

COUNCIL ACTION FORM

SUBJECT: WATER POLLUTION CONTROL FACILITY SITE UTILITY MAPPING

BACKGROUND:

Constructed in 1989, the Water Pollution Control Facility (WPCF) has changed the location of many water, gas, and electrical lines and installed new underground utilities such as security cameras and fiber optic cables. With the significant nutrient reduction modifications to the plant approaching, this project will provide an updated Master Utility Plan for planning and construction efforts.

The WPCF campus spans approximately 29.5 acres with numerous structures distributed throughout. This project will include identification and mapping of yard piping, sanitary sewers, storm sewers, water lines, gas lines, underground electric, security camera coax cables, and fiber optic cables. This project will consist of locating all utilities by means of traditional locating equipment in combination with ground penetrating radar technology. The locations of all utilities will be collected with GPS surveying equipment and drafted in CAD software.

On March 1, 2021, a request for proposals (RFP) was issued for engineering services to develop an updated Master Utility Plan. On April 1, 2021, staff received proposals. **Only one proposal was received. WHKS from Ames, Iowa, had a proposal fee of \$53,456.**

After a thorough review of their qualifications and project understanding, staff has determined that their proposal meets all our requirements. In addition to the mapping, WHKS will provide a 3D model using specialized software called REVIT. This model will accomplish the first part of future design tasks. The ground penetrating radar (GPR) services will only be billed as needed for the project. A total of 8 days has been included in the proposal cost for the GPR work. It is anticipated that this component will not take a total of 8 days, and the final cost could be lower than the proposal cost shown.

The professional services agreement has been modified from the version that was pulled by staff from the May 11 Council agenda to now explicitly denote WHKS's understanding and agreement that their work (a GIS map and model of the site utilities) will be reused by the City for future engineering work.

The FY 2021/22 CIP budget includes \$31,000 for Site Utility Mapping. A portion of the savings from the East 30 Lift Station Force Main Replacement Project (total of \$65,692 in savings) will be transferred during the FY 21/22 early amendments to cover the increased scope of work.

Project Budget

FY 21/22 CIP	\$ 31,000
Savings from E 30 Force Main Project	25,000
<u>Total Project Budget</u>	<u>\$ 56,000</u>

ALTERNATIVES:

1. Award a contract for Site Utility Mapping to WHKS & Co., of Ames, IA, in an amount not to exceed \$53,456.
2. Do not award a contract to WHKS & Co., and do not complete the project at this time.

CITY MANAGER'S RECOMMENDED ACTION:

In preparation for the future Water Pollution Control Facility upgrades, an updated utility plan is the first step before construction or planning can begin. The Master Utility Plan and 3D model of the site will provide the base information necessary for planning and design. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, by and between **City of Ames** 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 **Water Pollution Control Site Utility Mapping.**

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. WHKS agrees to comply with the attached insurance requirements included in Exhibit B.

Scope of Services

WHKS shall perform the following described services for the Client:

Design 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:

Billed Hourly with a Not-to-Exceed Fee of \$53,456 including Expenses. External expenses include an administrative charge of 10 percent.

Executed this _____ day of _____, 2021

City of Ames

By: _____
Printed Name: _____
Title: _____

WHKS & co.


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

Exhibit A to Professional Services Agreement

A. Project Description

The project consists of the locating of site utilities and updating of the site utility basemap at the Ames Water Pollution Control Facility (WPCF). The primary deliverable is an updated AutoCAD Civil3D site utility drawing. WHKS will also provide an AutoCad REVIT model of the site utilities and Schedule of Pipes attribute table as deliverables. WHKS will utilize data received from the Ames WPCF, including AutoCAD Civil3D site drawing and record drawings as a basis for the site utility basemap, and will refine the map based on field activities including interviews of WPCF staff, traditional utility locating, ground penetrating radar, and limited topographic survey to tie in the field locates.

It is expressly understood and agreed that the WPCF will reuse the maps for future construction projects, and may be shared with consultants, contractors, etc.

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 up to two (2) additional meetings as directed by City staff.

2. **Assemble Initial AutoCAD REVIT Model**

- Assemble initial AutoCad REVIT model. The initial site drawing in Civil3D received from City of Ames will be converted to REVIT.
- Record drawings provided by City of Ames will be added to the model.
- Pipe attributes will be added to the schedule of pipes.

3. **Staff Interviews**

- Conduct interviews with WPCF staff to capture institutional knowledge of past projects. One (1) day of interviews is included with the scope.

