

R-20- 131

RESOLUTION NO. ____

A RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH GENE SUMMERS CONTRUCTION, INC. FOR THE NORTH LITTLE ROCK RIVER TRAIL EROSION STABILIZATION PROJECT, IN THE AMOUNT OF \$55,115.00; APPROPRIATING FUNDS; AND FOR OTHER PURPOSES.

WHEREAS, approximately 150 feet of the embankment along the Arkansas River has eroded, resulting in significant damage to the North Little Rock River Trail System (see maps and photographs attached hereto as Exhibits A and B, respectively); and

WHEREAS, the City of North Little Rock (“the City”) has determined a need to stabilize the embankment, in a project known as the North Little Rock River Trail Erosion Stabilization Project (“the Project”); and

WHEREAS, the City has advertised for bids to complete the Project, and the low bidder meeting the requirements was Gene Summers Construction, Inc., with a bid for the project of \$55,115.00 (see bid information attached hereto as Exhibit C).

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 to accept the low bid of Gene Summers Construction, Inc. for North Little Rock River Trail Erosion Stabilization Project (“the Project”), in the amount of Fifty Five Thousand One Hundred Fifteen and 00/100 Dollars (\$55,115.00).

SECTION 2: That the \$55,115.00 for the Project is hereby appropriated from the Street Fund.

SECTION 3: That the Mayor and City Clerk are authorized to execute the contract (see Contract attached hereto as Exhibit D) with Gene Summers Construction, Inc., for the North Little Rock River Trail Erosion Stabilization Project with all documents reviewed and approved by the City Attorney prior to execution.

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:

Joe A. Smith
Mayor Joe A. Smith *by AT*

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields
Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED	<u>10:50</u>	A.M.	_____	P.M.
By	<u>A. Fields</u>			
DATE	<u>9-8-20</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>S. Ussery</u>			

RIVER TRAIL EROSION STABILIZATION

NORTH LITTLE ROCK, AR



AUGUST 2020

INDEX OF SHEETS	
SHEET	TITLE
1	COVER SHEET
2	SITE PLAN (AERIAL)
3	SITE PLAN (GENERAL)
4	CROSS SECTION I
5	CROSS SECTION II
6	CROSS SECTION III
7	CROSS SECTION III

