

**PUBLIC WORKS CONSTRUCTION AGREEMENT  
BY AND BETWEEN  
THE CITY OF DESERT HOT SPRINGS  
AND  
ROBERT CLAPPER CONSTRUCTION SERVICES INC**

THIS PUBLIC WORKS CONSTRUCTION AGREEMENT ("Agreement") is made and entered into this 19 day of March, 2019, by and between the City of Desert Hot Springs, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as "City," and Robert Clapper Construction services Inc, a Corporation, hereinafter referred to as "Contractor."

**RECITALS**

**WHEREAS**, the City desires to retain Contractor, on an independent contractor basis, to perform the construction of the City of Desert Hot Springs New City Hall Project No 2019-03 as more particularly described below; and

**WHEREAS**, Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

**NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND RELEASES CONTAINED HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:**

**AGREEMENT**

**1. Incorporation by Reference**

The foregoing recitals are hereby expressly made a part of this Agreement as though fully set forth herein.

**2. Project Information.**

- Location: The City of Desert Hot Springs New City Hall Project is located at 11999 Palm Drive as depicted in Contractor's proposal dated March 5, 2019, from approved Plans dated January 24, 2019, and Specifications dated January 27, 2019, and attached hereto and incorporated herein as Exhibit "A" ("Scope of Services" or sometimes "Project"). In the event any conflict exists between this

Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

- Project description, including significant materials to be used and equipment to be installed: The construction of the City of Desert Hot Springs New City Hall Project No 2019-03, in the City of Desert Hot Springs, California, as set forth in the Scope of Services. In the event any conflict exists between this Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.
- License classification applicable to Project: 716719 - B, C-8
- Approximate start date: April 8, 2019
- Approximate completion date: January 8, 2020
- Substantial completion of work evidenced by: Inspection and approval by City Staff.
- It is expressly agreed that except for extensions of time duly granted by the City, in writing, time shall be of the essence.
- The parties agree that the approved Plans dated January 24, 2019, and Specifications dated January 27, 2019, and standards, and procedures set forth in the 2018 Greenbook: Standard Specifications for Public Works Construction ("Greenbook") shall govern the completion of the Project, and to such extent the Greenbook is incorporated herein by this reference; provided, however, in the event any conflict exists between this Agreement and the Greenbook, this Agreement shall supersede unless otherwise required by law.

### **3. Contractor Information**

- Name: Robert Clapper Construction Services Inc
- Address: 2223 N Locust Ave Rialto CA 92377
- License Number: 716719 - B, C-8

### **4. Insurance**

a. Throughout the life of this Agreement, Contractor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City Manager or his/her

designee at any time and in his/her sole discretion. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

\$5,000,000 per occurrence for bodily injury and property damage  
\$1,000,000 per occurrence for personal and advertising injury  
\$10,000,000 aggregate for products and completed operations  
\$10,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease for each employee.

(v) BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. **(Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.)**

(vi) CONTRACTORS POLLUTION LIABILITY **(Unless waived in writing by the City Manager or his/her designee in his/her sole discretion, Contractors Pollution Liability is required for all environmental and water remediation work and for all work transporting fuel. Unless waived in writing by the City Manager or his/her designee in his/her sole discretion, Contractors Pollution Liability is also required for demolition, renovation, HVAC, plumbing or electrical (including, without limitation, lighting) work on any structure built prior to the year 1990.)** Insurance with limits of liability

of not less than the following:

\$5,000,000 per occurrence or claim

\$10,000,000 general or policy aggregate

b. In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

c. Should this Agreement involve any lead based, mold or asbestos environmental hazard, either the Automobile Liability insurance policy or the Contractors Pollution Liability insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by Contractor pursuant to the Agreement.

d. In the event this Agreement involves any lead-based environmental hazard (e.g., lead based paint), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event this Agreement involves any asbestos environmental hazard (e.g., asbestos remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event this Agreement involves any mold environmental hazard (e.g., mold remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.

e. Contractor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Contractor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee in his/her sole discretion. At the option of the City Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees and agents; or (ii) Contractor shall provide a financial guarantee, satisfactory to the City Manager or his/her designee in his/her sole discretion, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

f. All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish City with a new certificate and

applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

g. The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The Contractors Pollution Liability insurance policy shall be written on either an occurrence form, or a claims-made form. The General Liability (including ongoing operations and products/completed operations), Automobile Liability and Contractors Pollution Liability insurance policies shall name City, its officers, officials, employees and agents as an additional insured. All such policies of insurance shall be endorsed so Contractor's insurance shall be primary and no contribution shall be required of City, its officers, officials, employees and agents. The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the City as a loss payee. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, employees and agents. The coverage(s) shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees and agents. Should Contractor maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

h. **Claims-Made Policies** - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Contractor.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to City for review.
- (v) These requirements shall survive expiration or termination of the

