

LETTER OF AGREEMENT

BETWEEN:

The OWNER:

Lubbock County

PO Box 10536

Lubbock, Texas 79408

The CONTRACTOR:

ABF Roofing and Foam Inc.

702 Woodrow Road

Lubbock, TX 79423

The PROJECT:

Slaton Clubhouse Re-Roof

The ARCHITECT:

JSA Architects, Inc.

1314 Avenue Q

Lubbock, TX 79401

Parties Agree to the Following:

1. The Agreement consists of this Agreement, Bid Documents, Project Manual Job Specifications, Drawings, and Addendums, all known as the Contract Documents, issued prior to execution of this Agreement.
2. The Work shall be the re-roof of the Slaton Clubhouse in accordance with the Contract Documents.
3. Contract Sum: The Owner shall pay the Contractor the sum of \$62,296.00 for the complete performance of the Work subject to additions and deductions as provided for in the Contract Documents and as awarded in Commissioners Court on December 27, 2021.

4. Commencement of work shall be established by the Notice to Proceed. The date of Substantial Completion shall be Forty-Five (45) calendar days from the date established on the Notice to Proceed. The Substantial Completion date is subject to adjustments in accordance with the Project Specifications.

5. Failure of the Contractor to achieve substantial completion by the specified date will subject the Contractor to Liquidated Damages of \$500.00 per calendar day until date of Substantial Completion is achieved.

6. Substantial Completion: The work will be deemed substantially complete when the work (or a specified portion thereof) has progressed to the point where, in the opinion of the Owner or Owner's Representative, the work (or a specified portion thereof) is sufficiently complete, in accordance with all the contract documents, including the Proposal and all applicable technical specifications, so that the work (or a specified portion thereof) can be utilized for the purposes for which it is intended without unscheduled disruption.

7. Payments: Based upon the Application for Payment submitted to the Architect by the Contractor and the approved Application for Payment forwarded by the Architect to the Owner, the Owner shall make progress payments to the Contractor as provided below and in the Contract Documents.

a. The period of the Application for Payment shall be for a period of one month as of the 25th of each month.

b. Provided that the approved Application for Payment was received by the Architect by the 30th of each month, the Owner shall make payment to the Contractor no later than 30 days after the Architect receives the Application for Payment.

c. Each Application for Payment will be based on the most recent Schedule of Values submitted by the Contractor. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work. The Application of Payment shall show the percentage of completion of each portion of Work as of the end of the 25th day of each month.

d. Each Application for Payment shall be accompanied by a Conditional Release of Lien signed by all Subcontractor(s)/Supplier(s) covered by the request. The Conditional Release of Lien shall state that the Subcontractor has received payment for all work/material included in the previous Application for Payment. The Application for Payment will not be processed for payment without the Conditional Release of Lien attached from each Subcontractor/Supplier.

Any partial payment made hereunder shall not constitute a waiver by the Owner of any and all other rights to enforce the express terms of the contract documents, and

all remedies provided therein, as to any and all work performed, to be performed and/or materials delivered hereunder, including, but limited to, work to which said partial payment is attributable.

8. Retainage: The Owner shall retain five percent (5%) of the amount of each Application for Payment until completion of all Work related to the Project including all punch list items and submission of close out documents.

Owner may, in its sole discretion, release all or a portion of the Retainage for substantially completed portions of the project or fully completed and accepted portions of the project.

Notwithstanding the foregoing, Owner may withhold the Retainage if there is a bona fide dispute between Owner and Contractor according to section 2252.032(f) of the Texas Government Code.

9. The Owner's Representative:

Natalie Y. Harvill, P.E.
Director of Facilities
PO Box 10536
Lubbock, TX 79408

10. The Contractor's Representative:

Robert Proffitt
President
P.O. Box 64684
Lubbock, TX 79464

702 Woodrow Road
Lubbock, TX 79423

11. Neither the Owner's nor the Contractor's Representative shall be changed without ten (10) days written notice to the other party.

12. The Drawings, Specifications, and Addendums to the Lubbock County Project number ITB 221102 are binding parts of this Agreement.

13. Insurance and Bonds: The Contractor shall purchase and maintain, at no additional cost to the Owner, insurance and provide bonds as required by State Law and the Contract Documents.

14. SUBCONTRACTOR: The term Subcontractor, includes only those companies or individuals having a direct contract with the Contractor for performance of work on the project contemplated by these contract documents. Owner shall have no responsibility to any Subcontractor employed by Contractor for performance of work on the project contemplated by these contract documents, but said Subcontractors will look exclusively to Contractor for any payments due Subcontractor. The County reserves the

right to approve or disapprove the selection of any subcontractor(s).

15. Mediation: Except to the extent that a party to this Agreement seeks emergency judicial relief, the parties agree to negotiate in good faith in an effort to resolve any disputes related to this Agreement that may arise, no matter when the dispute arises. If a dispute cannot be resolved by negotiation, the dispute shall be mediated between the parties prior to resort to litigation. The parties may choose a mutually acceptable mediator to mediate the dispute, and the parties shall pay the costs of mediation services equally.

