



## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, by and between **Champaign County Highway Department** 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 **TR 312 over Unnamed Stream Superstructure Replacement**.

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 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:

A sum of money NOT TO EXCEED \$57,721.00 as detailed below and on the attached Engineering Estimate Summary (Attachment B). The below includes out-of-pocket expenses.

<b>Items a thru i (WHKS) -</b>	<b>\$57,721.00</b>
	<hr/>
<b>Total</b>	<b>\$57,721.00</b>

Executed this \_\_\_\_\_ day of April, 2023

### **Champaign County Highway Department**

By: \_\_\_\_\_

Printed Name: Jeff Blue, P.E.

Title: County Engineer

### **WHKS & CO.**

By: \_\_\_\_\_

Printed Name: Scott Sanford, P.E., S.E.

Title: Vice President

## **Exhibit A to Professional Services Agreement**

### **A. Project Description**

The project involves performing preliminary and final design for the superstructure replacement of a bridge on TR 312 over Unnamed Stream. The existing bridge is a single span precast prestressed concrete deck beam bridge founded on spill thru concrete abutments. The bridge is structurally deficient and has a sufficiency rating of 30.2.

Based on conceptual review, the superstructure replacement is assumed to be a single span 21" PPC deck beam bridge with a span approximately 51' and clear width of 23.5' founded on open pile bent abutments. Roadway work will include minor approach work necessary to excavate behind the abutments to perform any substructure modification to accommodate the new superstructure. The horizontal and vertical alignment will match existing conditions. The roadway will be closed to traffic and staged construction will not be required.

The bridge type and size as noted above is conceptual based on a preliminary review of site hydrology, superstructure depth, and economics. Final span/bearing configuration will be determined during Preliminary Design. Services for the project will include plan development and required submittals to meet Illinois Department of Transportation State letting requirements for LBFP projects.

### **B. Scope of Services Provided Under This Agreement:**

WHKS shall perform the following described services for the Client:

- a. Prepare Army Corps of Engineers Permit, Department of Natural Resources-Office of Water Resources Permit, Bridge waterway sketch, and/or Channel Change sketch.
- b. Prepare Preliminary Bridge Design and Hydraulic Report, required for superstructure replacement policy.
- c. Prepare Scour Critical Coding report.
- d. Prepare abbreviated Bridge Condition Report with recommendation on superstructure type.
- e. Provide necessary environmental documents in accordance with the procedures adopted by IDOT's Bureau of Local Roads and Streets. These documents are limited to the Environmental Survey Request and Asbestos Determination form.
- f. Make complete general and detailed plans, special provisions and estimates of cost and furnish the CLIENT with five (5) copies of the plans, special provisions and estimates. Additional copies of any or all documents, if required, shall be furnished to the CLIENT by WHKS at actual cost for reproduction.
- g. Prepare the Project Development Report required for Federal Funding.
- h. Prepare superstructure rating in AAHSTOware software program and complete BLR SLRS Form.
- i. Assist the CLIENT in the tabulation and interpretation of the Contractor's proposals.

CLIENT agrees to the following:

- To provide, or make reasonable efforts to assist WHKS in obtaining, high water data and stream flood histories.
- To provide plans or other data necessary for the completion of the project including, but not limited to, existing construction documents, photographs, design data, repair history, traffic counts, and existing survey data.



**Exhibit B to Professional Services Agreement**



EXHIBIT A

Engineering Estimate Summary		
WHKS Labor Fee (Est)	\$ 54,471.90	99.1%
WHKS Direct Cost (Est)	\$ 500.00	0.9%
(N/A - Survey)	\$ -	0.0%
(N/A - Soil Borings)	\$ -	0.0%
Contingency 5%	\$ 2,748.60	
<b>Total Engineering Estimate</b>	<b>\$ 57,720.50</b>	

3695 6th Street Frontage Road West, Suite A  
 Springfield, IL 62703  
 Phone: (217) 483-WHKS  
 Fax: (217) 483-9458

**Project Data**

Client: Champaign County Highway Department  
 Route: TR 312 over Unnamed Stream  
 Section No.: 23-17132-00-BR  
 Structure #'s: 010-4028(E)

**Scope:** Remove and replace existing bridge superstructure elements to create the best economical alternative. Conduct/perfrom Bridge inspection and BCR to re-view the ability to re-use existing substructure for single-span alternative. Conduct necessary hydraulic computations (approximate method) to analyze scour and prepare reports and permits as needed to gain design approval from District. Prepare Project Development Report, final plans, special provisions and estimates for a Federal letting using LBFP funding. Assist the County with minor bidding and construction questions as necessary. State Letting June 2024.

