



**RESOLUTION NO. 1091  
AWARD OF CONTRACT FOR WILCO ROAD INDUSTRIAL AREA  
STORMWATER PLANNING AND DESIGN CONSULTING PROJECT**

**WHEREAS**, in 2019 the Stayton City Council adopted an Economic Development Strategy and Action Plan;

**WHEREAS**, the Economic Development Plan identified the need for stormwater management facilities to be located in the Wilco Road Industrial Area;

**WHEREAS**, the City applied for, and was Granted an Oregon Business Development Department Grant to perform planning and design for the Wilco Road Industrial Area stormwater management area facilities;

**WHEREAS**, requests for proposals to complete the work was requested on December 12<sup>th</sup>, 2024;

**WHEREAS**, the City Received two (2) proposals, one from Mackenzie Inc, and one from AKS Engineering; and

**WHEREAS**, City staff reviewed and scored the proposals independently, with staff recommending awarding a contract to AKS Engineering and Forestry to perform the work.

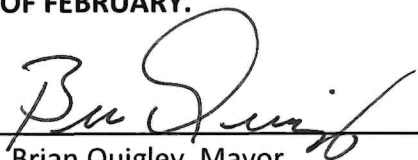
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STAYTON, OREGON, AS FOLLOWS:**

**Section 1:** The City Council authorizes the City Manager to enter into a consultant contract with AKS Engineering and Forestry to perform the Wilco Road Industrial Area Stormwater Planning and Design work as outlined in Exhibit A.

**Section 2:** This Resolution shall be effective following its adoption by the Stayton City Council.

**ADOPTED BY THE STAYTON CITY COUNCIL THIS 20<sup>TH</sup> DAY OF FEBRUARY.**

Date: \_\_\_\_\_, 2024

By:   
\_\_\_\_\_  
Brian Quigley, Mayor

Date: \_\_\_\_\_, 2024

By:   
\_\_\_\_\_  
Julia Hajduk, City Manager



December 28, 2023

Lance Ludwick, PE  
Director of Public Works  
City of Stayton  
311 N. Third Avenue  
Stayton, Oregon 97383

**RE: PRELIMINARY STORMWATER MANAGEMENT DESIGN SERVICES FOR THE PROPERTY LOCATED AT SHAFF ROAD AND WILCO ROAD IN STAYTON: AKS #10991**

Dear Lance:

As requested, attached is our proposed scope of work and estimated budget to provide professional consulting and preliminary stormwater management design services for the properties located southwest of Wilco Road and Shaff Road in Stayton. We understand the City has received limited grant funding for this project and also understand proposals have been requested from multiple firms for this work.

Because of the limited grant funding available, we have tailored our scope of services in a way to provide the most value to the City within the budgeting parameters. Our comprehensive team of in-house experts in various fields including Survey, Land Use Planning, Civil Engineering, and Natural Resources will be a significant resource for the City as this project moves forward. Some of the specific challenges we anticipate for this specific site and are prepared to address through our tailored approach include:

- Near-surface shallow groundwater elevation and poor infiltration potential.
- A Wetland Delineation which is set to expire within the year.
- An existing pond that is claimed to be a "Water of the State", but has potential to be used for stormwater management. We are currently permitting a development in Salem with very similar parameters.
- Coordination with Santiam Water Control District for stormwater discharge.
- Future permitting of impacted wetlands. For example, recently permitting responses from ACOE indicate a shift in their review that is triggering Cultural Resources assessment to permit any wetland impacts. For this reason, we have included a desktop study effort to understand potential issues that may arise during permitting efforts.

We strongly believe AKS is the best qualified choice for this project. The following are a few items that set our team apart for this specific project:

- Extensive experience successfully working in City of Stayton and Staff including Planning Department, Public Works Department, and City Engineer.
- Local knowledge and development experience. In particular, the design and construction of the Shaff Square development directly across the street from these sites. We are well versed in the City's Design Standards. We know what challenges to expect and have already navigated many of the potential solutions.