16. Prohibition to Contract With Certain Companies: Contractor must be in compliance with the provisions of §2252.152 and §2252.153 of the Texas Government Code, which states in part, contracts with companies engaged in business with Iran, Sudan, or Foreign Terrorist Organizations are prohibited. A governmental entity may not enter into a contract with any company listed on the Comptroller of the State of Texas website identified under Section 806.051, Section 807.051 or Section 2252.153, which do business with Iran, Sudan or any Foreign Terrorist Organization. By entering into this Agreement, CONTRACTOR verifies to OWNER that it is not on any such list.

17. Israel Statement: Consistent with Texas Government Code § 2271.002 (effective September 1, 2019), Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this agreement. The term "boycott Israel" is defined by § 808.001 of the Texas Government Code. Section 2271.002 of the Government Code only applies to a contract that is between a governmental entity and a company with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. The term "company" is defined by §§ 808.001 and 2271.001 of the Texas Government Code.

18. Severability: If any provision hereof or the application thereof to any person or circumstance is held to any extent, to be void, invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

19. Venue and Governing Law: The construction, interpretation, and performance of this Agreement and all transactions under it shall be governed by the domestic laws of the State of Texas and any suit regarding this Agreement must be filed in the District Courts of Lubbock County, Texas.

20. Independent Contractor. Contractor acknowledges that it is engaged as an independent contractor and that Owner has no responsibility to provide Contractor or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Contractor is not, and will not claim to be, an officer,

partner, employee or agent of Owner and shall not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Contractor hereby agrees to make Contractor's own arrangements for any of such benefits as Contractor may desire and agrees that Contractor is responsible for all income taxes required by applicable law.

21. Franchise Tax Certification. If Contractor is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Contractor certifies that it is not currently delinquent in the payment of any franchise taxes or that Contractor is exempt from the payment of franchise taxes.

22. Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for Owner, which is not generally known to the public, will be confidential, subject, however, to the Owner's obligations under the Texas Public Information Act. Contractor will not, beginning on the date of first association or communication between Owner and Contractor and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Agreement, Contractor will not make any press releases, public statements, or advertisement referring to the engagement of Contractor as an independent contractor of Owner in connection with the Project. Contractor will obtain agreements similar to those contained in this Paragraph from persons, vendors and consultants retained by Contractor. Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause Owner irreparable injury and damage. Contractor, therefore, expressly agrees that Owner will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this agreement. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict Contractor from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Contractor to defend itself from any suit or claim.

23. Funding. It is expressly understood and agreed that Owner has available the total maximum sum of funds hereinafter certified available by the County Auditor of Lubbock County for the purpose of satisfying Owner's obligations under the terms and provisions of this Agreement; that notwithstanding anything to the contrary, or that may be construed to the contrary, the liability of Owner as to payment under the terms and provisions of this Agreement is limited to this sum, plus additional amounts

of funds from time to time certified available pursuant to Sections 111.061 through 111.073 of the Local Government Code, as amended, for the purpose of satisfying Owner's obligations under the terms and provisions of this Agreement; and that when and if all the funds so certified are expended for the purpose of satisfying Owner's obligations under the terms and provisions of this Agreement, the sole and exclusive remedy of Contractor is to terminate this Agreement

Funds for payment have been provided through the Lubbock County budget approved by the Commissioners Court for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise beyond the end of the current Lubbock County fiscal year shall be subject to budget approval. All payments due hereunder shall be made from revenues currently available to Lubbock County.

24. Non-Waiver Provisions. Owner expressly acknowledges that Owner is a political subdivision of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Owner of its right to claim such exemptions, privileges, and immunities as may be provided by law.

This Agreement approved by the Lubbock County Commissioner's Court on the 14th Day of February 2022.

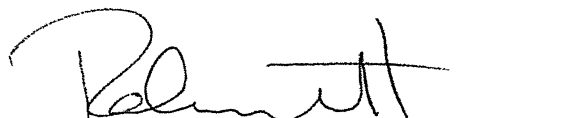
LUBBOCK COUNTY:



Curtis Parrish
County Judge

Date Signed : February 14, 2022

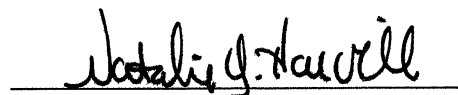
ABF ROOFING AND FOAM INC.:



Robert Proffitt
President

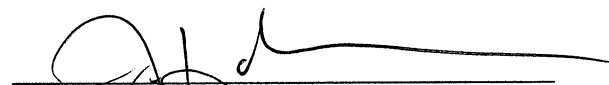
Date Signed : 1-19-2022

APPROVED AS TO CONTENT:



Natalie Y. Harvill, P.E.
Director of Facilities

REVIEWED FOR FORM ONLY:



Jennifer Irbeck
Civil Division
Criminal District Attorney's Office