Item Description	Total Hours	Project Manager	Transportation Eng. III	Transportation Eng. II	Transportation Eng. I	Structural Eng. III	Structural Eng. II	Structural Eng. I	Hydraulic Eng. III	Hydraulic Eng. II	Engineering Tech III	Engineering Tech II	Engineering Tech I	Land Surveyor	Survey Technician	Admin.
<b>001 Project Administration</b>																
01 Project Admin and Management	18	12				6										
02 Billing/Invoicing (1 hours/invoice x 6 invoices)	8	8														
03 Kickoff Meeting (Task Assignment) Meetings (none assumed)	3 0	0.5		0.5		0.5		0.5			1					
Labor Hours Subtotal	29	20.5	0	0.5	0	6.5	0	0.5	0	0	1	0	0	0	0	0
Labor Costs Subtotal	\$ 5,389.30	\$ 3,997.50	\$ -	\$ 56.44	\$ -	\$ 1,168.85	\$ -	\$ 54.71	\$ -	\$ -	\$ 111.80	\$ -	\$ -	\$ -	\$ -	\$ -
	9.8%															
<b>002 Reports and Coordination</b>																
01 BCR	20					8	8				4					
02 Preliminary Bridge and Hydraulic Reports	24			8		2			6		8					
03 Clearinghouse Coordination (Regional Planning Comm)	2		2													
04 Project Development Report w/ Disposition & Resubmit	40	2	2	12		8					16					
Labor Hours Subtotal	86	2	4	20	0	18	8	0	6	0	28	0	0	0	0	0
Labor Costs Subtotal	\$ 11,769.88	\$ 390.00	\$ 754.00	\$ 2,257.45	\$ -	\$ 3,236.81	\$ 1,104.22	\$ -	\$ 897.00	\$ -	\$ 3,130.40	\$ -	\$ -	\$ -	\$ -	\$ -
	21.4%															
<b>003 Permits and Coordination</b>																
01 ESR (Cultural, Biological, Wetlands)	12		2				4				6					
02 404 Permit (Joint Application Form)	8						4				4					
03 SWPPP (if needed)	0															
04 Asbestos Determination	2						2									
05 Utility Coordination (Julie Request)	7	1		2	2						2					
Labor Hours Subtotal	29	1	2	2	2	0	10	0	0	0	12	0	0	0	0	0
Labor Costs Subtotal	\$ 3,718.33	\$ 195.00	\$ 377.00	\$ 225.75	\$ 198.71	\$ -	\$ 1,380.28	\$ -	\$ -	\$ -	\$ 1,341.60	\$ -	\$ -	\$ -	\$ -	\$ -
	6.8%															
<b>004 Hydraulics and Drainage</b>																
01 Drainage Area/Flows (StreamStats)/Modify basin	2								2							
02 Prepare Base HECRAS Model	0		0						0	0						
03 Analyze Natural and Existing Condition	0		0						0	0						
04 Analyze Proposed Conditions	0															
04 Analyze Existing Pier Scour (Approx Method) N/A	0						0		0							
05 Ditch Hydraulics and Special Ditches	0															
06 Entrance Culverts (No Design-Replace in Kind)	4			4												
Labor Hours Subtotal	6	0	0	4	0	0	0	0	2	0	0	0	0	0	0	0
Labor Costs Subtotal	\$ 750.49	\$ -	\$ -	\$ 451.49	\$ -	\$ -	\$ -	\$ -	\$ 299.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	1.4%															
<b>005 Roadway Design and Plan Preparation</b>																
01 Process Survey Data and Create DTM	4		0								4					
02 Roadway Design, Roadside Safety	0										0					
03 Cover, General Notes, SOQ, Schedules	14			2							12					
03 Typical Sections, Entrance Details	10			2							8					
03 Erosion Control and Drainage Details	10			2							8					
03 Alignment, Ties, Benchmarks, Coordinates	6			2							4					
03 Plan and Profile Sheet	28		4								24					
03 Cross-Sections	0															
03 Miscellaneous Details	14		2	4							8					
04 Roadway Quantities	16			8							8					
Labor Hours Subtotal	102	0	6	20	0	0	0	0	0	0	76	0	0	0	0	0
Labor Costs Subtotal	\$ 11,885.25	\$ -	\$ 1,131.00	\$ 2,257.45	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,496.80	\$ -	\$ -	\$ -	\$ -	\$ -
	21.6%															



