

AGREEMENT NO. 2018-XX

THIS CONTRACT AND AGREEMENT, made and entered into this ____ day of _____, 2017, by and between the City of Desert Hot Springs, County of Riverside, State of California, (hereinafter referred to as the "AGENCY"), acting through its duly authorized representatives, and

CONTRACTOR'S NAME _____
STREET ADDRESS _____
CITY _____, CALIFORNIA, ZIP _____

WITNESSETH:

WHEREAS, by minute action of the City Council of said City, the Contractor was duly awarded the Contract for the work or improvement hereinafter mentioned.

NOW, THEREFORE, the Contractor for the consideration hereinafter mentioned, promises and agrees with said City that he will faithfully do and perform, or cause to be faithfully done and performed, in a good and workmanlike manner, under the supervision of and to the satisfaction of the City Engineer, all said work or improvement described as follows:

**New City Hall Parking Lot Improvements
City Project No. 2017-20**

IN THE CITY OF DESERT HOT SPRINGS

(hereinafter referred to as the "Project")

The Contractor further promises and agrees that he will faithfully do and perform, or cause to be faithfully done and performed, said work and that the work shall be done strictly in accordance with the Plans and Specifications are hereby expressly made a part of this Contract as though fully set forth herein, and the Contractor further agrees that it will, at its own cost and expense, furnish all necessary materials and labor for doing and performing said work, and that the materials used therein shall comply with the Specifications and be to the satisfaction of said Engineer and that it will, within the time hereinafter fixed, complete said work and turn the same over to said AGENCY, complete and ready for use, and free and clear, and discharged from all claims and demands whatsoever for, or on account of, any and all materials, equipment, and labor used or furnished to be used in said work. Insurance requirements shall be met and must include the AGENCY as an "additional insured."

Prior to being authorized to participate in the project, the contractor and all subcontractors shall be verified for eligibility through the General Services Administration's Excluded Parties Listing System *Consolidated List of Debarred, Suspended, and Ineligible Contractors*.

All sub-tier construction contracts resulting from this Contract Agreement must incorporate the same Federal provisions and requirements as the original Contract Agreement.

The Engineer of said AGENCY, acting in his official capacity, and not individually, hereby sets completion of all work per schedule set forth in the Notice Inviting Bids. The Contractor shall ensure that all materials required for the project will be available for the scheduled work. No additional working days will be allowed for material delay once the Contractor commences work. The Contractor shall notify the Engineer at least five (5) working days prior to the start of work.

The Contractor promises and agrees that upon the performance of the covenants aforesaid by the Contract, and upon the acceptance of the work to his satisfaction, the AGENCY will pay and the Contractor shall receive in full compensation therefore, the lump sum price, or if the bid is on the unit price basis, adjusted for the variation of quantities, the total price of the items furnished pursuant to the Specifications, as set forth in the Contractor's proposal heretofore filed by him and accepted by AGENCY, at the time and manner specified in the Contract documents.

Contractor agrees to indemnify, hold harmless, release and defend (even if the allegations are false, fraudulent or groundless), to the maximum extent permitted by law, the AGENCY, its City Council, the County of Riverside, its Board of Supervisors, and each member thereof, and its officers, employees, commission members and representatives, from any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part are claimed to result from or to arise out of the usage or operation, including the malfunctioning of, or, any injury caused by, any product purchased herein; or any acts, errors or omissions (including, without limitation, professional negligence) of Contractor, its employees, representatives, subcontractors, or agents in connection with the performance of this Contract. This agreement to indemnify includes, but is not limited to, personal injury (including death at any time) and damage to property (including, but without limitation, contract or tort or patent, copyright, trade secret or trademark infringement) sustained by any person or persons (including, but not limited to, companies, or corporations, Contractor and its employees or agents, and members of the general public).