COVER SHEET

RIVER TRAIL
EROSION STABILIZATION

CITY OF NORTH LITTLE ROCK
Engineering Department

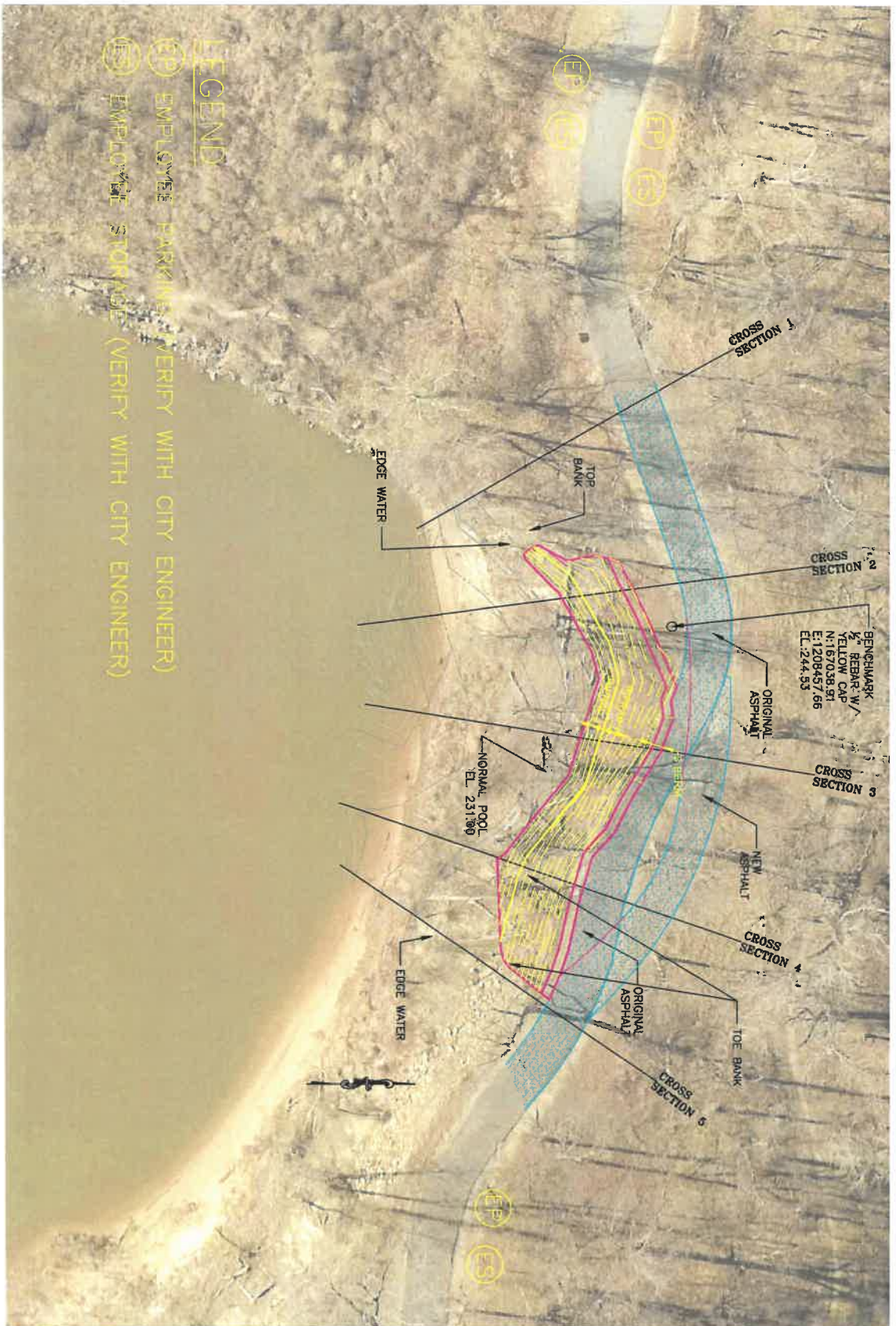
500 WEST 19TH STREET

NORTH LITTLE ROCK, AR 72114



DATE: 8/2020
DESIGNED BY: MCK
DRAWN BY: MCK
SCALE: NONE
SHEET NUMBER

1



- LEGEND**
- (EP) EMPLOYEE PARKING (VERIFY WITH CITY ENGINEER)
 - (ES) EMPLOYEE STORAGE (VERIFY WITH CITY ENGINEER)

SITE PLAN (AERIAL)

DATE: 8/20/20
 DESIGNED BY: MCK
 DRAWN BY: MCK
 SCALE: 1" = 30'

SHEET NUMBER
2

**RIVER TRAIL
 EROSION STABILIZATION**

CITY OF NORTH LITTLE ROCK
 Engineering Department

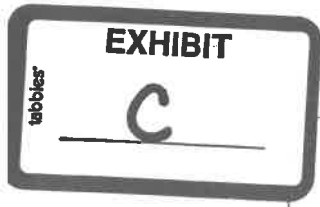
500 WEST 13TH STREET NORTH LITTLE ROCK, AR 72114







CITY OF NORTH LITTLE ROCK 20-3664 SUMMARY
 Wednesday, August 12, 2020 @ 10:00 a.m.



NLR River Trail Erosion Stabilization Project	Shields & Associates	Burkhalter Technologies	Gene Summers Construction	Redstone Construction
<i>Present at Bid Opening</i>				
Bid Bond	Yes	Yes	Yes	Yes
Acknowledge Addendums 1 and 2	Yes	Yes	Yes	Yes
Total Project Bid Amount \$	60,382.00	111,275.00	55,115.00	97,600.00
<i>Additional Information</i>				

Opened by: Amy Smith
 Summary by: Crystal Willis



CITY OF NORTH LITTLE ROCK 20-3664 SUMMARY
 Wednesday, August 12, 2020 @ 10:00 a.m.

