

RESOLUTION NO. ____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONTRACT WITH WESTERN MILLWRIGHT SERVICES, INC. TO REMODEL THE FRATERNAL ORDER OF POLICE LODGE; APPROPRIATING FUNDS FOR FLOOD RELATED EXPENSES FROM THE FEMA FLOOD ACCOUNT; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock (“City”) experienced severe flooding beginning on or about May 27, 2019, resulting in significant damage to publicly owned property; and

WHEREAS, the North Little Rock City Council (“City Council”) adopted Resolution No. 9705, which created the Federal Emergency Management Agency (“FEMA”) Flood Account, from which all flood related expenditures should be charged in order to facilitate proper accounting of flood expenses for the purposes of reimbursement from FEMA; and

WHEREAS, the City owns certain property that is leased to the Fraternal Order of Police (“FOP”) for use as the FOP Lodge that requires remodeling and renovation as a result of seven feet of water damage from the 2019 flooding, and Western Millwright Services, Inc. has agreed to provide the services at a cost of \$74,031.85 (see Contract attached hereto as Exhibit A); and

WHEREAS, the cost of the repairs should be appropriated from the FEMA Flood Expenses account to repair the FOP Lodge; and

WHEREAS, FEMA has allocated \$40,391.33 to be reimbursed to the City for the repair of the FOP Lodge.

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 authorized to execute a contract (substantially similar to Exhibit A) with Western Millwright Services, Inc. for the remodel of the Fraternal Order of Police Lodge due to water damage from the 2019 flooding.

SECTION 2: That Seventy-Four Thousand and Thirty-One and 85/100 Dollars (\$74,031.85) is hereby appropriated from Account No. 01-024-52350 - FEMA Flood Expenses – for the remodeling and renovation of the Fraternal Order of Police Lodge.

SECTION 3: That all resolutions or parts of resolutions in conflict herewith are repealed to the extent of the conflict.


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:



Mayor Joe A. Smith *by AT*

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:



Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/ABF

FILED	<u>11:05</u> A.M.	_____ P.M.
By	<u>A. Fields</u>	
DATE	<u>7-7-20</u>	
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas		
RECEIVED BY	<u>S. Usery</u>	



CONTRACT

FOR REMODEL OF FRATERNAL ORDER OF POLICE LODGE

THIS **CONTRACT** is made by and between THE CITY OF NORTH LITTLE ROCK, (hereinafter the "City,") acting herein through its Mayor, Joe A. Smith, and WESTERN MILLWRIGHT SERVICES, INC. (hereinafter "Contractor"), a company, duly authorized to do business in the State of Arkansas, effective on the date signed by the City of North Little Rock.

1. Scope of Work

Contractor shall provide the services to the City as set forth in Bid Document 20-3658 dated June 29, 2020, attached hereto and incorporated herein as Exhibit "A" (the "Project").

2. Contract Documents

The fully executed Contract shall include the Bid Document #20-3658 dated June 14, 2020, attached as Exhibit "A".

3. Compensation

The City shall pay Contractor for the services and labor in the amount **Eleven SEVENTY-FOUR THOUSAND THIRTY-ONE and 85/100 DOLLARS (\$74,031.00)** as stated in the attached Bid Document ("Compensation"). All invoices submitted to the City by Contractor shall list in detail the services provided.

Further, Contractor 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 Bid.

4. Non-Appropriation of Funds or Change in Law

Notwithstanding any other provision of this Contract, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event there is a change in law applicable to this Contract, or the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such event or 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.

The City shall provide Contractor with written notice of termination pursuant to this section.

5. Commencement of Work

Contractor hereby agrees to commence the work on the Project on or before a date to be specified in a written Notice to Proceed and to close the Project no later than sixty (60) days from the date of the Notice to Proceed.

6. Site Electrical Power

At no cost or expense to Contractor, the City shall furnish Contractor electrical power with respect to the Project. Contractor's personnel shall coordinate their activities with and avoid interference with the City's employees during the work schedule.

7. Change Orders

No major changes shall be made to the Scope of Work without written authorization from the City's Designated Representative, Mary Beth Bowman, Director of Commerce.

8. Warranties and Representations

(a) The Contractor represents and warrants that Contractor has full power and authority to enter into this Contract and to carry out the Project contemplated by this Contract.

(b) The Contractor represents and warrants that Contractor will comply with all laws applicable to the performance of the Project under this Contract.

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

(d) The Contractor 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. Contractor further represents and warrants that Contractor and all personnel used to perform the Project, including permitted subcontractors, possess the knowledge, skill, and experience necessary to perform the Project.

(e) The Contractor represents and warrants that Contractor 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 Contractor to complete the Project. Contractor shall also ensure that all permitted subcontractors are similarly licensed and qualified.

