



**AGENDA ITEM #12.3**

**REPORT TO CITY COUNCIL**

**Report Prepared by: Nancy Malecha**

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**Date:** June 2, 2020

**Subject:** Proposal for Subdivision Platting Services

**Report:** Attached is a Proposal for Subdivision Platting Services from Widseth in the amount of \$4,425 for phase one of the Heart of the Good Life Development. This area encapsulates approximately 12 acres and includes the Public Works Facility property, the new lots directly west of the Public Works Facility, dedicated road right of way, and dedicated drainage/utility easements. These services will be paid from the Business Park Fund.

**Council Action Requested:** Council motion accepting the Proposal for Subdivision Platting Services from Widseth in the amount of \$4,425 to be paid from the Business Park Fund for phase one of the Heart of the Good Life Development.

May 13, 2020

Widseth  
7804 Industrial Park Road  
PO Box 2720  
Baxter, MN 56425

Nancy Malecha  
City Administrator  
City of Pequot Lakes  
4638 Main Street  
Pequot Lakes, MN 56472

**RE: Proposal for Subdivision Platting Services, HOTGL Phase 1**

Dear Ms. Malecha:

We have received your request to provide platting services for the City's property along Derksen Road.

We understand the City's intention is to plat the property adjacent to Derksen into two lots and a portion of dedicated road right of way. The platting process will include the creation of the new lots, dedication of road right of way and the dedication of necessary drainage and utility easements in accordance with the City requirements. Our proposed scope of services for this project is as follows:

### **Subdivision Platting Services**

WSN proposes to provide the following services related to re-platting the property:

- Utilize title work used and previous survey of the property as the base for our work.
- Complete field and office work necessary to determine property boundaries
- Prepare the Preliminary Plat in accordance with City requirements
- Prepare the Final Plat in accordance with the City requirements including necessary drainage and utility easement dedication.
- Field staking of the new lot boundaries and right of way corners
- Obtain suitable mylar copies necessary for recording

Also included in our proposed services, we will order reproducible mylar copies of the final plat, at a cost of approximately **\$450.00**. We propose to complete these services for submittal at the next available City of Pequot Lakes submittal deadline. It is our understanding that the City of Pequot Lakes will obtain the services necessary to update the necessary title work.

WSN proposes to perform the proposed subdivision platting services including the cost of the mylars described above for the amount of **\$3,975.00**. If you are in agreement with our proposed scope of services, please sign and return one copy of this letter to us as your authorization to proceed.

We thank you for the opportunity to submit this proposal and again look forward to working with City to make this proposed project a reality.

Sincerely,

Sincerely,  
WIDSETH SMITH NOLTING



**Chad M. Conner, LS, CFedS**  
**Vice President**

**Accepted by the City of Pequot Lakes:** The above proposal and attached General Provisions of Professional Services Agreement are satisfactory and WSN is authorized to do the work as specified. Payment will be made upon completion of the proposed services. Acceptance of this contract through the signature of its authorized representative below.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Date

# General Provisions of Professional Land Survey Agreement



These General Provisions are intended to be used in conjunction with a letter-type Agreement or a Request for Services between Widseth Smith Nolting, a Minnesota Corporation, hereinafter referred to as WSN, and a CLIENT, wherein the CLIENT engages WSN to provide certain Land Surveying services on a Project.

As used herein, the term "this Agreement" refers to (1) the WSN Proposal Letter which becomes the Letter Agreement upon its acceptance by the Client, (2) these General Provisions and (3) any attached Exhibits, as if they were part of one and the same document. With respect to the order of precedence, any attached Exhibits shall govern over these General Provisions, and the Letter Agreement shall govern over any attached Exhibits and these General Provisions. These documents supersede all prior communications and constitute the entire Agreement between the parties. Amendments to this Agreement must be in writing and signed by both CLIENT and WSN.

## ARTICLE 1. PERIOD OF SERVICE

The term of this Agreement for the performance of services hereunder shall be as set forth in the Letter Agreement. In this regard, any lump sum or estimated maximum payment amounts set forth in the Letter Agreement have been established in anticipation of an orderly and continuous progress of the Project in accordance with the schedule set forth in the Letter Agreement or any Exhibits attached thereto. WSN shall be entitled to an equitable adjustment to its fee should there be an interruption of services, or amendment to the schedule.

## ARTICLE 2. SCOPE OF SERVICES

The scope of services covered by this Agreement shall be as set forth in the Letter Agreement or a Request for Services. Such scope of services shall be adequately described in order that both the CLIENT and WSN have an understanding of the expected work to be performed.

