

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT WITH THOMAS ENGINEERING COMPANY, INC. TO PROVIDE ENGINEERING SERVICES FOR THE SIXTH STREET DESIGN PROJECT; APPROPRIATING FUNDS; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock desires to implement a project known as the Sixth Street Design Project; and

WHEREAS, based upon proposals submitted, Thomas Engineering Company, Inc. is a firm selected by the Architect and Engineering Committee to provide engineering services to the City and has proposed to perform these services for the total sum of \$63,670.00. See breakdown below:

Civil Design Engineering	\$28,200.00
Traffic Analysis	\$12,300.00
Construction Phase	\$16,100.00
Survey Services	<u>\$ 7,070.00</u>
	\$63,670.00

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized and directed to enter into a Contract for Civil Engineering and Surveying Services (substantially similar to Exhibit "A" attached hereto) with Thomas Engineering Company, Inc. for the Sixth Street Design Project in the amount \$63,670.00.

SECTION 2: That the total amount of \$63,670.00 for civil design engineering services, traffic analysis, construction phase along with surveying services is hereby appropriated from the Street Fund.

SECTION 3: That all contracts/agreements outlined and approved herein will be reviewed and approved by the City Attorney's Office prior to the execution thereof.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

ATTEST:

Joe A. Smith

Mayor Joe A. Smith

by AP

Diane Whitbey, City Clerk

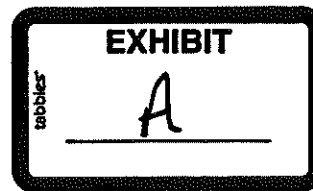
APPROVED AS TO FORM:

Amy Beckman Fields

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kh

FILED	10:56	A.M.	_____	P.M.
By	City Atty Amy Fields			
DATE	5-8-18			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	K. Thomas			



CONTRACT

FOR

PROFESSIONAL CIVIL ENGINEERING & SURVEYING SERVICES

THIS **CONTRACT** is made this ____ day of _____, 2018, by and between THE CITY OF NORTH LITTLE ROCK, herein called the "City," acting herein through its Mayor, Joe A. Smith, and **Thomas Engineering Company, Inc.**, herein called "Engineer."

In consideration of the mutual covenants herein, the parties agree as follows:

ARTICLE 1. SCOPE OF WORK

1.01 The Engineer will provide all professional services necessary for the complete design phase and construction phase of 6th Street, which includes, without limitation, Street, Drainage, Sanitary Sewer, & Water Line Improvements from Main Street to Magnolia Street, Main Street and 6th Street Traffic signal analysis, and Topographical and Boundary Survey of the Project site, as specifically described in the [DOCUMENT], attached hereto and incorporated by reference herein,(hereinafter referred to as the "Project").

ARTICLE 2. CONTRACT DOCUMENTS

2.01 The Contract Documents shall consist of:

- .1 This fully executed Contract;
- .2 The Scope of Work document by Engineer as referenced in Section 1.01;
- .3 Engineer's Preliminary Estimate.
- .4 Engineer's Hourly Rate Schedule.

All of the above is incorporated by reference, and attached hereto as Exhibit A.

The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- .5 Written Amendments;
- .6 Change Order(s).

2.02 The Contract Documents may only be amended, modified, or supplemented upon written agreement signed by the City and the Engineer.

ARTICLE 3. CONTRACT PRICE

3.01 Contract Price and Payment Schedule

3.02 The Engineer hereby agrees with the City to the following fees and schedules:

The estimated construction cost of all improvements covered by this agreement is \$403,000.00.

Civil Engineering Design	\$28,200.00
Traffic Analysis	\$12,300.00
Construction Phase	\$16,100.00
Survey Services	\$ 7,070.00
Total	\$63,670.00

3.03 Direct Cost Methods.

- .1 Cost of **review fees**, supplies, printing, material, postage and all other out-of-pocket expenses will be reimbursed by the City at actual cost.
- .2 Requisitions for Payment shall be submitted to the City monthly to cover amount earned during preceding month with description of services for which compensation is being requested and itemized listing of actual out-of-pocket or direct expense claimed.