- We bring a balanced and unique blend of public infrastructure and private development experience. This experience helps us to take a holistic approach to projects in search of win-win scenarios for all parties.
- Value-added strategies and solutions-oriented approach to challenges that we encounter.

We thank you for the opportunity to continue our partnership and work with City of Stayton on this important project. We can begin work immediately upon receiving your authorization. If you have any questions or comments, please contact me at 503-400-6028 or richardw@aks-eng.com.

Sincerely,

*AKS ENGINEERING & FORESTRY, LLC*



Richard Walker, PE – Principal  
3700 River Road N, Suite 1 | Keizer, OR 97303

Attachments:

Scope of Work

Basis of Cost

Hourly Rate Schedule

General Provisions

## LETTER OF AGREEMENT FOR PROFESSIONAL SERVICES

This agreement is made between City of Stayton (Client) and AKS Engineering & Forestry, LLC (Consultant) to provide professional land surveying, civil engineering, and natural resources consulting services for the properties located southwest of the intersection of Shaff Road and Wilco Road in Stayton, Marion County, OR.

The Client authorizes AKS to provide professional consulting services acting as an independent consultant for this project as individually named. The scope of work and estimated fees are as follows:

### Wilco Road Industrial Area Stormwater Facility Study Scope of Work

**TASK 1 – PROJECT MANAGEMENT:** Provide project management and administration for work associated with this Project, including managing Consultant’s staff and any sub-consultants. Consultant will schedule and coordinate with the City’s Project Manager and communicate with the City the Project status on a regular basis and project issues as concerns arise. Consultant will also provide quality assurance such that all deliverables have been peer reviewed prior to submittal to the City. Prepare monthly progress reports accompanied by progress billings, as well as monitor work tasks, budgets and schedule. Monthly progress billings are subject to City review and approval. Prepare a detailed Project schedule that includes each task and subtask and key project milestones. Update the Project schedule as changes to task timeframes occur.

#### TASK 1 – DELIVERABLES

- Monthly progress billings on a time and materials basis per task and subtask.
- Project schedule and updates as needed.
- Meeting agendas and minutes

**TASK 2 – REVIEW OF DATA, MODELS, AND DOCUMENTS:** Consultant will review available data, stormwater models, and other pertinent documents. Data or documents may include:

- 1) GIS Storm Utility Data
- 2) Stayton Storm Water Master Plan
- 3) Stayton Economic Development Strategy
- 4) Stayton Economic Development Technical Analysis
- 5) Initial Subsurface Data Report - Wilco and Shaff Property Piezometer Installation prepared by GeoEngineers dated March 20, 2020.
- 6) One virtual meeting with Santiam Water Control District to discuss potential requirements and site constraints for stormwater discharge.

#### TASK 3 – PRELIMINARY SURVEY

**TASK 3A – TOPOGRAPHIC SURVEY OF CRITICAL ELEMENTS:** Consultant will survey elements of the existing infrastructure which are critical to the evaluation and execution of Tasks 4, 5, & 6. These elements are anticipated to include existing pipes, culverts, and channels, as well as significant trees, mapped natural resources, and other landmarks (transmission lines) that might impact the planning and design of the stormwater facility.



**TASK 3B – DRONE SURVEY:** Consultant will complete an aerial drone survey of the entire Wilco Road Industrial Area. The drone survey will produce a high resolution orthomosaic map with existing grade contours at a 1-foot interval. The TIN surface created from the LIDAR data will be more accurate than other publicly available elevation data. This task will be completed in conjunction with Task 3A.

**TASK 3C – BOUNDARY RESEARCH:** Consultant will complete property boundary research including recorded surveys and plats and review of title reports for properties southwest of the intersection of Shaff Road and Wilco Road. Property boundaries and recorded easements will be mapped. This task will be completed in conjunction with Task 3A. Data collected through Tasks 3A – 3C will be compiled into a survey base map for use in evaluation of the proposed stormwater facility.