If WSN is of the opinion that any work they have been directed to perform is beyond the Scope of this Agreement, or that the level of effort required significantly exceeds that estimated due to changed conditions and thereby constitutes extra work, they shall notify the CLIENT of that fact. Extra work, additional compensation for same, and extension of time for completion shall be covered by a revision to the Letter Agreement or Request for Services and entered into by both parties.

## ARTICLE 3. COMPENSATION TO WSN

A. Compensation to WSN for services described in this Agreement shall be on a Lump Sum basis, Percentage of Construction, and/or Hourly Rate basis as designated in the Letter Agreement

1. In addition to the foregoing, WSN shall be reimbursed for items and services as set forth in the Letter Agreement or Fee Schedule and the following Direct Expenses when incurred in the performance of the work:

- (a) Travel and subsistence.
- (b) Specialized computer services or programs.
- (c) Outside professional and technical services with cost defined as the amount billed WSN.
- (d) Identifiable reproduction and reprographic costs.
- (e) Other expenses for items such as permit application fees, license fees, or other additional items and services whether or not specifically identified in the Letter Agreement or Fee Schedule.

2. The CLIENT shall make monthly payments to WSN within 30 days of date of invoice based on computations made in accordance with the above charges for services provided and expenses incurred to date, accompanied by supporting evidence as available.

B. The CLIENT will pay the balance stated on the invoice unless CLIENT notifies WSN in writing of the particular item that is alleged to be incorrect within 15 days from the date of invoice, in which case, only the disputed item will remain undue until resolved by the parties. All accounts unpaid after 30 days from the date of original invoice shall be subject to a service charge of 1% per month, or the maximum amount authorized by law, whichever is less. WSN shall be entitled to recover all reasonable costs and disbursements, including reasonable attorneys fees, incurred in connection with collecting amount owed by CLIENT. In addition, WSN may, after giving seven days written notice to the CLIENT, suspend services and withhold deliverables under this Agreement until WSN has been paid in full for all amounts then due for services, expenses and charges. CLIENT agrees that WSN shall not be responsible for any claim for delay or other consequential damages arising from suspension of services hereunder. Upon payment in full by Client and WSN's resumption of services, the time for performance of WSN's services shall be equitably adjusted to account for the period of suspension and other reasonable time necessary to resume performance.

## ARTICLE 4. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

Either Party has the right to terminate this Agreement upon seven days written notice. In addition, the CLIENT may at any time, reduce the scope of this Agreement. Such reduction in scope shall be set forth in a written notice from the CLIENT to WSN. In the event of unresolved dispute over change in scope or changed conditions, this Agreement may also be terminated upon seven days written notice as provided above.

In the event of termination, and upon payment in full for all work performed and expenses incurred to the date of termination, documents that are identified as deliverables under the Letter Agreement whether finished or unfinished shall be made available by WSN to the CLIENT pursuant to Article 5, and there shall be no further payment obligation of the CLIENT to WSN under this Agreement except for payment of an amount for WSN's anticipated profit on the value of the services not performed by WSN and computed in accordance with the provisions of Article 3 and the Letter Agreement.

In the event of a reduction in scope of the Project work, WSN shall be paid for the work performed and expenses incurred on the Project work thus reduced and for any completed and abandoned work, for which payment has not been made, computed in accordance with the provisions of Article 3 and the Letter Agreement.

## ARTICLE 5. DISPOSITION OF PLANS, REPORTS AND OTHER DATA

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by WSN or its consultants are Instruments of Service and shall remain the property of WSN or its consultants, respectively. WSN and its subconsultants retain all common law, statutory and other reserved rights, including, without limitation, copyright. WSN and its subconsultants maintain the right to determine if production will be made, and allowable format for production, of any electronic media or data to CLIENT or any third-party. Upon payment in full of monies due pursuant to the Agreement, WSN shall make hard copies available to the CLIENT, of all documents that are identified as deliverables under the Letter Agreement. If the documents have not been finished (including, but not limited to, completion of final quality control), then WSN shall have no liability for any claims expenses or damages that may arise out of items that could have been corrected during completion/quality control. Any Instruments of Service provided are not intended or represented to be suitable for reuse by the CLIENT or others on extensions of the Project or any other project. Any modification or reuse without written verification or adaptation by WSN for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to WSN. CLIENT shall indemnify, defend and hold harmless WSN from any and all suits or claims of third parties arising out of use of unfinished documents, or modification or reuse of finished documents, which is not specifically verified, adapted, or authorized in writing by WSN. This indemnity shall survive the termination of this Agreement.

