _____
Mayor David J. Brenno

ATTEST:

By _____
City Clerk Michelle Elton

1st Reading Summary: 11/21/22 2nd Reading Summary: ____ 3rd Reading Summary: _____

I certify that a summary of the foregoing was published as Summary of Ordinance No. 501 on the _____ day of _____, 20__.

City Clerk Michelle Elton

Cresco City Council-

An outdoor water faucet was left on last month at the home of Dulcie Ollendieck at 519 8th Avenue East. We are writing this letter to request forgiveness of her sanitary sewer charges on the over water usage from last month to this month.

Thank you for your consideration.
Phillip & Kim Ollendieck

UBIQRV60 11/29/22 City of Cresco IA PAGE 1
05.06.22 11:18 UTILITY BILLING CONSUMPTION INQUIRY OPER AMY

ACCOUNT NUMBER 7235003 STATUS Active
NAME ROBERT OLLENDIECK
PROPERTY 519 8TH AVE E

SV SERIAL # MULTIPLIER DIGITS INS DATE SERV DATE LOCATION NOTE

SE 35337137 1.00000 7 11/21/2014
WA 35337137 1.00000 7 11/21/2014 10001 D1

BILL DATE	SERV READ DATE	PRBS	PREV EST	BILL CONS	CHARGE
11/30/2022	SE 11/18/2022	364102	334858	29244	279.57
10/31/2022	SE 10/20/2022	334858	334335	523	14.34
9/30/2022	SE 9/20/2022	334335	333795	540	14.34
8/31/2022	SE 8/19/2022	333795	333159	636	14.34
7/31/2022	SE 7/20/2022	333159	332570	589	14.34
6/30/2022	SE 6/20/2022	332570	331959	611	13.79
5/31/2022	SE 5/20/2022	331959	331321	638	13.79
4/30/2022	SE 4/20/2022	331321	330779	542	13.79
3/31/2022	SE 3/21/2022	330779	330350	429	13.79
2/28/2022	SE 2/21/2022	330350	329799	551	13.79
1/31/2022	SE 1/20/2022	329799	329114	685	13.79
12/31/2021	SE 12/20/2021	329114	327867	1247	13.79
11/30/2021	SE 11/19/2021	327867	327488	379	13.79

14.34 +
14.34 +
14.34 +
14.34 +
13.79 +
13.79 +
13.79 +
13.79 +
13.79 +
13.79 +
13.79 +
13.79 +
13.79 +
13.79 +
13.79 +
13.79 +

012

167.68 *

279.57 +
13.97 -

167.68 =
12.00 =
12mo Aug - 13.97 *

002

Pos. Credit - 265.60 *

000



Website: www.mhcfair.com

Facebook: www.facebook.com/MHCFair

HOWARD COUNTY AGRICULTURAL SOCIETY

THOMAS V. BARNES, EXECUTIVE SECRETARY

Post Office Box 83, Cresco, Iowa 52136

Home Phone: 563.547.4996 Fax: 563.547.4355 E-mail: tbarnes@mhcfair.com

November 3, 2022

City of Cresco
Michelle Elton, City Clerk
130 North Park Place
Cresco, IA 52136

Michelle and members of the City Council,

I am contacting you regarding a water leak in the Expo Center on the Howard County Fairgrounds in Cresco.

Sometime during the night of October 27-28, on fitting on the main water line inside of the Expo Center broke, resulting in a significant water leak. The location of the line is in the ceiling area above the lobby and restrooms. Due to the location of the fitting failure, water ran through the main lobby and out the main entry doors, into the parking lot area.

While I understand the Fair Board is responsible for water costs, I am asking the City of Cresco to forgive any sewer and assessments caused by the water leak.

The only fair way to estimate the amount of water lost is to compare water usage from the October billing and upcoming November billing. Events held in these two months are similar in size.

Should you have questions please contact me. My cell is:



Thank you for your consideration. I look forward to be hearing from you.

Respectfully submitted,

Tom Barnes, Secretary of the Board

 ACCOUNT NUMBER 7155201 STATUS Active
 NAME HOWARD CTY AGRICULTURAL SOC
 PROPERTY FAIRGROUNDS-EXPO

 SV SERIAL # MULTIPLIER DIGITS INS DATE SERV DATE LOCATION NOTE

 SE 36208067 1.00000 9
 WA 36208067 1.00000 9 10001 D1

BILL DATE	SERV READ DATE	PRES	PREV EST	BILL CONS	CHARGE
11/30/2022	SE 11/18/2022	792782	782694	10088	96.44
10/31/2022	SE 10/20/2022	782694	778418	4276	40.88
9/30/2022	SE 9/20/2022	778418	774269	4149	39.66
8/31/2022	SE 8/19/2022	774269	770099	4170	39.87
7/31/2022	SE 7/20/2022	770099	754838	15261	145.90
6/30/2022	SE 6/20/2022	754838	748831	6007	55.20
5/31/2022	SE 5/20/2022	748831	747103	1728	15.88
4/30/2022	SE 4/20/2022	747103	745044	2059	18.92
3/31/2022	SE 3/21/2022	745044	744591	453	13.79
2/28/2022	SE 2/21/2022	744591	742928	1663	15.28
1/31/2022	SE 1/20/2022	742928	742653	275	13.79
12/31/2021	SE 12/20/2021	742653	741138	1515	13.92
11/30/2021	SE 11/19/2021	741138	739396	1742	16.01
10/31/2021	SE 10/20/2021	739396	735362	4034	37.07

40.88 +
 39.66 +
 39.87 +
 55.20 +
 15.88 +
 18.92 +
 13.79 +
 15.28 +
 13.79 +
 13.92 +
 16.01 +
 011
 283.20 *
 Average 283.20 ÷
 11.00 =
 25.75 *

96.44 +
 25.75 -
 002
 POSS. Credit 70.69 *

RESOLUTION NUMBER _____

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
A PROFESSIONAL SERVICES AGREEMENT WITH WHKS & CO. FOR THE
CRESCO WASTEWATER TREATMENT PLANT (WWTP) – NUTRIENT
REDUCTION STUDY SUPPLEMENT.**

The City Council of the City of Cresco met in regular session on December 5, 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 Nutrient Reduction Study Supplement. 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 5TH DAY OF December, 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 **Cresco Wastewater Treatment Plant (WWTP) – Nutrient Reduction Study Supplement**.

