

AGREEMENT

THIS AGREEMENT entered into this day, April 18, 2017, by and between Bailey Contractors, Inc. hereinafter referred to as the Contractor, and the City of Jonesboro, Arkansas, hereinafter referred to as Owner, in accordance with Arkansas Code Annotated 22-2-103 et seq.,

WITNESSETH:

1. That for and in consideration of the payment by the Owner in the amount of **\$501,193** to be made as set forth in the Contract Documents, the Contractor hereby agrees to furnish all tools, labor, equipment, and materials, and to build and construct that certain project in Craighead County, designated as:

Project #: 15-057

Project Name: **HVAC Replacement, Central Fire Station**, more specifically described in the Contract Documents attached hereto and incorporated herein by reference. Contract Documents includes the following: ***the Agreement (this instrument); the Invitation to Bid; Instruction to Bidders; Form of Proposal; all Addenda; Statutory Performance and Payment Bond; General and Supplemental Conditions; Special Provisions; Plans and Specifications, Drawings listed in the Specifications; Notice to Proceed; and Change Orders.*** All construction shall be in exact accord with the Contract Documents. Said construction shall be to the satisfaction of the City, and in accordance with the laws of the State of Arkansas, and the work shall be subject to inspection and approval at all times by the appropriate state and federal agencies.

2. Owner may at any time during the progress of the work alter, change, subtract from, or add to said specifications without violating this Agreement or the terms thereof. Said changes, alterations, subtractions, or additions shall be set forth in writing in a document referred to as a "Change Order." The Change Order shall be attached hereto and incorporated herein by reference and shall be made a condition or term of the Contract Documents.

3. The Contractor agrees, for the consideration set forth in the Form of Proposal, to begin work within 5 days after a "Notice to Proceed" is issued and to complete the work **within 180 days from "Notice To Proceed"**. If the Contractor shall fail to complete the work within the time limit herein specified, he shall pay to the Owner, **\$500.00** a day, as liquidated damages and not in the nature of a penalty, the sum specified in the Form of Proposal for each day delayed, it being understood and agreed between the parties hereto that the said sum fixed as liquidated damages is a reasonable sum, considering the damages that Owner will sustain in the event of any such delay, and said amount is herein agreed upon and fixed as liquidated damages because of difficulty of ascertaining the exact amount of damages that may be sustained by such delay. The said sum shall be deducted from the final amount of estimate due the Contractor.

4. Should Contractor be delayed in the execution or completion of the work by the act, neglect or default of the City, or by any damage by fire, weather conditions or other casualty for which the contractor is not responsible, or by general strikes or lockouts caused by acts of employees, then any extended period shall be determined and fixed by the Owner. Said extended period shall be the time for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner within seven (7) days of the occurrence of the delay.

5. It is mutually agreed between the parties that in the performance of this contract, Contractor is acting independently and in no sense as Agent of the Owner. Contractor shall not let, assign, or transfer this contract or any interest therein, without the written consent of the Owner.

6. It is agreed and understood between the parties hereto that the Contractor agrees to accept and the Owner to pay for the work, at the prices stipulated in the Contract Documents, such payment to be in the form of legal tender, and the payment shall be made at the time and in the manner set forth in the Contract Documents.

7. Any laborer or mechanic employed by the Contractor or any Subcontractors for this project, directly on site for the work covered by the Contract Documents, shall be paid a rate of wages required by the Contract Documents. If the Owner discovers that wages less than the rate of wages specified by the Contract Documents have been or are being paid, then the Owner, after giving written notice to the Contractor, shall terminate the Contractor's right to proceed with the project work or such part of the work as to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the Contractor and his sureties shall be liable to the Owner for any excess costs occasioned thereby.

8. Contractor will promptly repair, at his own expense and to the satisfaction of the Owner, any damage done by him or his employees or agents, at the work site, or to the public property and/ or buildings, and will save the City harmless from all claims of any person for injury to person or to property occasioned by his act, or the acts of his employees or agents, while in the execution of the work specified.