Should WSN choose to deliver to CLIENT documents in electronic form, CLIENT acknowledges that differences may exist between any electronic files delivered and the printed hard-copy. Copies of documents that may be relied upon by CLIENT are limited to the printed hard-copies that are signed and/or sealed by WSN. Files in electronic form are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic documents will be at user's sole risk. CLIENT acknowledges that the useful life of some forms of electronic media may be limited because of deterioration of the media or obsolescence of the computer hardware and/or software systems. Therefore, WSN makes no representation that such media will be fully usable beyond 30 days from date of delivery to CLIENT.

## ARTICLE 6. CLIENT'S ACCEPTANCE BY PURCHASE ORDER OR OTHER MEANS

In lieu of or in addition to signing the acceptance blank on the Letter Agreement, the CLIENT may accept this Agreement by permitting WSN to commence work on the project or by issuing a purchase order signed by a duly authorized representative. Such purchase order shall incorporate by reference the terms and conditions of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and those contained in the CLIENT's purchase order, the terms and conditions of this Agreement shall govern. Notwithstanding any purchase order provisions to the contrary, no warranties, express or implied, are made by WSN.

#### **ARTICLE 7. CLIENT'S RESPONSIBILITIES**

- A. To permit WSN to perform the services required hereunder, the CLIENT shall supply, in proper time and sequence, the following at no expense to WSN:
1. Provide access to, and make all provisions for WSN to enter upon publicly or privately owned property as required to perform the work.
  2. Provide other services, materials, or data as may be set forth in the Letter Agreement or any Exhibits attached hereto.
- B. WSN may use any CLIENT provided information in performing its services. WSN shall be entitled to rely on the accuracy and completeness of information furnished by the CLIENT. If WSN finds that any information furnished by the CLIENT is in error or is inadequate for its purpose, WSN shall endeavor to notify the CLIENT. However, WSN shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by CLIENT.

#### **ARTICLE 8. CERTIFICATIONS, GUARANTEES AND WARRANTIES**

WSN shall not be required to sign any documents, no matter by who requested, that would result in WSN having to certify, guarantee or warrant the existence of conditions whose existence WSN cannot ascertain. CLIENT agrees not to make resolution of any dispute with WSN or payment of any amount due to WSN in any way contingent upon WSN signing such certification.

#### **ARTICLE 9. INSURANCE**

WSN shall procure and maintain insurance for protection from claims against it under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims against it for damages because of injury to or destruction of property including loss of use resulting therefrom.

Also, WSN shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by any negligent act, error, or omission for which WSN is legally liable.

Certificates of insurance will be provided to the CLIENT upon request.

#### **ARTICLE 10. ASSIGNMENT**

Neither Party to this Agreement shall transfer, sublet or assign any rights or duties 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. Subcontracting to subconsultants, normally contemplated by WSN as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

#### **ARTICLE 11. NO THIRD-PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship or a cause of action by a third-party against either WSN or CLIENT. WSN's services pursuant to this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against WSN because of this Agreement.

#### **ARTICLE 12. CORPORATE PROTECTION**

It is intended by the parties to this Agreement that WSN's services in connection with the Project shall not subject WSN's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary, CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against WSN, a Minnesota corporation, and not against any of WSN's individual employees, officers or directors.

#### **ARTICLE 13. CONTROLLING LAW**

This Agreement is to be governed by the laws of the State of Minnesota.

#### **ARTICLE 14. ASSIGNMENT OF RISK**

In recognition of the relative risks and benefits of the project to both the CLIENT and WSN, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of WSN, employees of WSN and sub-consultants, to the CLIENT and to all construction contractors, subcontractors, agents and assigns on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that total aggregate liability of WSN, employees of WSN and sub-consultants, to all those named shall not exceed WSN's total fee received for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

#### **ARTICLE 15. NON-DISCRIMINATION**

WSN will comply with the provisions of applicable federal, state and local statutes, ordinances and regulations pertaining to human rights and non-discrimination.

#### **ARTICLE 16. SEVERABILITY**

Any provision or portion thereof in this Agreement which is held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding between CLIENT and WSN. All limits of liability and indemnities contained in the Agreement shall survive the completion or termination of the Agreement.

#### **ARTICLE 17. PRE-LIEN NOTICE**

Pursuant to the Agreement WSN will be performing services in connection with improvements of real property and may contract with subconsultants or subcontractors as appropriate to furnish labor, skill and/or materials in the performance of the work. Accordingly, CLIENT is entitled under Minnesota law to the following Notice:

- (a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for its contributions.
- (b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or materials for the improvement and who gave you timely notice.