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:

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 1-3 - Billed as a Lump Sum Fee of \$25,190.00.

Executed this _____ day of December, 2022

City of Cresco

By: _____
Printed Name: _____
Title: _____

WHKS & CO.


By: 
Printed Name: Derek J. Thomas, P.E.
Title: Vice President



Exhibit A to Professional Services Agreement

A. Project Description

The Client is required to prepare and submit a supplement to the previously submitted Nutrient Reduction Study report from March 2018 to the Iowa Department of Natural Resources that evaluates options for nutrient removal at the WWTP. The report must be submitted by May 1, 2023. Below is the original schedule for recommended actions as developed in the March 2018 report:

- Raise sewer rates to increase cash reserves for anticipated expenses: 2019-2028
- Age-related equipment replacement at WWTP and collection system: 2019-2023
- Investigate watershed partnerships and credit-trading options: 2019-2023
- Develop Nutrient Reduction Study Supplement as required by IDNR: 2023
- Age-related equipment replacement at WWTP: 2024-2028
- Nutrient Removal Upgrade: 2028 (Tentative)

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.

2. Feasibility Study/Report Preparation

- Update the WWTP's Age-Related Equipment Replacement and Maintenance inventory to reflect changes to the previously developed inventory that have occurred since 2018.
- Prepare a supplement to the previously submitted Nutrient Reduction Study to address the requirements stipulated in the Client's NPDES Permit, which will include the following:
 - i. A description and evaluation of the existing wastewater treatment system with particular emphasis on its capabilities for removing nitrogen and phosphorus.
 - ii. A description and evaluation of operational changes to the existing treatment facility that could be implemented to reduce the amounts of total nitrogen and total phosphorus discharged in the final effluent and the feasibility and reasonableness of each. The evaluation will discuss total nitrogen and total phosphorus reduction achievable, the effect on removal of other pollutants (e.g. CBOD5, TSS), estimates of the additional cost, if any, to implement such changes and for a publicly-owned treatment works the impact on user rates.
 - iii. A description and evaluation of new or additional treatment technologies that would achieve significant reductions in the amounts of total nitrogen and total

phosphorus discharged in the final effluent with a goal of achieving annual average concentrations of 10 mg/L total nitrogen and 1 mg/L total phosphorus for plants treating typical domestic strength sewage or 66% removal of total nitrogen and 75% removal of total phosphorus for atypical domestic sewage. For each treatment technology the report shall assess its feasibility, reasonableness, practicability, the availability of equipment, capital costs, annual operating costs, impact on user rates and any non-water quality environmental impacts (e.g. additional air pollution, increased sludge production, etc.).

- iv. Based on the evaluations of operational changes and new or additional treatment technologies the report shall select the preferred method(s) for reducing total nitrogen and total phosphorus in the final effluent, the rationale for the selected method(s) and an estimate of the effluent quality achievable.
 - v. Proposed schedule for making operational changes and/or installing new or additional treatment technologies to achieve the projected effluent quality attainable using the selected method(s).
 - vi. Additional financial justification to be provided if no operational changes or treatment technologies are feasible or reasonable.
- Provide electronic copies of the Nutrient Reduction Study Supplement to the Client and present the report findings at a City Council meeting.
 - Submit Nutrient Reduction Study Supplement to IDNR and assist the Client in responding to IDNR questions and comments relating to this report.

3. Watershed Improvements Evaluation

- Prepare an evaluation of practices within the watershed that can be submitted with the Nutrient Reduction Study Supplement described above.
- Continue to investigate watershed partnerships and credit-trading options.
- Discuss potential regulatory framework changes that may occur in the near future with IDNR staff.
- Coordinate with Iowa Department of Agriculture and Land Stewardship (IDALS) staff to identify potential improvements within the WWTP's watershed to achieve nutrient reduction. Potential watershed improvements include wetlands construction and/or streambank restoration.
- Provide concept drawings and opinions of probable construction cost for potential watershed improvements identified.
- Provide recommendations on the feasibility of performing watershed improvements in lieu of WWTP modifications based on the IDNR's current regulatory framework.

C. Information To Be Provided By Client:

The following financial information is to be provided by the client to accomplish the Project:

1. Capital expense projects and budgets related to collections and treatment.
2. Water use, rates, and number of connections for residential and industrial customers.
3. General debt obligations for water and wastewater infrastructure.

D. 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. Costs of wastewater sampling or analysis.
2. Pilot-scale testing at WWTP.
3. Anti-degradation analysis or report generation.
4. Sewer-use ordinance and rate structure review and modification assistance.
5. Collection system analysis.
6. Project financing requirements.
7. Additional report requirements generated by IDNR beyond the scope of requirements stipulated in the Client's NPDES Permit and itemized in Item 2 above.
8. Additional report requirements for SRF or CDBG funding.

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