9. The Owner may terminate this agreement to the extent Owner's funds are no longer available for expenditures under this agreement. The Owner may terminate this agreement after providing the Contractor written notice of delay, neglect or default, if the Contractor:
- (a) fails to begin the work after the notice to proceed has been issued;
 - (b) fails to perform the work with sufficient workers, equipment, or materials to assure prompt completion of the work;
 - (c) performs the work negligently or unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable or unsuitable;
 - (d) discontinues the prosecution of the work;
 - (e) fails to resume work that has been discontinued within 10 calendar days after notice to do so;
 - (f) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency,
 - (g) or fails to provide a replacement bond that must be on a State of Arkansas Statutory and Performance Bond form within 10 calendar days, if the Surety should be declared in default and/or liquidation;
 - (h) fails to settle all valid claims for materials, labor or supplies in an expedient manner;
 - (i) allows any final judgment to stand unsatisfied for a period of 10 calendar days;
 - (j) makes an assignment for the benefit of creditors;
 - (k) fails to refund any moneys due the Owner in determining pay quantities for estimates within 30 calendar days;
 - (l) fails to comply with the contract documents;
 - (m) is a party to fraud;
 - (n) or, for any other cause whatsoever, fails to carry on the work in a manner acceptable to the Owner.

10. Both parties agree that the state of Arkansas, local county and city ordinances shall govern the contents of this agreement and neither party is waiving any rights under these terms.

11. Contractor shall follow all federal, state and local hiring practices and procedures. Owners shall not be responsible or liable for any negligent or discriminatory hiring practices.

12. Company shall not discriminate against any person based on race, religion, color, national origin, sex, age, disability or veteran's status during the term of this contract.

13. All employees, subcontractors and subcontractor employees must wear identification badges while on premises.

14. Contractor agrees to place temporary lighting up in each place where existing lighting is disabled due to construction.

15. The Facility is Tobacco Free. The use of tobacco products is prohibited anywhere on the premises. Contractor agrees that it will not use or permit tobacco, alcohol, or illegal drugs to be used by any of its employees, subcontractors, guests, representatives, or agents while on the premises.

16. Contractor agrees to follow all parking regulations. Contractor specifically agrees that it will not permit its employees, agents, or subcontractors to: (1) park on the grass; (2) park on the sidewalks; (3) block or impede traffic; or (4) create a traffic hazard of any sort.

17. Contractor acknowledges that Owner's obligations contained in this agreement are wholly contingent upon Owner's receipt of any necessary or required legislative approval and/or appropriation, and if either are withheld, Owner is not liable to Contractor under this agreement.

18. Contractor agrees that it will be solely responsible for any harm, damage or injury that it, its employees, subcontractors, agents or guests cause or permit to occur to any person or their real or personal property as the result of Contractor's actions or failure to act. Contractor further agrees to fully indemnify and hold harmless the Owner from any and all losses, damages, or expenses, including reasonable attorney's fees, arising out of or resulting from claims or actions for bodily injury, death, sickness, property damage, financial loss, or other injury or damage caused by any negligent act or omission of Contractor, its employees, subcontractors, agents or guests.

19. Contractor agrees that it will be solely responsible for any damage that it, its employees, crew, agents or guests cause or permit to occur to the real or personal property of the Owner.

20. Upon the signing of this contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of A.C.A. §25-19-101, et seq.

21. Contractor agrees that it will not permit any of its employees, subcontractors, or employees of subcontractors who have been convicted of a felony involving force, violence, or possession or use of illegal drugs to work on this project.

22. Contractor will not assign or otherwise transfer its duties under this contract to another person or entity without Owner's express written permission. Further, this agreement shall be binding upon the Contractor's successors and assigns.

23. The parties agree and understand that approval of this contract or any amendments to this contract are subject to approval by the Owner or any committee or subcommittee of the Owner in its or their sole discretion. The parties further agree that in the event such legislative approval is not granted or is otherwise withheld, this contract shall terminate automatically with no penalty to the Owner.

Executed by the parties who individually represent that each have the authority to enter into this Contract.

CONTRACTOR:

BY: _____

DATE: _____

OWNER: CITY OF JONESBORO, ARKANSAS

BY: _____

DATE: _____