

RESOLUTION NO. 2008-1-178

WHEREAS, the City of Tontitown, Arkansas, is in need of professional engineering services related to city planning and development; and

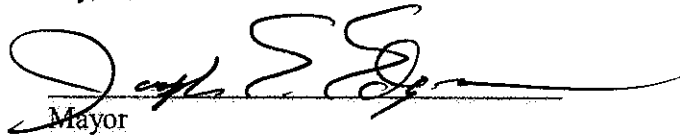
WHEREAS, the City Council of the City of Tontitown, Arkansas has selected USI Consulting Engineers, Inc., as the engineering firm most qualified and best suited to provide said services; and

WHEREAS, the City, by and through its attorney, has negotiated a contract for engineering services with USI Consulting Engineers, Inc., to provide professional services to the City of Tontitown for city planning and development issues;

BE IT THEREFORE RESOLVED BY THE CITY COUNCIL FOR THE CITY OF TONTITOWN, ARKANSAS, as follows:

The Engineering Services Contract between the City and USI Consulting Engineers, Inc., attached hereto is hereby approved, and the Mayor of Tontitown is hereby authorized and directed to execute the contract on behalf of the City of Tontitown, Arkansas.

Passed and approved this 8 day of January, 2008.


Mayor


Recorder/Treasurer

Sponsor: Arthur Penzo

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT, entered into this ___ day of _____, 200___, by and between the City of Tontitown, Arkansas, hereinafter referred to as the "Owner," and the engineering firm known as USI Consulting Engineers, Inc., hereinafter referred to as the "Engineer,"

WITNESSETH THAT:

WHEREAS, the Owner is in need of a professional engineer to provide general engineering services on behalf of the City of Tontitown, Arkansas, and

WHEREAS, the Engineer has been selected by Owner to provide professional engineering services for general municipal matters including the review of certain developments proposed by third parties within the City and has the necessary experience and competency to provide the engineering services required; and

WHEREAS, the Owner now desires to engage the Engineer to perform the engineering services set forth herein, and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Owner and the Engineer, the parties hereto, hereby stipulate and agree as follows:

Section I. Scope of the Work

The scope of work covered by this agreement is as follows:

Engineer will provide general engineering services to the Owner on a continuing basis for various municipal projects, including review of plans and specifications submitted by others and advising the City on matters pertaining to improvements and maintenance of City infrastructure and other municipal matters throughout the town.

Section II. Scope of Engineering Services

The Engineer shall provide a suitable engineering staff to complete the necessary services required by this agreement. The staff shall consist of engineers, engineering technicians, administrative staff, surveyors, and other assistants, including sub-consultants as may be necessary to carry on the work in an efficient and expeditious manner. The Engineer will provide the following services:

- A. The Engineer will review and comment on plans and specifications

submitted by others seeking approval by the City for subdivision and land development or improvement per the City Code on such matters. The Engineer shall advise the Owner, including providing comments and recommendations, as to whether such plans and specifications are in compliance with the City Code and other applicable codes and standards.

B. The Engineer will advise the Owner on matters pertaining to improvements and maintenance of City infrastructure, including roads, parks, drainage and the like.

C. The Engineer will be available for consultation with the city officials or representatives from time to time regarding miscellaneous City engineering matters. Consultations may occur by telephone at the Engineer's offices, City Hall, or other locations within the City.

D. The Engineer will provide other Engineering services as requested by Owner from time to time on miscellaneous municipal matters.

E. Nothing in this contract shall limit or prevent the Engineer from providing services to the Owner on other matters or projects pursuant to separate agreements entered into between the Owner and Engineer.

Section III. Payment

In consideration of the performance of the foregoing services by the Engineer, the Owner shall compensate the Engineer as follows:

For work set out under Section II-A, B, C and D compensation shall be based upon standard hourly rates as shown on the attached Schedule of Rates, plus reimbursable expenses. The Schedule of Rates is subject to adjustment no more than annually upon the written agreement of Engineer and Owner.

The reimbursable expenses for which the Engineer will be reimbursed shall include travel expenses in connection with the work (pre-authorized by the Owner), rental expenses for special equipment, purchase of material, reproduction and mailing costs and other expenses directly attributable to the project, including work performed and expenses incurred by subconsultants. The Engineer shall charge the Owner for reimbursable expenses at actual cost.