In accepting this Contract, Contractor certifies that in the conduct of its business it does not deny the right of any individual to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age as provided in the California Fair Employment Practice Act (Government Code Sections 12900, et seq.) Contractor agrees that a finding by the State Fair Employment Practices Commission that Contractor has engaged during the term of this Contract in any unlawful employment practice shall be deemed a breach of this Contract and Contractor shall pay to City \$500.00 liquidated damages for each such breach committed under this contract.

The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Contractor records to the extent the City deems necessary to insure it is receiving all money to which it is entitled under the contract and/or is paying only the amounts to which Contractor is properly entitled under the Contract or for other purposes relating to the Contract.

The Contractor shall maintain and preserve all such records for a period of at least three years after termination of the contract.

The Contractor shall maintain all such records in the City of Desert Hot Springs. If not, the Contractor shall, upon request, promptly deliver the records to the City or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than at City offices including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

The Notice Inviting Sealed Bid Proposals the Instruction to Bidders, the Bid Proposal Form, the Specifications' General Provisions, Special Provisions, and the Drawings mentioned herein, and all addenda issued by the AGENCY with respect to the foregoing, prior to the opening of bid proposals are hereby incorporated in and made a part of this Agreement.

Remedies. Notwithstanding any other provision herein, and in addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement.
- b. Order Contractor to stop work under this Agreement and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- c. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to any other remedies City may have. The above remedies are not the exclusive remedies for Contractor's failure to maintain or secure appropriate policies or endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of work under this Agreement.

Termination Prior To Expiration Of Term. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Contractor. Upon receipt of any notice of termination, pursuant to this Section, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Contractor shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer.

Termination For Default of Consultant. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may take over work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated, and City may withhold any payments to Contractor for the purpose of setoff or partial payment of the amounts owed to the City.

Independent Contractor. It is understood and agreed that in the performance of this Agreement, Contractor (including its employees and agents) is acting in the capacity of an independent contractor, and not as an agent or employee of the AGENCY. Contractor has full control over the means and methods of performing said services and is solely responsible for its acts and omissions, including the acts and omissions of its employees and agents.

IN WITNESS WHEREOF: The Parties hereto have caused this Contract to be executed the day and year first above written.

CITY OF DESERT HOT SPRINGS, CALIFORNIA

Contractor

BY: _____
Charles Maynard, City Manager

Company Official

ATTEST:

Jerryl Soriano, City Clerk, CMC

AFFIDAVIT FOR CO-PARTNERSHIP FIRM

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

_____, being first duly sworn,
deposes and says:

That he is a member of the co-partnership firm designated as

which is the party making the foregoing bid proposal; that such bid proposal is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any other bidder or person to put in a sham bid proposal or that such other person shall refrain from bidding; and has not in any manner sought by collusion to secure any advantage against the City of Desert Hot Springs or any person interested in the proposed contract, for himself or for any other person.

That he has been and is duly vested with authority to make and sign instruments for the co-partnership by

who constitute the other members of the co-partnership.

Signature

Subscribed and sworn (affirmed)
to before me this

____ day of _____, 20____

Signature of Officer Administering Oath
(NOTARY PUBLIC)

AFFIDAVIT FOR CORPORATION BIDDER

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

_____, being first duly sworn,
deposes and says:

That he is _____ of,

a corporation which is the party making the foregoing bid proposal; that such bid proposal is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any other bidder or person to put in a sham bid proposal or that such other person shall refrain from bidding; and has not in any manner sought by collusion to secure any advantage against the City of Desert Hot Springs or any person interested in the proposed contract, for himself or for any other person.

Signature

Subscribed and sworn (affirmed)
to before me this

_____ day of _____, 20____

Signature of Officer Administering Oath
(NOTARY PUBLIC)

AFFIDAVIT FOR INDIVIDUAL BIDDER

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

_____, being first duly sworn,
deposes and says:

That he is the party making the foregoing bid proposal; that such bid proposal is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any other bidder or person to put in a sham bid proposal or that such other person shall refrain from bidding; and has not in any manner sought by collusion to secure any advantage against the City of Desert Hot Springs or any person interested in the proposed contract, for himself or for any other person.