(f) The Contractor shall provide ten (10) months warranty on labor and materials.

9. TERMINATION OF CONTRACT.

Termination for Cause

This Contract may be terminated for cause, including, but not limited to the following reasons:

(a) the Contractor defaults in the performance of any of the terms in the Bid Document;

- (b) the Contractor exceeds more than fifteen (15) days the scheduled performance dates due to the fault of the Contractor;
- (c) the Contractor breaches any material representation or warranty made by the Contractor herein, or
- (d) if the materials supplied by the Contractor fail to perform in accordance with the essential purpose of the Project.

For any of the above reasons, the Contractor will be given ten (10) calendar days to cure the default. If not cured within the specified time, the City may in its sole discretion terminate this Contract. The City may withhold any payments due to the Contractor up to the termination date in order to defray any documented costs of completion of the Project in accordance with the specifications in the Final Bid Documents. The City reserves the right to pursue any and all available legal and equitable remedies, including, but not limited to, instituting formal litigation proceedings against reserve the right to pursue any and all available legal and equitable remedies, including, but not limited to, instituting formal litigation proceedings against Contractor.

10. Dispute Resolution

City and Contractor agree to negotiate each dispute between them in good faith during the fourteen (14) calendar days after written notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated by using an alternative dispute resolution service in Pulaski County, Arkansas, mutually agreed upon by the parties with the costs being shared equally by the parties. If mediation is unsuccessful, the parties may exercise their rights at law in a court of competent jurisdiction in Pulaski County, Arkansas.

11. Insurance

Contractor shall, at Contractor's sole cost and expense, procure and maintain for the duration of this Contract proper and complete liability insurance, and Workers' Compensation Insurance in accordance with the laws of the State of Arkansas. Contractor shall provide a copy of Contractor's Certificate of General Liability Insurance prior to execution of this Contract.

12. Indemnification

A. The Contractor shall indemnify and hold the City its officers, employees, and agents harmless from any loss, lawsuit, liability, damage, cost and expense (including reasonable attorneys' fees) which may arise out of or result from (i) claims by third persons against the City that the Project has caused damage to property or bodily injury

(including death); or (ii) the acts or omissions of the Contractor, its agents or employees in connection with this Contract; or (iii) any defects in any equipment used by the Contractor; or (iv) any breach or default in the performance of the obligations of the Contractor hereunder including any breach of warranties. The Contractor's indemnification obligations hereunder shall not apply to the extent that any claim is caused by the gross negligence or misconduct of The City.

B. The foregoing indemnification by the Contractor is not a waiver of the City's tort immunity.

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

13. Notices

Except for service of process, all notices and other communications pertaining to this Contract shall be in writing and shall be deemed duly to have been given if: (a) hand-delivered to the designated representative; (b) sent by the United State Postal Service certified mail, return receipt requested, postage prepaid; (c) sent by Federal Express, United Parcel or other nationally recognized overnight carrier, or (d) sent by electronic mail transmission, with proof of delivery. All notices or communications by letter by the City and Contractor pertaining to this Contract shall be addressed as follows:

If to the City: North Little Rock Department of Commerce
 Attention: Mary Beth Bowman, Director
 120 Main Street
 North Little Rock, AR 72114
 mbowman@nlr.ar.gov

With a copy to: North Little Rock City Attorney
 Attention: Amy Beckman Fields, City Attorney
 116 Main Street
 North Little Rock, AR 72114
 afields@nlr.ar.gov

If to Contractor: Western Millwright Services, Inc.
 Attention: Tom Miller, Project Manager
 96 Cherokee Loop Lane
 Russellville, AR 72802
 479.968.6852
 miller.347@centurytel.net

Either party may change its notification designated representative and/or address by giving written notice to that effect to the other party in the manner provided herein.

14. 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.

15. 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. A waiver of a right on one occasion shall not be deemed to be a waiver of any other right on that occasion.

16. 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.

17. Severability

If any portion of this Contract is held invalid, such invalidity shall not affect the validity of the remaining portions of the Contract, and the parties will substitute for any such invalid portion hereof a provision which best approximates the effect and intent of the invalid provision.

18. 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.

19. 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.

20. 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.

21. 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. An original signature transmitted by facsimile or other electronic means shall be deemed to be original.

22. 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 are 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
By: _____
Joe A. Smith, Mayor

Date

ATTEST:

Diane Whitbey, City Clerk

Western Millwright Services, Inc.
By: _____
Tom Miller, Project Manager

Date

Contract reviewed and approved by:

Amy Beckman Fields
North Little Rock City Attorney

BY: _____
Deputy City Attorney

Date