**TASK 3D – WETLAND DELINEATION RENEWAL:** A Wetland Delineation for the project site was previously conducted by Pacific Habitat Services, Inc. (PHS), receiving concurrence from the Oregon Department of State Lands (DSL) on November 20, 2019. The Delineation is set to expire on November 20, 2024, so AKS recommends that a site visit be conducted to confirm wetland boundaries during the spring 2024 field season. This will allow the use of DSL’s Request for Reissuance of a Jurisdictional Determination (JD) process to renew the delineation for an additional five-year period. Once the concurrence expires, this process will not be available, and a full delineation and report will be required.

If AKS cannot obtain CAD or GIS linework for the PHS delineation, AKS staff will import the scaled drawings and trace the boundaries. This linework will then be uploaded into our TSC3 data collector to facilitate the fieldwork. Plots will be established to confirm previously approved wetland boundaries in accordance with the *Western Mountains, Valleys, and Coast Regional Supplement* and the 1987 U.S. Army Corps of Engineers (Corps) Delineation Manual. If changes to the boundaries are identified, then AKS will flag the new boundaries for survey, and prepare a request to revise the DSL concurrence. Once the revision is approved by DSL, the Request for Reissuance of a JD will be submitted to DSL for review and approval.

In addition to addressing the DSL concurrence, AKS staff will submit the original PHS report, and any supporting documentation prepared by AKS, to the US Army Corps of Engineers (USACE) for an Approved Jurisdictional Determination under the current definition of Waters of the US (WOTUS). Determining if the on-site features are WOTUS will help identify potential mitigation strategies.

**TASK 3 – DELIVERABLES:**

- Project Survey Base Map, including survey of critical elements, property boundary records, and the orthomosaic photo in AutoCAD and PDF format.
- DSL Revised and/or Renewed Wetland Delineation Concurrence
- USACE Approved Jurisdictional Determination

**TASK 4 – STORMWATER DRAINAGE BASIN ANALYSIS:** Consultant will perform a drainage basin analysis, taking into consideration Salem Ditch and Wilco Road Industrial Areas at full build-out based on minimum landscape area requirements in the City’s Land Use and Development Code. Assumptions for land uses and lot coverages for these areas will be determined through review of the associated zoning maps, master plans and concept plans. A hydrological model will be developed for the drainage basin

utilizing HydroCAD Stormwater modeling software and City of Stayton Design Standards. Downstream capacity analysis is not included as winter time flows for the Salem Ditch are well below the peak conveyance capacity for the system.

#### **TASK 4 – DELIVERABLES**

- Drainage Basin Map in electronic (PDF) format. Drainage Basin Map will show boundaries of both Wilco Road Industrial Area and Salem Ditch basins.

**TASK 5 – FACILITY SITING ALTERNATIVES:** Consultant will propose and analyze up to three (3) alternative locations and stormwater treatment facility types for a future semi-regional stormwater facility to primarily serve Wilco Road Industrial Area properties and their future development. The alternatives are anticipated to include 1) Strategy for complete avoidance of existing wetlands; 2) Strategy for use of existing pond area as a stormwater quality feature; and 3) Strategy for partial impacts to delineated wetlands. A full wetland impact strategy is highly unlikely to be permitted. Each alternative will consider the feasibility of utilizing the facility to detain contributing basin storm flows as determined in Task 4. Consultant will make a preferred alternative recommendation based on site impacts, permitting requirements, and estimated construction costs.

**TASK 5A – PERMITTING STRATEGY MEMORANDUM:** Consultant will review available mapping and data, such as natural resource and hazardous material site information, to identify potential project site concerns not related to wetlands and waters and their permitting requirements. Consultant will also perform a cultural resources desktop review inclusive of a review of Oregon State Historic Preservation Office (SHPO) records, a literature review on environmental history, prehistory, Native peoples, and historic development of the project area. This review will help determine the probability of cultural resources being present on-site and to determine the potential need for any additional studies such as a pedestrian survey and subsurface probing that may arise with any permitting effort for impacted wetlands. Our Natural Resource staff will also work with the engineering team to determine wetland and waters impacts and mitigation requirements for each facility site alternative, and identify strategies for fulfilling those requirements. A Permitting Strategy Memorandum will be prepared to summarize the results of our research and coordination, including anticipated permit timelines for each alternative and opportunities for expedited permitting options.

**TASK 5B – SITING ALTERNATIVES REPORT:** Consultant will work with the City to develop the three facility siting alternatives to be evaluated. The siting study will be summarized in a draft memo and presented to the City project manager for review.

#### **TASK 5 – DELIVERABLES**

- Technical memorandum summarizing alternatives. At a minimum, technical memorandum will include:
  - Discussion of how alternatives were determined
  - High level analysis of each of the alternatives
  - Exhibit maps showing alternative facility(s) locations
  - Benefits and anticipated challenges for each alternative
  - Preferred alternative recommendation
- Permitting Strategy Memorandum

**TASK 6 – PRELIMINARY DESIGN & SUMMARY REPORT:** Consultant will advance the preferred alternative conceptual semi-regional stormwater facility to a preliminary design level including any potential on-site wetland mitigation based on City of Stayton Design Standards.

**TASK 6 – DELIVERABLES:**

- Preliminary grading and stormwater drainage plan set in electronic (PDF) format.
- Preliminary stormwater calculations and summary memo outlining the methodology used for the stormwater calculations, assumptions and limitations that apply, design considerations for continuation of advanced construction documents by future developers, and any anticipated design exceptions and potential value engineering opportunities that were identified through the preliminary design effort.

**ASSUMPTIONS:**

- Due to shallow groundwater and presence of wetlands, it is assumed that limited to no infiltration capacity is available for the proposed stormwater facility. Infiltration testing will not be provided with this analysis and will be provided by future development team as site plans and construction documents are developed.
- City will provide title reports for Wilco Road Industrial Area properties. Consultant will be responsible for obtaining title reports for all other properties as deemed necessary by Consultant.
- City will notify affected property owners and coordinate access to project area.
- Excludes resetting missing monuments and filing a Record of Survey with the County
- Excludes field tying or measuring utility structures within the right-of-way
- Excludes traffic control services
- Assumes the property is mowed prior to field work, tall grass will decrease drone precision

**Basis of Fees and Billing**

In consideration for performing said services, the Client agrees to compensate AKS on an hourly basis at our standard rates. Invoices will be issued monthly for services provided during the previous month.

**Exclusions**

Services that do not fall within the scope of work are excluded from this estimate. Reproduction and mileage expenses will be billed “at cost”.

See attached “General Provisions.”

\_\_\_\_\_  
**AKS Engineering & Forestry, LLC**  
Date \_\_\_\_\_

AKS Engineering & Forestry, LLC  
3700 River Road N, Suite 1  
Keizer, OR 97303

\_\_\_\_\_  
Client  
Date \_\_\_\_\_

City of Stayton  
311 N. Third Avenue  
Stayton, Oregon 97383





# AKS Engineering & Forestry LLC

## Billing Rates – Effective 1/1/2023

	<u>Hourly rate</u>
Principal/Sr. Project Manager	\$225
QA/QC Reviewer	\$225
Project Manager	\$210
Sr. Project Engineer	\$200
Project Engineer	\$170
Engineering Designer	\$150
Engineering CAD Technician	\$130
Sr. Project Surveyor	\$200
Project Surveyor	\$170
Surveyor	\$150
Survey CAD Technician	\$130
One-person Survey Crew w/ vehicle & equipment	\$190
One-person Survey Crew w/ vehicle & equipment - BOLI	\$210
Two-person Survey Crew w/ vehicle & equipment	\$250
Two-person Survey Crew w/ vehicle & equipment – BOLI	\$265
Two-person Laser Scanning Survey Crew w/vehicle & equipment	\$250
Two-person Laser Scanning Survey Crew w/vehicle & equipment - BOLI	\$265
One-person Drone Field Crew	\$200
One-person Drone Field Crew – BOLI	\$220
Drone Specialist - Office	\$150
One-person LiDAR Field Crew	\$225
One-person LiDAR Field Crew – BOLI	\$250
LiDAR Specialist – Office	\$150
Sr. Landscape Architect	\$170
Landscape Architect	\$135
Sr. Land Use Planner	\$200
Land Use Planner	\$160
Planning Technician/Graphic Design Specialist	\$130
Construction Manager/Owners Representative	\$200
Construction Inspector	\$140
Sr. Natural Resources Manager	\$220
Natural Resources Specialist	\$155
Natural Resources Technician	\$120
Sr. Certified Arborist	\$175
Certified Arborist	\$150
Sr. Forest Engineer	\$175
Forest Engineering Technician	\$130
Sr. Forester	\$175
Forester Technician	\$130
GIS Specialist	\$140
Technical Editor	\$120
Project Coordinator/Clerical	\$90
<b>Non-salary costs (reimbursables)</b>	
Subcontractors and Subconsultants	cost + 10%
Application/Permit Fees	cost + 10%
Mileage	current federally allowed rate
Technical Supplies	cost + 10%
Postage/Shipping	cost + 10%
Commercial Copies	cost + 10%
Commercial Deliveries	cost + 10%
Per Diem	Standard rates apply

AKS does not have an additional charge or multiplier for overtime. Field equipment (survey instruments, vehicles, etc.), computer hardware, and computer software (AutoCAD licenses, etc.) are included in the labor rate.

## GENERAL PROVISIONS

1. **Expenses:** AKS Engineering & Forestry, LLC's ("AKS") reimbursable expenses shall be those expenses incurred directly for a project, including but not limited to services provided by outside consultants or contractors, transportation costs, meals, lodging, computer services, printing, permit fees, in-house deliveries, clerical, and binding charges. Client shall pay for such expenses on the basis of actual costs (if incurred through an outside vendor) plus 10%, or at AKS's regular rates at the time the cost is incurred.
2. **AKS's Fees / Fee Estimates:** Unless otherwise agreed in writing: (a) charges for AKS's services will be billed per AKS's rate schedule in effect at the time services are performed; (b) services include, without limitation, all office time, field time, meetings, phone calls, travel time, and all other time incurred for a project; (c) AKS bills in 15-minute increments; (d) AKS bills for travel time door-to-door at its regular rates; (e) AKS's rates may be adjusted from time to time, without notice; and (f) AKS does not warrant that actual fees and expenses will not vary from estimates.
3. **Payment:** AKS will issue invoices approximately monthly. Invoices are due and payable on receipt. All amounts more than 30 days past due will be subject to finance charges. Finance charges are computed at a rate of 1.5% per month, unless such rate exceeds the maximum amount allowed by law, in which case the finance charge will equal the maximum rate allowed by law. If Client disputes any portion of an invoice, Client must notify AKS of the dispute in writing within 30 days of the invoice date. The notice must state the disputed amount and basis for dispute. Client hereby waives the right to dispute an invoice more than 30 days after an invoice's date, and/or if Client fails to provide the required notice.
4. **Failure to Pay:** Failure to timely pay any amount due to AKS is a material breach of this Agreement and, in the case of late payment, AKS may, in its sole discretion, suspend or terminate service and all other obligations under this contract and/or under any other contract between AKS and Client (and/or between AKS and any other client subject to control by Client or any of Client's principals). If any payment is not timely made, AKS may withhold plans, documents, and information (whether such documents and/or information was prepared under this contract, another contract between AKS and Client, or a contract between AKS and another client subject to control by Client or one of Client's principals). If AKS suspends or terminates work due to Client's non-payment, AKS may require an additional "start-up fee" to re-start work, even if Client cures all past defaults. These remedies are in addition to any others available to AKS at law or in equity.
5. **Additional Charges:** If AKS performs any work pursuant to a lump sum agreement, AKS reserves the right to charge additional amounts (and client shall timely pay such extra amounts) when: (a) AKS provides any services not specified in the agreement; (b) unforeseen or differing conditions modify the scope of work anticipated by AKS; (c) any law, ordinance, regulation or similar item changes after the date of the agreement and such change requires AKS to re-perform any work; and (d) delay or other conduct by others impact AKS's services; and/or (e) any other circumstance justifies an equitable adjustment to the contract price. Unless otherwise agreed, additional charges shall be at AKS's standard rates.
6. **Cost Estimates:** Any construction or development cost estimates provided by AKS are only estimates. AKS has no control over market conditions or bidding procedures. AKS cannot warrant that bids or actual costs will not vary from estimates. AKS will not be liable to Client for any inaccurate cost estimates, and Client assumes all risks associated with construction and development cost estimates that AKS provides to Client.
7. **Standard of Care:** AKS shall only be responsible to the level of competency and the standards of care and skill maintained by similarly licensed professionals providing similar services on projects of similar type, size and scope as a subject project, in the locale where the subject project is located, at the time that AKS provides services. *AKS shall not be liable to Client for any standard of care higher than such standard.*
8. **Termination:** Without any liability to the other party, either Client or AKS may terminate this Agreement for any reason by giving 30 days written notice to the other party. In such event, Client shall immediately pay AKS in full for all work performed prior to the effective date of termination. AKS need not give 30-days' notice if the reason for termination is client's non-payment.
9. **Limitation of Liability:** In recognition of the fees charged by AKS, and the relative risks, rewards, and benefits of the project to AKS and Client, Client agrees that AKS's liability to Client relating to this Agreement and the services that AKS performs hereunder, for any cause or combination of causes, under any theory of law, including tort (including negligence), contract or otherwise, shall be limited, in the aggregate, to the lesser of: (a) the amount of the fee received by AKS in connection with the project; and (b) the remaining insurance coverage available to AKS (after deduction of any costs, claim payments or other amounts that may have reduced policy limits). Client hereby expressly waives all claims of every nature against AKS that exceed these liability limitations. Client had the opportunity to negotiate a higher limitation for a higher fee.
10. **Release of Individuals:** No member, employee or other representative of AKS shall have any personal liability to Client for any act or omission, whether based on a claim of negligence or any other tort, or otherwise, arising out of or relating to this Agreement or the services that AKS performs hereunder, and Client hereby releases all such individuals from all claims of every nature.
11. **Consequential Damage Waiver:** AKS and Client hereby waive all claims against each other for indirect and consequential damages that arise in any manner out of this Agreement or the services performed hereunder. This mutual waiver includes a release of all claims for consequential damages, whether based in tort, contract or otherwise, and includes, without limitation, a release of claims for economic losses such as rental expenses, losses of use, income, profit, financing, business and reputation, and for loss of management or productivity.
12. **Enforceability:** If any provision contained in this Agreement (or any portion thereof) is held to be unenforceable by a court of competent jurisdiction, the remaining provisions contained herein (and all parts thereof) shall remain unimpaired, in full force and effect. Each clause shall be enforced to the greatest extent not prohibited by law and shall be modified to enforce the expressed intent to the greatest extent allowed.
13. **Assignment:** This Agreement is not assignable by Client without the written consent of AKS.
14. **Access; Client Cooperation:** Client represents and warrants that it has unrestricted access to the site, and that AKS has access to the site, to the same degree as Client. Client shall cooperate with AKS and timely provide AKS information that AKS requests.
15. **Work Product:** Calculations, drawings, and specifications prepared pursuant to this Agreement ("Work Product"), in any form, are instruments of professional service intended for one-time use by Client only, for this project only. Work Product is and shall remain the property of AKS and its consultants. Client may not use any Work Product on other projects without AKS's express written permission. Client shall not obtain the right to use the Work Product, even for one-time use on this project, unless all amounts due to AKS are paid in full. If Client is in possession of any Work Product and has not paid any amount due to AKS, AKS may demand return of the Work Product, and may specifically enforce Client's obligation to return the Work Product. Client agrees that AKS shall not have waived its rights in any Work Product by virtue of submission to a public body, by dissemination of Work Product without copyright designations or via any other conduct other than a written waiver signed by AKS.
- 15.1: If Client uses any Work Product without retaining AKS for any portion of the project (including construction phase) or any other project, then Client releases AKS and AKS's consultant(s) from all claims and causes of action that relate in any manner to the project and the Work Product. Client recognizes, acknowledges and agrees that the design for a project can be a work in progress and that changes occur and information becomes available, even during construction, and that, unless AKS can stay involved in the project through completion, AKS should be relieved of liability associated with the services it provided for the project. Client agrees to indemnify and hold AKS harmless from and against any claims, demands, damages and amounts of every nature, to the extent caused by Client's use of the Work Product (or Client's allowing someone else to use the Work Product) without the involvement