Agreement.

i. Contractor shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee in his/her sole discretion prior to City's execution of the Agreement and before work commences.** Upon request of City, Contractor shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

j. If at any time during the life of the Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Contractor of its responsibilities under this Agreement.

k. The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

l. In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Agreement and the final acceptance by the City of the work or materials to be performed or supplied thereunder, the Contractor shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the Contractor or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Agreement.

m. If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor shall require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees and agents in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Contractor and City prior to the commencement of any work by the subcontractor.

## **6. Security**

a. Contractor shall, concurrently with the execution hereof and to the extent not already completed, furnish a payment bond at no expense to the City, in substantially the same form as that attached hereto and made part hereof as Exhibit "B," in an amount equal to **FIVE MILLION EIGHTY EIGHT THOUSAND DOLLARS and No Cents (\$5,088,000)**, as security of the payment of all persons performing labor and furnishing materials in connection with this Agreement. To be acceptable, the surety company must be authorized to do business and have an agent for service of process in California, be on the accredited list of the United States Treasury Department, and have an "A" policyholder's rating and a financial rating of Class V, or better, in accordance with the current Best's Rating.

b. Contractor shall, concurrently with the execution hereof and to the extent not already completed, furnish a performance bond at no expense to the City, in substantially the same form as that attached hereto and made part hereof as Exhibit "C," or deposit an amount with the City equal to **FIVE MILLION EIGHTY EIGHT THOUSAND DOLLARS and No Cents (\$5,088,000)**, as security for the faithful performance of this Agreement. To be acceptable, the surety company must be authorized to do business and have an agent for service of process in California, be on the accredited list of the United States Treasury Department, and have an "A" policyholder's rating and a financial rating of Class V, or better, in accordance with the current Best's Rating.

c. The surety on any and all bonds and the form thereof shall be satisfactory to the City Attorney.

d. The payment bond shall remain in force and shall not be released until at least seven (7) months after the date of recordation of the Notice of Completion or Notice of Acceptance, whichever occurs first. The performance bond shall remain in force until at least (1) year after the date of final acceptance of the Project, unless the City determines, in its sole and absolute discretion, to release the Performance Bond earlier and notifies Contractor of the same in writing.

## **7. Compensation; Payments**

a. Contractor shall be paid compensation not to exceed **FIVE MILLION EIGHTY EIGHT THOUSAND DOLLARS and No Cents (\$5,088,000)** for the services

rendered by Contractor pursuant to this Agreement, including profit, labor and materials, in accordance with the Scope of Services.

b. Contractor shall invoice the City for the performance of the services under this Agreement in the amount agreed upon by the parties herein. Subject to the retention provisions below, Contractor shall be paid the amount specified in the invoice within 30 days of receipt by the City, provided that the services reflected in the invoice were performed to the reasonable satisfaction of the City in accordance with the terms of this Agreement.

c. Pursuant to Public Contract Code Section 9203, the City shall retain no less than five percent of the compensation to be paid to Contractor which shall be released to the Contractor no later than sixty (60) days from the date of the City's acceptance of the work pursuant to this Agreement.

## **8. Substitution of Securities**

a. In conformance with the State of California Public Contract Code, Part 5, Section 22300, Contractor may substitute securities for any monies withheld by the City to ensure performance under this Agreement.

b. At the request and expense of Contractor, Contractor has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for Contractor's direct deposit of securities as a substitute for retention earnings required to be withheld by the City. Upon Contractor's completion of its obligations hereunder, as evidenced by the City's acceptance of the work pursuant to Section 13 hereof, the escrow agent shall return the securities to Contractor. The escrow agent shall notify the City within ten (10) days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the City and shall designate Contractor as the beneficial owner. Alternatively, on written request of Contractor, the City shall make payments of the retention earnings directly to the escrow account.

## **9. Extra Work and Change Orders**

Extra work and change orders shall become a part of this Agreement once the extra work or change order is approved in writing and signed by the City and Contractor, prior to the commencement of any extra work or change in work covered by the change order. The City's form change order shall be used for both extra work and a change in work. The change order must describe the scope of the extra work or change in work, and the cost to be added or subtracted from this Agreement. The City shall not require Contractor to perform any extra work or a change in work without written authorization. A change order shall not be enforceable against the City unless the change order

complies with this provision.