4. **Survey and Utility Locating**

- Perform traditional utility locating with transmitter and sonde to locate any utilities with tracer wire, such as underground electrical lines, fiber, and camera coax cables. Up to two (2) days of traditional utility locating is included in this scope.
- Perform ground penetrating radar scans to locate selected raw water lines, process piping, and decant line. The scope of ground penetrating radar activities shall be as directed by City of Ames staff. GPR services will be performed by a subcontractor to

WHKS under this contract. Up to eight (8) days of ground penetrating radar scanning are included.

- Perform limited site topographical surveys to tie in field locates from traditional locating and GPR activities, into the CAD model.

5. 2nd Draft AutoCad REVIT Model

- Update second draft REVIT drawing to incorporate the new locates.
- Export draft Civil3D drawing to City of Ames for comment.

6. Final Deliverable – AutoCad REVIT Model, Civil3D, and Schedule of Pipes

- Convert final deliverable REVIT model to Civil3D drawing.
- QC of final deliverables.
- Provide final deliverable REVIT model, Civil3D drawing, and Schedule of Pipes to City.

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. Topographic survey (other than scope listed above)
2. Interior building pipe locating and mapping
3. 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.~~ DT 5/13/21 FKD 7/7/17

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.~~ FKD 7/7/17

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, other than dispute resolution between Client and WHKS. FKD 7/7/17 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. WHKS agrees to extend any and all liability limitations and indemnifications provided by WHKS to Client and Client's officers, employees and their assigns. FKD 7/7/17

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 reasons 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 consultants(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.

Revised: 07/07/17, BA, COA, Sec 9,16,19

Revised: 05/13/21, DT, WPCF, Sec 8, 9 specific for WPCF Site Utility Mapping Project.

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: 08/16/16, BA, COA, Sec 14

EXHIBIT B TO PROFESSIONAL SERVICES AGREEMENT

CITY OF AMES, IOWA, INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES PROVIDERS

The Consultant/Engineer/Contractor/Vendor agrees to procure and maintain at its expense until final payment by the City for services covered by this Agreement, insurance in the kinds and amounts provided below with insurance companies authorized to do business in the State of Iowa, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the work, the Engineer, Contractor, or Vendor shall furnish to the City a certificate or certificates in form satisfactory to the City, showing that it has complied with this paragraph. All certificates shall provide that the policy shall not be changed or canceled until at least thirty (30) days' prior written notice shall have been given to the City. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Ames, its officials, employees, or volunteers.

Consultant shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on standard insurance company forms or forms provided by the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. Subcontractors/subconsultants shall furnish the City with certificates of insurance and all coverages shall be subject to all the requirements stated herein.

Kinds and amounts of insurance required are as follows:

I. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. Insurance Services Office form number CG 00 01 covering Commercial General Liability.
- B. Insurance Services Office form number CA 00 01 covering Automobile Liability, comprehensive form.
- C. Worker's Compensation insurance as required by the Laws of the State of Iowa and Employers Liability insurance.
- D. Professional Liability insurance.

II. MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

- A. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- C. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits as required by the laws of the State of Iowa.

D. Professional Liability: Not less than \$1,000,000 each claim and annual aggregate.

The Consultant shall add the City of Ames, its officials, employees and agents as additional insured under the commercial general liability policies. The company(ies) providing coverage must be at least A - Class VII rated by A. M. Best Company. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or volunteers. This coverage shall be primary and non-contributory.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Ames, its officials, employees, or volunteers.

To the fullest extent provided by the laws of Iowa, the insurer shall agree to waive all rights of subrogation against the City of Ames, its officials, employees, and volunteers for losses arising from services performed by the Provider for the City.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Ames, its officials, employees, or volunteers.

Consultant shall furnish the City with certificates of insurance effecting coverage required by this clause.

The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on standard insurance company forms or forms provided by the City and are to be received and approved by the City before services commence. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Consultant shall include all subcontractors as insured under its policies. All coverages for subcontractors shall be subject to all the requirements stated herein.

III. INDEMNIFICATION

To the fullest extent permitted by law the Consultant shall indemnify and hold harmless the City of Ames, their agents, and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from the performance of the services, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the services itself) including the loss of use resulting therefrom; and (2) is caused in whole or in part by any negligent act or omission of the Provider, any Sub-consultant, anyone directly or indirectly employed by any of them or any one for whose acts, any of them may be liable.

In no case will the Consultant's coverage be constructed to provide coverage for acts of negligence alleged to be caused by the sole negligence of employees of the City of Ames.

Questions concerning these requirements should be directed to:

Bill Walton, City of Ames Risk Manager
515 Clark Avenue, Ames, Iowa 50010
E-mail: bwalton@city.ames.ia.us
Phone: 515-239-5102