3.04 Revision to Drawings and Specifications

3.05 The Engineer will make, without expense to the City, such revisions of the preliminary drawings as may be required to meet the needs of the City but after a definite plan has been approved by the City, if a decision is subsequently made by the City, which, for its proper execution, involves extra services and expenses for changes in or additions to the drawings, specifications or other documents, or if the Engineer is put to labor or expense by delays imposed on him from causes not within his control, such as by the re-advertisement of bids or by the delinquency or insolvency of contractors, the Engineer shall be considered as covered in this Agreement. Compensation for such additional services shall be at the rates set out in 3.01.4, Payments for Additional Services.

3.06 Further, in accordance with the Contract Documents, Engineer agrees, at its own proper cost and expense, to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the Project in accordance with the Request for Proposal, the Engineer's Proposal, as supplemented, and prices stated in these specifications, which include any maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof all of which are made a part hereof and collectively constitute the Contract.

3.07 The City agrees to pay the Engineer in current funds for the Project performed under the Contract, upon submission of supporting documentation to the satisfaction of the City of services performed, subject to additions and deductions, as may be provided in any written modification signed by the City and the Engineer.

ARTICLE 4 ENGINEER

4.01 The Project will be coordinated by:

City of North Little Rock Engineering Department

Chris Wilbourn, Engineer

Who is hereinafter called CITY ENGINEER and who is to act as the City's representative, in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 5 CONTRACT TIMES, DATES FOR SUBSTANTIAL COMPLETION, AND LIQUIDATED DAMAGES

5.01 Engineer hereby agrees to commence the work on the Project on or before a date to be specified in a written Notice to Proceed (NTP) of the City, incorporated by reference as set forth herein, and to fully complete the project within sixty (60) calendar days or as determined by City Engineer.

ARTICLE 6 PAYMENT PROCEDURES

6.01 Engineer shall submit Application for Payment upon completion of the Project to the satisfaction of the City or as described in 3.03. Application for Payment will be processed by the City within thirty (30) calendar days after being submitted.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

7.01 In order to induce the City to enter into this Agreement _____ makes the following representations:

.1 Engineer has full power and authority to enter into this Contract and to carry out the Project contemplated by this Contract.

.2 Engineer represents and warrants that Engineer will comply with all laws applicable to the performance of the Project under this Contract.

.3 Engineer represents and warrants that Engineer's execution, delivery, and performance of this Contract will not constitute: (i) a violation of any judgment, order, or decree binding on Engineer; (ii) a breach under any contract by which Engineer is bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a breach.

.4 Engineer represents and warrants that the Project will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional procedures and industry standards prevailing at the time the Project is performed, and that all work on the Project meet the specifications set forth herein. Engineer further represents and warrants that Engineer and all personnel

used to perform the Project, including permitted subcontractors, possess the knowledge, skill, and experience necessary to perform the Project.

.5 Engineer represents and warrants that Engineer has, and shall maintain in effect for the duration of this Contract, all licenses, permits qualifications, and approvals of whatsoever nature which are legally required for Engineer to complete the Project. Engineer shall also ensure that all permitted subcontractors are similarly licensed and qualified.

ARTICLE 8 CHANGE ORDERS

8.01 The Engineer and the City agree and acknowledge as a part of this Contract that no change order, defined as “material” change, or other form or order or directive is authorized without written assurance by the City that lawful appropriations to cover the costs of the additional work have been made, and without the change order being signed by the City and the Engineer. It is the Engineer's sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this Contract.

8.02 For services not otherwise covered by this Contract, but ordered by the City during the duration of this Contract in accordance with Section 8.01 (“Additional Services”), the Engineer shall be paid upon submission of certified statements based on the following hourly rates included herewith. By mutual agreement, partial payments, not to exceed fifty (50) percent of the amount earned, may be made from time to time as the work progresses.