Signature

Subscribed and sworn (affirmed)
to before me this

_____ day of _____, 20____

Signature of Officer Administering Oath
(NOTARY PUBLIC)

AFFIDAVIT FOR JOINT VENTURE

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

_____, being first duly sworn,
deposes and says:

That he is _____ of,

_____,
one of the parties submitting the foregoing bid proposal as a joint venture and that he has been
and is duly vested with the authority to make and sign instruments for and on behalf of the
parties making said bid proposal who are:

_____;

that such bid proposal is genuine and not collusive or sham; that said bidder has not colluded,
conspired, connived or agreed, directly or indirectly, with any other bidder or person to put in a
sham bid proposal or that such other person shall refrain from bidding; and has not in any
manner sought by collusion to secure any advantage against the City of Desert Hot Springs or
any person interested in the proposed contract, for himself or for any other person.

Signature

Subscribed and sworn
to before me this

_____ day of _____, 20____

Signature of Officer Administering Oath
(NOTARY PUBLIC)

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, THAT WE _____

hereinafter referred to as "Contractor" as PRINCIPAL, and _____

as SURETY, are held and firmly bound unto the CITY OF DESERT HOT SPRINGS, CALIFORNIA hereinafter referred to as the "AGENCY", in the sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum, will and truly to be made, we bind ourselves, jointly and several firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that whereas, said contract has been awarded and is about to enter into the annexed contract with said AGENCY for consideration of the work under the specification entitled **New City Hall Underground Utility Relocation Vault and Conduit Installation, City Project No. 2017-04** and is required by said AGENCY to give this bond in connection with the execution of said contract.

NOW, THEREFORE, if said Contractor shall well and truly do and perform all the covenants and obligations of said contract on his part to be done and performed at the time and in the manner specified herein; this obligation shall be null and void; otherwise it shall be and in full force and effect;

PROVIDED, that any alterations in the work to be done, or the materials to be furnished, which may be made pursuant to the terms of said contract shall not in any way release said Contractor or the Surety thereunder nor shall any extension of item granted under the provisions of said contract release either said Contractor or said Surety and notice of such alterations or extensions of the contract is hereby waived by such Surety.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this

_____ day of _____, 20____.

PRINCIPAL

SURETY

BY: _____

BY: _____

(SEAL)

(SEAL)

LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS, THAT WE _____

hereinafter referred to as "Contractor" as PRINCIPAL, AND _____

as SURETY, are held and firmly bound unto the CITY OF DESERT HOT SPRINGS, CALIFORNIA hereinafter referred to as the "AGENCY," in the sum of _____

_____ Dollars (\$ _____) lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, jointly and several firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that whereas, said Contract has been awarded and is about to enter into the annexed contract with said AGENCY for construction of the work under the AGENCY's specification entitled **New City Hall Underground Utility Relocation Vault and Conduit Installation, City Project No. 2017-04**, and is required by said City to give this bond in connection with the execution of said contract;

NOW, THEREFORE, if said Contractor in said contract, or subcontractor, fails to pay for any materials, provisions, provender or other supplies, or for the use of implements or machinery, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, said Surety will pay for the same in an amount not exceeding the sum specified above, and also in case suit is brought upon this bond, a reasonable attorney's fee, to be fined by the court. This bond shall immure to the benefit of any and all persons entitled to file claims under Section 1192.1 of the Code of Civil Procedure of the State of California.

PROVIDED, that any alterations in the work to be done, or the material to be furnished, which may be made pursuant to the terms of said contract, shall not in any way release either said Contractor or said Surety thereunder nor shall any extensions of time granted under the provisions of said contract release either said Contractor or said Surety, and notice of such alterations or extensions of the contract is hereby waived by said Surety.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this

_____ day of _____, 20____.

PRINCIPAL

SURETY

BY: _____

BY: _____

(SEAL)

(SEAL)