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<b>006 Bridge Design and Plan Preparation</b>																
01 PPC Deck Beam/Channel Beam Analysis and Design	8					2	6									
02 Pier Check (Abbreviated and Detailed for BCR)	0					0	0									
03 Abut Check (Abbreviated and Detailed for BCR)	10					2	8									
04 General Plan, Notes and Bill of Material	12										12					
04 Beam Details	6						2				4					
04 Railing Details	6						2				4					
04 Abutment Details	12						4				8					
04 Pier Details	0						0				0					
04 Pile Details	0				0						0					
04 Miscel Details ( Riprap Scour Countermeasures)	0		0						0		0					
05 Bridge Quantities	16						4	12								
Labor Hours Subtotal	70	0	0	0	0	4	26	12	0	0	28	0	0	0	0	0
Labor Costs Subtotal	\$ 8,751.54	\$ -	\$ -	\$ -	\$ -	\$ 719.29	\$ 3,588.72	\$ 1,313.13	\$ -	\$ -	\$ 3,130.40	\$ -	\$ -	\$ -	\$ -	\$ -
	15.9%															
<b>007 Final Plans, Specification and Estimates</b>																
01 Special Provisions	9	1		2			6									
02 Estimate of Cost	4	1		1			2									
02 Estimate of Time	4	1		1			2									
03 Bid Documents (Federal Let)	13	1		4			8									
04 Pre-Final Plan Revisions (Address IDOT comments)	6						2				2		2			
Labor Hours Subtotal	36	4	0	8	0	0	20	0	0	0	2	0	2	0	0	0
Labor Costs Subtotal	\$ 4,846.53	\$ 780.00	\$ -	\$ 902.98	\$ -	\$ -	\$ 2,760.55	\$ -	\$ -	\$ -	\$ 223.60	\$ -	\$ 179.40	\$ -	\$ -	\$ -
	8.6%															
<b>008 Miscellaneous/Other</b>																
01 Field Check of Structure	8		4				4									
02 Shop Drawing Review	6						6									
03 AASHTOWare Bridge Rating SLRS Form	8					2	6									
04 Phase 3 Involvement (address minor questions)	4	2				2										
Labor Hours Subtotal	26	2	4	0	0	4	16	0	0	0	0	0	0	0	0	0
Labor Costs Subtotal	\$ 4,071.73	\$ 390.00	\$ 754.00	\$ -	\$ -	\$ 719.29	\$ 2,208.44	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	7.4%															
<b>009 QC/QA</b>																
01 Hydraulic QC/QA	6					6										
02 Roadway QC/QA	6		6													
03 Bridge QC/QA	6					6										
Labor Hours Subtotal	18	0	6	0	0	12	0	0	0	0	0	0	0	0	0	0
Labor Costs Subtotal	\$ 3,288.87	\$ -	\$ 1,131.00	\$ -	\$ -	\$ 2,157.87	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	6.0%															
<b>Total Labor Hours</b>	<b>402</b>	<b>30</b>	<b>22</b>	<b>55</b>	<b>2</b>	<b>45</b>	<b>80</b>	<b>13</b>	<b>8</b>	<b>0</b>	<b>147</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Labor Cost</b>	<b>\$ 54,471.90</b>	<b>\$ 5,752.50</b>	<b>\$ 4,147.00</b>	<b>\$ 6,151.55</b>	<b>\$ 198.71</b>	<b>\$ 8,002.10</b>	<b>\$ 11,042.20</b>	<b>\$ 1,367.84</b>	<b>\$ 1,196.00</b>	<b>\$ -</b>	<b>\$ 16,434.60</b>	<b>\$ -</b>	<b>\$ 179.40</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

## 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 terms of this Agreement shall be governed by the laws of the State of Illinois without giving effect to any choice of law or conflict of law rules or provision. Each party agrees that it will not initiate any suit, action or proceeding arising out of or relating to this Agreement in any Court other than the State Courts sitting in Sangamon County, Illinois for projects that originate through WHKS' Springfield office and/or the State Court sitting in Jo Daviess County, Illinois for WHKS projects originating out of its East Dubuque office. Each party agrees to submit to the exclusive jurisdiction and venue of such courts.

### 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. The indemnification obligation under this paragraph shall not be limited in any way by any limitation on any amount or type of damages, compensation or benefits payable by or for the client under the Workmens' Compensation Acts, Disability Acts, or other employee benefit acts.

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

Revised: 10/03/18