ARTICLE 9 TERMINATION OF CONTRACT

9.01 *Termination for Cause.* This Contract shall be terminated for cause if the Engineer defaults in the performance of any of the terms in the Request for Proposal and the Engineer’s Proposal, including Exhibit A, and not to the exclusion of the following:

- .1 Failure to perform any material obligation or covenant under this Contract and does not correct or substantially cure such failure, default, or breach within fifteen (15) days after Engineer’s receipt of written notice from the City of such default or breach; or
- .2 A breach of any material representation or warranty made by Engineer hereunder, which it fails to cure to the satisfaction of the City fifteen (15) days after receiving written notice from the City of such breach.

9.02 *Termination for Convenience.*

The City may, at any time, terminate this Contract for the City’s convenience and without cause, including, without limitation, the non-appropriation of funds in sufficient amounts to discharge such obligation. Such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement, attachment,

schedule, or exhibit thereto, by the City. As used herein, the term “appropriation” shall mean and include the due adoption of an appropriation ordinance and budget and the approval of availability of sufficient funds for the performance of fiscal obligations arising under this Contract.

ARTICLE 10 INSURANCE AND BOND

10.01 Engineer shall, at Engineer’s sole cost and expense, procure and maintain for the duration of this Contract proper and complete liability insurance, and Performance Bond.

ARTICLE 11 INDEMNIFICATION

11.01 The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City against damages, liabilities and costs arising from the negligent acts of the Engineer in the performance of professional services under this Agreement, to the extent that the Engineer is responsible for such damages, liabilities and costs on a comparative basis of fault and responsibility between the Engineer and the City.

11.02 The invalidity, in whole or in part, of any of the foregoing paragraph will not affect the remainder of such paragraph.

11.03 The foregoing indemnification by the Engineer is not a waiver of the City’s tort of immunity.

ARTICLE 12 DISPUTE RESOLUTION

12.01 Any dispute between the City and the Engineer may be resolved by mediation, and if mediation is unsuccessful, either party may initiate legal action in the Pulaski County Circuit Court. Mediation costs shall be equally shared by the parties.

ARTICLE 13 MISCELLANEOUS

13.01 *Choice of Law.* The parties hereto agree that this Contract shall be construed under Arkansas law, excluding its conflict of laws rules. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Contract shall be vested in either the U.S. District Court for the Eastern District of Arkansas or the Circuit Court of Pulaski County, Arkansas.

13.02 *Non-Waiver.* No delay or failure to exercise any right under this Contract shall impair any such right or be construed to be a waiver thereof. No waiver shall be effective unless in writing signed by the party waiving. A waiver of a right on one occasion shall not be deemed to be waiver of such right on any other occasion.

13.03 *No Assignment.* The Project to be performed pursuant to this Contract is personal in nature, and Contractor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Contract without the prior written consent of the City.

13.04 *Merger.* This Contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and

conditions of their agreement, related to the services provided hereunder. All prior agreements, negotiations, dealings and understandings, whether written or oral, regarding the subject matter hereof, are superseded by and merged into this Contract.

13.05 Modification

No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Contract.

13.06 Severability. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

13.07 No Presumption against Drafter. Each of the parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement.

13.08 Counterpart Execution. This Contract may be executed in two or more counterparts, each of which is deemed as original but all constitute one and the same instrument.

13.09 Filing. This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either party may additionally file this document in any other governmental office deemed appropriate; however, the parties waive all claims and defenses in law or equity based upon such additional filing.

[Signatures on the Next Page]

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

City of North Little Rock

Engineer

Thomas Engineering Company, Inc.

By: _____
Joe A. Smith, Mayor

By: _____

Thomas R. Pownall, Project Engineer

ATTEST:

Diane Whitbey, City Clerk

Contract reviewed and approved as to form by:

Amy Beckman Fields
North Little Rock City Attorney

BY: _____ Date
Deputy City Attorney

DRAFT

DRAFT