NLR River Trail Erosion Stabilization Project	Hydco	Noland Construction	
<i>Present at Bid Opening</i>			
<i>Bid Bond</i>	Yes	Yes	
<i>Acknowledge Addendums 1 and 2</i>	Yes	Yes	
Total Project Bid Amount \$	1 10,501.00	88,000.00	
<i>Additional Information</i>			

Opened by: Amy Smith
 Summary by: Crystal Willis

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CONTRACT

FOR

NLR RIVER TRAIL EROSION STABILIZATION

THIS CONTRACT, by and between THE CITY OF NORTH LITTLE ROCK, ("City"), acting herein through its Mayor, Joe A. Smith, and Gene Summers Construction, LLC ("Contractor"), is effective on the date signed by the City.

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

ARTICLE 1. SCOPE OF WORK

1.01 The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Project involves the following:

Stabilization of approximately 150 feet of the embankment along the Arkansas River, which is part of the North Little Rock River Trail System. Project involves mobilization and demobilization, temporary storage of riprap material, debris removal as needed (Vegetation, timber and asphalt), shaping of the existing embankment to receive riprap, placement of filter fabric, installation of graded riprap, & site clean-up.

The Work includes all labor, materials, equipment, supplies, and incidental items necessary to complete the project in conformance with the plans and specifications as more fully set forth in the Contract Documents (the "Project"). All Contract Documents, including Plans and Specifications, are included in the Project Manual, attached hereto as Exhibit "A," which is incorporated by reference as though fully set forth herein.

ARTICLE 2. CONTRACT DOCUMENTS

2.01 The Contract Documents shall consist of:

- .1 The fully executed Contract; which incorporates by reference documents (.2) thru (.10)
- .2 The entire Bid Documents dated: August 12, 2020;
- .3 The Contractor's Bid dated August 12, 2020, all of which documents are incorporated herein;

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- .4 EJCDC Standard General Conditions, as modified;
- .5 Supplementary General Conditions;
- .6 Performance and Payment Bond;
- .7 Proof of Insurance Coverage, including Workers' Compensation Insurance;

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

- .8 Written Amendments;
- .9 Work Change Directives;
- .10 Change Order(s).

2.02 The Contract Documents may only be amended, modified, or supplemented as provided in Article 11 of the Standard General Conditions of the Construction Contract, as modified and identified in the Supplementary General Conditions, if applicable.

ARTICLE 3. CONTRACT PRICE

3.01 Contractor hereby agrees with the City to commence and complete the Work for the sum of Fifty five thousand one hundred fifteen and 00/100 (\$55,115.00) and any additional services in connection therewith, under the terms stated in the standard General Requirements, as modified and identified in the EJCDC Standard General Conditions, if applicable.

3.02 Further, in accordance with the Contract Documents, 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 Documents and General Conditions, as modified, 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.

3.03 The City agrees to pay the Contractor in current funds for the Project performed under the Contract, subject to additions and deductions, as provided in the EJCDC Standard General Conditions, as modified.

ARTICLE 4 ENGINEER

4.01 The Project will be coordinated by:

City of North Little Rock Engineering Department

D. Chris Wilbourn, Chief City Engineer

Who is hereinafter called ENGINEER and who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the

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Contract Documents 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 Contractor 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 on a **MUTUALLY AGREEABLE SCHEDULE** with the Chief City Engineer. Contractor further agrees to pay, as liquidated damages, the sum of **\$250.00** for each consecutive calendar day thereafter as hereinafter provided.

ARTICLE 6 PAYMENT PROCEDURES

6.01 Contractor shall submit Applications for Payment in accordance with Article 15 of the EJCDC Standard General Conditions of the Construction Contract, as modified. Applications for Payment will be processed by ENGINEER as provided in the EJCDC Standard General Conditions of the Construction Contract, as modified.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

7.01 In order to induce Owner to enter into this Agreement CONTRACTOR makes the following representations:

.1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

.2 Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

.3 Contractor is familiar with and is satisfied as to all federal, state and local laws, regulations, and ordinances that may affect cost, progress, and performance of the Work. All Work shall be completed in accordance with all applicable federal, state, and local laws, regulations, and ordinances.