**10. Term**

Contractor will perform the services set forth in the Scope of Services and in any approved change orders pursuant to section 9 of this Agreement, the term of which shall commence as of March 19, 2019, and shall expire one year following the City's acceptance of the work pursuant to this Agreement, or upon release of the Performance Bond in accordance with Section 6.d. of this Agreement, whichever occurs first.

**11. Independent Contractor**

Contractor shall at all times during the term of this Agreement perform the services described in this Agreement as an independent contractor, and hereby waives any claims for any compensation or benefits afforded to City employees and not to independent contractors.

**12. Civil Code Section 1542 Waiver**

a. Contractor expressly waives any and all rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code which reads as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

b. This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind that are known or unknown, or suspected or unsuspected, including, without limitation, claims of entitlements under the California Public Employees' Retirement System (CalPERS) that are only afforded to employees and not independent contractors. Contractor further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

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Initials

**13. Acceptance of Work**

Acceptance of the Project shall be by action of the City Council or its designee. Neither the acceptance nor prior inspections or failure to inspect shall constitute a waiver by the City of any defects in the Project. From and after acceptance, the Project

shall be owned and operated by the City. As a condition to acceptance, Contractor shall certify to the City in writing that all of the Project performance has been performed in strict conformity with this Agreement and that all costs have been paid, satisfactory to the City, guaranteeing such performance.

#### **14. Warranty**

a. In addition to Contractor's other obligations under this Agreement, Contractor warrants all work and materials to be of good quality and fit for the purpose and intended use, for a duration that shall continue until expiration of the term of this Agreement as described in Section 10, or the longest period permitted by law, whichever is later. If any defects in materials or workmanship become evident prior to expiration of the warranty granted in this Section, the Contractor shall, at its own expense, make any repair(s) or replacement(s) necessary to restore the work to full compliance with the this Agreement. Contractor shall also repair, replace and restore any other work which is displaced in correcting defective work as well as other portions of the work which the City by reason of such defects reasonably suspects may also be defective. In the event of a failure to commence with the compliance of above-mentioned conditions within seven (7) calendar days after being notified in writing or failure to diligently pursue such compliance to completion, the City is hereby authorized to proceed to have the defects repaired and made good at the expense of Contractor who hereby agrees to pay the cost and charges therefor immediately on demand.

b. If, in the opinion of the City, nonconforming work creates a dangerous condition or requires immediate correction or repair to prevent further loss to the City or to prevent interruption of operations, the City shall attempt to give the Contractor notice. If Contractor cannot be contacted or does not comply with the City's request for correction within a reasonable time as determined by the City, the City may proceed to make such correction or provide such repair. The costs of such correction or repair shall be charged against Contractor, who agrees to make payment for said costs upon demand. Corrective action by the City will not relieve Contractor or Contractor's sureties or insurers of the guarantees and indemnities of this Agreement.

c. This section does not in any way limit the City's remedies available under the law, or the guarantee or warranty on any items for which a longer guarantee is specified or on any items for which a manufacturer or supplier gives a longer guarantee or warranty period. Contractor agrees to act as a co-guarantor with such manufacturer or supplier and shall furnish the City all appropriate guarantees or warranty certificates upon completion of the Project. No manufacturer's guarantee period shall in any way limit the liability of Contractor or Contractor's sureties and insurers under the indemnity or insurance provisions of this Agreement.

#### **15. Indemnification**

a. To the furthest extent allowed by law, including California Civil Code section 2782, Contractor shall indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

b. If Contractor should subcontract all or any portion of the work to be performed under this Agreement, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

c. The City does not, and shall not, waive any rights that it may have against Contractor under this Section because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless, indemnification and duty to defend provisions of this Section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein.

d. Notwithstanding the foregoing provisions of this Section, Contractor shall not be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or the failure of the City to furnish timely information or to approve or disapprove Contractor's work promptly, or by reason of delay or faulty performance by the City, construction contractors, or governmental agencies, or by reason of any other delays beyond Contractor's control, or for which Contractor is without fault.

e. This section shall survive termination or expiration of this Agreement.

## **16. Default**

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than fifteen days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

## **17. Licenses, Certifications and Permits**

Contractor represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement.