The Engineer agrees to keep an accurate record of the hours of the various classifications of personnel working on the project. Engineer shall provide Owner copies of all time and billing records related to Owner's projects upon reasonable notice. Billing shall be submitted monthly and shall include all costs accrued. Billing

shall be broken down showing how much time and billing is allotted to each matter under review so that the Owner may seek reimbursement of engineering costs from the developer. Payment for engineering services under this agreement shall be made within 30 days after claim submittal by the Engineer. If any of the work is suspended for an extended period of time or abandoned as a result of orders from the Owner, the Engineer shall be paid for work actually completed; payment to be based insofar as possible upon the fees established herein.

Section IV. Standard of Care

Services provided by the Engineer 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.

Section V. Insurance

The Engineer agrees to maintain standard insurance policies through the life of this Agreement, including Workers' Compensation in accordance with the statutory requirements of the State of Arkansas, comprehensive general liability, automobile liability, and professional liability with a limit of \$1,000,000.

Section VI. Indemnity

To the fullest extent allowed by law, Engineer shall indemnify and hold harmless owner, its affiliated and associated entities, and their agents, officers, officials and employees for any liability, loss, cost, claims, expenses, including attorney's fees, arising from the performance of or failure to perform this contract by Engineer.

Section VII. Other Provisions

A. Reuse of Documents

The Owner acknowledges the Engineer's plans and specifications, and other documents including all documents of any description or in any format whether in paper form or on electronic media ("delivered documents"), as instruments of professional service. Nevertheless, the delivered documents prepared under this Agreement shall be delivered to and become the property of the Owner upon completion of the services and payment in full of all monies due to the Engineer. Except for the Engineer's Services provided for by this Agreement as related to the construction and completion of the Project, the Owner accepts full responsibility of any liability and agrees to defend, indemnify and hold harmless the Engineer from all claims, damages, and expenses, including attorneys' fees, and hereby waives any claim against the Engineer arising

from any reuse of the delivered documents. Except where the Owner reuses the delivered documents subsequent to the completion of the Project, nothing contained in this paragraph shall alter the Engineer's responsibilities and obligations under this Agreement.

B. Changes

The Owner may, at any time, by written order, make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the Engineer's cost or time required to perform any services under this Agreement, an equitable adjustment shall be made and this Agreement shall be modified in writing. Any modification must be in writing signed by both parties.

C. Termination

Either the Owner or the Engineer may terminate this Agreement at any time with or without cause upon giving the other party 15 calendar days prior written notice.

D. Governing Law

The interpretation of the provisions of this Agreement and of the rights of the parties shall be under the laws of the state of Arkansas. Any judicial proceeding shall be filed in Washington County, Arkansas.

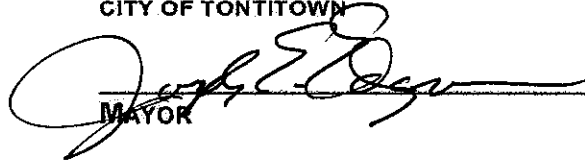
E. Cooperation with Owner

Engineer acknowledges that Owner is a municipality subject to the Arkansas Freedom of Information Act. Engineer agrees to cooperate with Owner as necessary as Owner attempts to respond to Freedom of Information Act Requests. Engineer agrees that, upon request by Owner, Engineer will immediately provide or make available any documents or information belonging to Owner which are in the possession of the Engineer.

THIS AGREEMENT shall be binding upon the parties hereto, their partners, heirs, successors, administrators and assigns; and neither party shall assign, sublet or transfer his interest in this agreement without the prior written consent of the other party hereto.

IN WITNESS WHEREOF, the Owner has caused these presents to be executed in its behalf by its duly authorized representatives, and the said Engineer by its duly authorized representatives, and the parties hereto have set their hands and seals on the date heretofore set out.

CITY OF TONTITOWN


MAYOR

Attest:


Recorder/Treasurer

USI CONSULTING ENGINEERS, INC.

BY: _____
TITLE: _____

Attest:
