F.9

City of Hiawatha

Engineering Department

101 Emmons St., Hiawatha Iowa, 52233-169
PHONE (319) 393-1515 ext. 511 FAX (319) 393-1516

To: Mayor and City Council **Date:** November 29, 2018

From: John C Bender PE, City Engineer

Re: Professional Services Agreement with MMS Professional Services (Attached)

Description: Village Center Boundary Survey

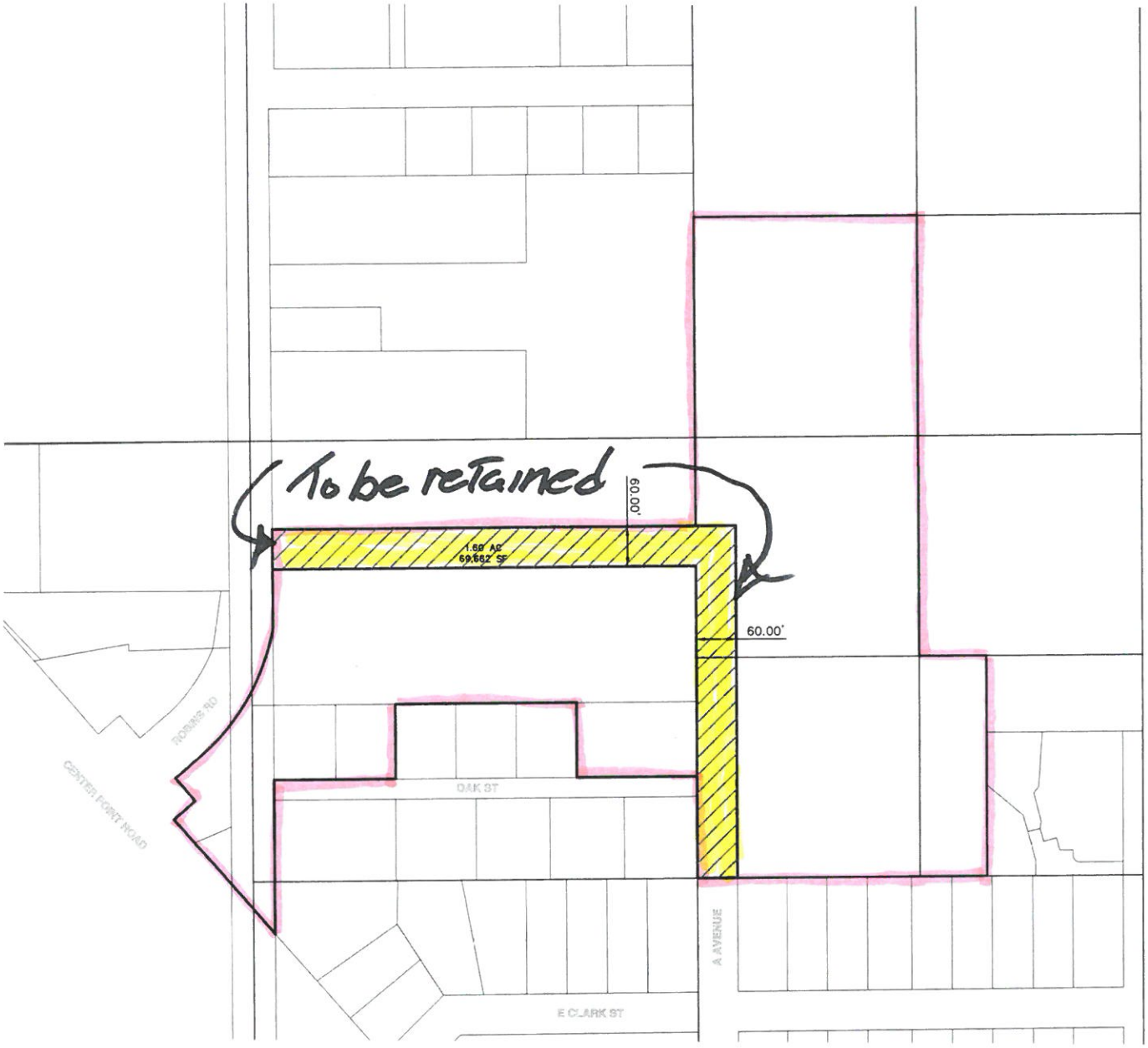
Report: As we progress on the development of the new Village Center and the sale of the City owned Oakbrook property, the developer's agreement needs to be finalized as to the property description that will be transferred in the sale. During the drafting of the agreement, it was determined that the future public street proposed in the Village Center should remain public property and therefore be removed from the property sale.

The only way to identify this property is to prepare a legal description in a survey document of the entire property, and then remove the proposed new right-of-way in a separate document. All these documents can then be recorded with the County and a clean description and acreage can be prepared and then be transferred.

The attached contract from MMS Consultants (the engineer for the developer) includes the following:

- Research the boundary of the entire parcel
- Prepare a survey document of the parcel minus the property to be retained by the City.
- Prepare Auditor's plats of possibly 3 parcels, the property north of the right-of way, the property south of the right-of way, and the property to be retained.
- Prepared legal descriptions along with acreage calculations to be used in the closing documents.
- Provide certified plats to the City for recording.
- A fee of not-to-exceed $10,000.

Engineering recommends approval of the agreement.



CIVIL ENGINEERS
LAND PLANNERS
LAND SURVEYORS
LANDSCAPE ARCHITECTS
ENVIRONMENTAL SPECIALISTS

1917 S. GILBERT ST.
IOWA CITY, IOWA 52240
(319) 351-8282
www.mmsconsultants.net

Date	Revision

LOT EXHIBIT

HIAWATHA MIDTOWN

CITY of HIAWATHA
LINN COUNTY
IOWA

MMS CONSULTANTS, INC.

Date: 11/07/2018	
Designed by: KBK	Field Book No:
Drawn by: CAK	Scale: 1"=150'
Checked by: KBK	Sheet No: 1
Project No: IC 10613-001	of: 1

MMS Consultants, Inc.
Experts in Planning and Development Since 1975

1917 S. Gilbert Street
Iowa City, Iowa 52240
319.351.8282
mmsconsultants.net
mms@mmsconsultants.net

Environmental Specialists
Landscape Architects
Land Planners
Land Surveyors
Civil Engineers

PROFESSIONAL SERVICES AGREEMENT

ATTN: John Bender
City of Hiawatha
101 Emmons Street
Hiawatha, IA 52233

PROJECT: Boundary Survey and Platting for Village Center Project
PROJECT LOCATION: 155 Robins Rd, Hiawatha, Iowa
DATE OF AGREEMENT: November 30, 2018

PROJECT DESCRIPTION

This project will consist of boundary survey and platting associated with the Hiawatha Village Center development project in Hiawatha, Iowa.

SCOPE OF SERVICES

The project consists of the following scope of services:

A. BOUNDARY SURVEY AND PLATTING

1. Research existing property records to determine existing property boundaries and owners.
2. Locate and tie down existing property corners and other survey monuments to determine existing property boundaries
3. Prepare ROW acquisition plat for property the City is to retain.
4. Prepare Auditor's Parcel plats for property to be sold by the City (Anticipated to be 2 plats)
5. Provide signed plats to the City for recording

SERVICES DO NOT INCLUDE

1. Construction observation or testing (to be provided by the City)
2. Topographic survey
3. Preliminary of final design services
4. Construction administration or staking
5. Recording fees
6. Rezoning Exhibits application
7. Floodplain or Wetlands Permit Application

COMPENSATION

A) BOUNDARY SURVEY AND PLATTING	Fixed Fee	**$9,500**
TOTAL		**$9,500**

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Civil Engineers Land Surveyors Land Planners Landscape Architects Environmental Specialists

SCHEDULE

MMS proposes to begin work as soon as authorized to proceed and to deliver signed plats to the City within 3 weeks.

ADDITIONAL SERVICES

MMS Consultants, Inc. will provide additional services as directed by the Client at our current hourly rates.

TERMS AND CONDITIONS

1. Standard of Care will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. MMS makes no warranties, express or implied, under this Agreement or otherwise, in connection with services required to be performed by this Agreement. MMS and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers and suppliers.
2. MMS shall not at any time supervise, direct or have control over any contractor's work, nor shall MMS have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
3. MMS neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Client and such contractor.
4. MMS Shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except MMS's own employees) at the Project site or otherwise furnishing or performing any construction work in connection with the Project; or for any decision made based on interpretations or clarifications of the construction contract given by Owner without consultation with and advice of MMS.
5. All design documents prepared or furnished by MMS are instruments of service and MMS retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.
6. To the fullest extent permitted by law, Client and MMS (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that MMS's total liability to Client under this Agreement shall be limited to the total amount of the compensation received by MMS pursuant to this Agreement.
7. The information and services provided by MMS pursuant to this Agreement are intended for use only by Client. No third party shall have any right arising from this Agreement or the documents produced pursuant to this Agreement. As additional consideration for the performance the services called for hereunder, Client agrees to hold harmless and indemnify MMS and its employees, officer, directors, and agents for all costs, expenses, legal fees, awards, settlements, and judgments in any legal proceeding brought by any third party who claims that he or she relied on representations made in such documents and was damaged thereby. Client's request

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that MMS release copies of documents produced pursuant to the terms of this Agreement shall be at Client's risk with respect to the contents of this paragraph.

8. If Client claims that MMS has made an error in any of the services provided hereunder, Client will inform MMS of the alleged error and allow MMS to inspect the property before Client takes any action to correct the alleged error or which would otherwise make it difficult or impossible for MMS to evaluate the existence of the alleged error. If Client repairs or otherwise provides a remedy for such alleged error or further disturbs the property such that it becomes impossible for MMS to confirm the existence or otherwise evaluate the alleged error, Client waives any and all actions against MMS for such alleged error.
9. Client shall indemnify and reimburse MMS for any and all costs and expenses associated with any civil action arising under this Agreement, including but not limited to attorney's fees, costs, and expenses, unless Client unilaterally prevails in a court of competent jurisdiction.
10. Upon complete execution of the Agreement, MMS shall have the right to commence the performance of its services immediately and shall continue its performance of said services thereafter until said services are complete. Client shall not have the right to terminate this Agreement or to cancel MMS's services unless the entire project of which MMS's services are a component part has been ceased or cancelled. In said event, Client shall give MMS written notice of the termination of the project and MMS shall be entitled to payment for any services performed or expenses incurred prior to receipt of said written notice.

AGREEMENT

This is an Agreement made as of _____, 2018, between MMS Consultants, Inc. (MMS) and City of Hiawatha (CLIENT - legally responsible party). CLIENT hereby engages MMS Consultants, Inc. to perform services as outlined and according to the terms and conditions expressed herein. IN WITNESS WHEREOF, the parties below have executed this Agreement as of the day and year first above written.

MMS Consultants, Inc.

By: _____
Kelly J. Beckler, PE
President

City of Hiawatha

By: _____
Address for giving notices:
101 Emmons Street
Hiawatha, IA 52233

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RESOLUTION NO. 18
City Council

RESOLUTION ENTERING INTO AN AGREEMENT WITH MMS CONSULTANTS, INC. FOR PROFESSIONAL SERVICES

WHEREAS, the City of Hiawatha is in the process of selling city land that right-of-way legal descriptions need to be created as part of the city's selling process of city owned land, and

WHEREAS, City Staff has determined MMS Consultants, Inc who has knowledge of the land area is the appropriate engineering firm to complete the required boundary surveying needed to create the right-of-way legal descriptions with cost not to exceed $10,000, and

WHEREAS, the appropriate funding for surveying will be in general fund general engineering, and

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, to authorize city staff to proceed with MMS Consultants, Inc to complete the required legal descriptions of city right-of-way in an amount not to exceed $10,000.

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 5th day of December, 2018.

_____

Bill Bennett, Mayor

ATTEST:

_____

Kari Graber, Deputy City Clerk