.4 Contractor has carefully studied all: (1) drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities), if applicable, which have been provided as described in paragraph 5.03 of the EJCDC Standard General Conditions of the Construction Contract, as modified and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the General Conditions, if applicable, as provided in paragraph 5.06 of the EJCDC Standard General Conditions of the Construction Contract, as modified.

.5 Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means methods, techniques, sequences, and procedures

of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.

.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

.7 Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

.8 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

.9 Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

.10 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

.11 The Contractor further represents and warrants that:

a. 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.

ARTICLE 8 CHANGE ORDERS

8.01 The Contractor and the Owner agree and acknowledge as a part of this Contract that no change order, as defined in Section 1.01.A.8 of the General Conditions of the Construction Contract, as modified, or other form or order or directive is authorized without written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made, and without the change order being signed by the Owner and the Contractor. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this Contract.

ARTICLE 9 SUSPENSION OF WORK AND TERMINATION

9.01 Suspension of Work and Termination of this Contract will be in accordance with Article 16 of the EJCDC Standard General Conditions of the Construction Contract, as modified.

9.02 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 the budget or other means of appropriation for any such year fails to provide 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 Contractor shall, at Contractor's sole cost and expense, procure and maintain for the duration of this Contract proper and complete liability insurance in the amount of \$1,000,000, and Workers Compensation Insurance in accordance with the laws of the State of Arkansas. The City shall not be responsible in case of accident.

10.02 Contractor shall provide a Performance Bond equaling the total amount of the bid, (pursuant to Ark. Code Ann. §§ 18-44-503 and 22-9-401. Additionally, the Contractor shall provide a Maintenance Bond, equaling 50% of the Street Improvements within the Right-of-Way (ROW) for a period of two (2) years.

ARTICLE 11 INDEMNIFICATION

11.01 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 determined by a court of competent jurisdiction to have been caused by the gross negligence or misconduct of 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 Contractor is not a waiver of the City's tort of immunity.

ARTICLE 12 DISPUTE RESOLUTION

12.01 Dispute resolution shall be in accordance with the process set forth in the standard General Conditions of the Construction Contract, as modified.

ARTICLE 13 MISCELLANEOUS

13.01 *Terms.* Terms used in this Agreement will have the meanings indicated in the standard General Conditions of the Construction Contract, as modified.

13.02 Restrictions on Public Improvement Contracts

.1 In accordance with the Bid Documents, all bid documents related to public improvements exceeding \$75,000 in value must include a statement that encourages participation of small, minority, and women's business enterprises.

.2 Contractor, in accordance with Ark. Code Ann. §§ 18-44-503 and 22-9-401, must furnish a surety bond in an amount equal to the contract price.

.3 In accordance with Ark. Code Ann. § 22-9-601, et seq., Contractor is subject to the retainage provisions which allows the City to retain five percent (5%) of payments until final project completion.

.4 Contractor acknowledges that a public right-of-way is an easement used for ingress and egress to property. These easements are held by the City for the benefit of the public at large. As part of any public improvement contract performed in or about public rights-of-way, the City requires and Contractor agrees that such rights-of-way will be repaired, to the extent possible, to the condition prior to the performance of work.

13.03 *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.

13.04 *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.

13.05 *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.

13.06 *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.

13.07 *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.

13.08 *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.

13.09 *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.

13.10 *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.

13.11 *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.

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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
Joe A. Smith, Mayor
9/1/2020
Date

Contractor
By: Robert Summer
[Name & Title] Robert Summer, President
8/13/20
Date

ATTEST:
Diane Whitbey
Diane Whitbey, City Clerk
9/1/2020

Contract reviewed and approved as to form by:

Amy Beckman Fields
North Little Rock City Attorney

BY Amy Beckman Fields Date 8-20-2020
City Attorney