of AKS. If this Agreement is terminated prior to completion of the project, for any reason other than AKS's termination as a result of Client's breach, then Client may continue to use the Work Product prepared by AKS prior to the date of termination, pursuant to the license granted herein, but only if: (a) Client pays AKS all amounts due to AKS; (b) Client removes all indicia of AKS's involvement in the Project from such documents, including title blocks and stamps; (c) Client retains another licensed design professional to review, approve and assume all responsibility for all design documents (the new design professional shall stamp the Work Product and, if anything has been submitted to a jurisdiction prior to termination, then the new design professional shall notify the jurisdiction that the new design professional is the new design professional of record).

**15.2:** If Client makes, authorizes or consents to changes to any Work Product, and such changes are not approved in writing by AKS, then such changes and the results thereof are not the responsibility of AKS. In that case, Client releases AKS from any liability arising from construction, use or result of such changes, and Client shall indemnify, defend and hold AKS harmless from and against any liabilities, costs, damages, demands, claims or other amounts to the extent caused by such changes.

**15.3:** AKS's deliverables only include printed paper copies or PDF's of Work Product. If AKS chooses, in its sole discretion, to produce any native editable design documents (such as CADD, REVIT or Word files), then Client agrees not to distribute such editable documents to any other person without AKS's express written consent, which consent AKS may withhold in its discretion.

**16. Indemnity:** Client hereby agrees to defend, indemnify and hold AKS (and each of AKS's owners, employees and agents) harmless from any claim, demand, loss, damages and/or liability, including reasonable attorneys' fees, to the extent such arises out of any acts by the Client, its agents, staff, and/or other consultants or contractors that act at Client's direction.

**17. Work of Others:** Client agrees that AKS shall not be responsible or liable for any work performed or services provided by anyone other than AKS and/or AKS's direct employees. If AKS assists Client with the coordination of other contractors and/or design professional and/or consultants, and/or AKS arranges for the provision of services by others, such coordination and/or other efforts is done as a convenience to Client and does not make AKS liable for the services provided by others. Client understands and expressly acknowledges that AKS does not provide geotechnical engineering, safety, traffic engineering, structural engineering, or electrical engineering services. Client acknowledges that AKS does not assume responsibility and agrees that AKS shall have no liability for determining, supervising, implementing or controlling the means, methods, technique, sequencing or procedures of construction, or monitoring, evaluating or reporting job conditions that relate to health, safety or welfare.

**18. All Terms Material; Negotiation; Construction:** All provisions herein are material to AKS's agreement to provide services and were expressly negotiated by the parties. Client had the opportunity to negotiate each term hereof and waives any argument that this Agreement should be construed against the drafter.

**19. Authorization to Proceed:** Any request by Client for AKS to proceed with work shall constitute an express acceptance of all terms to this Agreement, including these General Provisions.

**20. Law/Venue:** All claims that relate to this Agreement or the services provided hereunder shall be subject to Oregon law, and any litigation shall be filed in Multnomah County, Oregon, except: (a) if any case involves a lien claim that must be litigated elsewhere as a matter of law, all issues may be litigated in the same forum as the lien foreclosure; and (b) if all work performed hereunder occurred in Washington, disputes shall be subject to Washington law and litigation shall be filed in Clark County, Washington.

**21. Mediation:** Client agrees to mediate any dispute between AKS and Client, at AKS's request. The parties shall equally share the costs of mediation.

**22. Notice of Claims:** Client shall provide AKS immediate written notice of any facts that could potentially result in any potential claim against AKS. *As a condition precedent to any recovery from AKS, Client shall give AKS written notice of any claim or facts that could result in a claim not later than ten (10) days after the date of the occurrence of the event causing the potential claim. Client's failure to provide such notice shall constitute waiver of such claim.*

**23. No Third-Party Beneficiaries:** Client and AKS are the only beneficiaries of this Agreement; no term herein is intended to benefit any third party.

**24. Time Limitation/Accrual:** Any claim or cause of action by Client against AKS arising out of or relating to this Agreement or the services performed hereunder (under any theory of law) must be initiated within two (2) years of *the earlier of the date:* (a) of AKS's last invoice; (b) of substantial completion; (c) of abandonment; (d) that Client knew or should have known of the damages claimed; and (e) that Client knew or should have known the facts giving rise to the claim. For purposes of this provision, AKS statements shall not constitute invoices; the "last invoice" shall be the last invoice that reflects new charges not previously charged for base contract work. A signed certificate of substantial completion shall be conclusive evidence of the date of substantial completion. If no certificate of substantial completion is executed, substantial completion shall be the earliest of the date that (a) the project is fit for its intended purpose; (b) the project is utilized for its intended purpose; and (c) a certificate of occupancy (permanent or temporary) is issued for any portion of the Project.

**25. Integration; Amendments:** This Agreement represents the entire and integrated agreement between Client and AKS, and supersedes all prior and contemporaneous negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the party against which such amendment is asserted.

**26. Binding Nature; Survival:** This Agreement shall be binding on the parties and their respective successors, heirs and permitted assigns. Each of Client's principals agrees to be bound by the terms hereof, to the same extent as Client. Any clauses intended to survive termination or expiration of this Agreement (including without limitation indemnity, waivers, limitations, and dispute resolution clauses) shall survive termination or expiration.

**27. Waiver:** No failure on the part of either party to exercise its rights under this Agreement shall be considered a waiver, release or relinquishment of any rights or powers conferred under this Agreement.

**28. Unmanned Aerial Systems (UAS):** AKS may utilize UAS to compile aerial photography of the project site before, during, and after construction. Client hereby grants AKS permission to operate the UAS over the project site. Client represents that all persons, vessels, vehicles, and structures related to the project are considered participants consenting to be involved with any UAS operations by AKS, and that Client has authority to grant these rights and to make these representations. Client shall defend, indemnify and hold AKS harmless from any breach of these representations, and from any claims or demands against AKS arising from any allegation of trespass, non-consent, or any other issues arising out of AKS's UAS operations (except to the extent that AKS causes property damage or personal injury that arises out of AKS's negligence).

**29. Electronic Media:** Client may only rely on printed Work Product, with AKS's wet stamp. Any files provided to Client in electronic format are for convenience only and should not be relied upon as final documents. Any use of electronic files shall be at the user's sole risk. AKS makes no representation as to the accuracy or completeness of electronic documents, or as to the compatibility, usability or readability of such files.

**30. Court Materials:** If AKS receives a subpoena or is otherwise required to produce documents, provide testimony, or otherwise get involved in a court case that relates to your project (and to which AKS is not a party), the Client will pay all time and costs incurred for such matters at AKS' current staff billing rates.