## **18. Labor Laws, Prevailing Wages**

a. All work or services performed within the State of California pursuant to this Agreement by Contractor, Contractor's employees and independent contractors, or Contractor's subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any other person not lawfully permitted to perform said work or services in the State of California or the United States of America.

b. Contractor represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, denial of family and medical care leave, religious creed (including religious dress and grooming practices), color; national origin (including language use restrictions), ancestry, physical disability or mental disability (including HIV and Aids), medical condition (cancer and genetic characteristics), genetic information, military or veteran status, marital status, gender, gender identity, gender expression, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), age or sexual orientation. Unless otherwise permitted under the law, Contractor shall not refuse to hire or employ

any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

c. Contractor and all of Contractor's subcontractors, if any, shall pay each employee engaged in all applicable trades or occupation not less than the prevailing hourly wage rate for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In accordance with the provisions of Section 1770 of the California Labor Code ("Labor Code"), the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code Section 1773.8, apprenticeship or other training programs authorized by Labor Code Section 3093 and similar purposes applicable to the work to be done. Said wages are available through the California Department of Industrial Relations' Internet website at <http://www.dir.ca.gov/dlsr/PWD/index.htm> and are on file at City Hall, as provided in Section 1773.2 of the Labor Code. Said rates shall be posted at the Project site where work is to be performed, in accordance with Labor Code Section 1773.2. Contractor shall access a copy of the wage rate determination and shall make all subcontractors, if any, aware of the determination. As the wage determination for each craft reflects an expiration date, it shall be the Contractor's responsibility to ensure that the prevailing wage rates of concern are current and paid. Subject to the safe harbor provisions of Labor Code Section 1775, Contractor shall forfeit to the City an amount not to exceed two hundred dollars (\$200) for each calendar day or portion thereof, as set by the Labor Commissioner in accordance with the terms of Labor Code section 1775, for each laborer, workmen or mechanics employed that is paid less than the general prevailing rate of wages herein referred to and stipulated for any work done under the proposed contract, by him, or by any subcontractor under him, in violation of the provisions of the Labor Code, and in particular, Sections 1770 to 1781 inclusive. Contractor and any and all or its subcontractors shall forfeit to the City twenty-five dollars (\$25) for each worker employed in the performance of this Agreement for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Section 1813 of the Labor Code. In the event the total cost of the Project is thirty thousand dollars (\$30,000.00) or more, Contractor shall further comply with provisions set forth in Labor Code Section 1777.5 pertaining to employment of properly registered apprentices, including without limitation the obligation to (i) pay employed apprentices the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of craft or trade to which he or she is registered; (ii) employ apprentices in at least the ratio as set forth in said section; (iii) submit contract award information to an applicable apprenticeship program; and (iv) contribute to California Apprenticeship Council.

d. Contractor and all subcontractors hired to perform any work under the Project shall keep accurate payroll records, including the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each worker, in accordance with Section 1776 of the Labor Code. Payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") or in a manner containing the same information as the forms provided by the DLSE. Failure to comply with the above may result in monetary penalties to the Contractor or affected subcontractor. Payroll records shall be verified by written declaration made under penalty of perjury, that the information contained in the records is true and correct. Contractor and any and all subcontractors shall make a certified copy of all payroll records available for inspection by DLSE, the City or any member of the public and otherwise provide certified copies of such records to any of the foregoing within ten (10) days of Contractor's and subcontractor's receipt of written request therefor. Failure to comply with the above may result in monetary penalties, in accordance with Labor Code Section 1776(d) and (h).

e. Notwithstanding anything else to the contrary, Contractor hereby acknowledges that all contractors and subcontractors must be registered with the Department of Industrial Relations ("Department") pursuant to Labor Code Section 1725.5 in order to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract, including this Agreement, that is subject to the payment of prevailing wages. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In accordance with Section 3700 of the Labor Code, Contractor must secure payment of compensation to all Contractor's employees. Contractor represents and warrants that Contractor is registered with the Department in the manner prescribed by the Department and has paid the requisite application fee, as required by Labor Code Section 1725.5. Moreover, prior to Contractor entering into any contracts with any subcontractor, Contractor shall obtain proof that all such subcontractors have also registered with the Department in accordance with Section 1725.5.

## **19. Notices**

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the City:	Charles Maynard, City Manager City of Desert Hot Springs 65-950 Pierson Blvd. Desert Hot Springs, CA 92240
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Telephone: (760) 329-6411  
Email: cmaynard@cityofdhs.org

To Contractor: Robert W Clapper, President  
Robert Clapper Construction Services Inc  
2223 N Locust Ave  
Rialto, CA 92377  
(909)829-3688

- b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

## **20. General Conditions**

a. Severability. If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

b. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

c. Cumulative Remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other party.

d. Venue. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

e. Litigation Expenses and Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

f. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

g. Entire Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and supersedes any and all other agreements, either oral or written, between the City and Contractor. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

h. Conflicts of Interest. Contractor covenants that it does not have any interest, nor shall it acquire an interest, directly or indirectly, which would conflict in any manner with the performance of Contractor's services under this Agreement. In the event the City officially determines that Contractor must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Contractor shall file the subject Form 700 with City Hall, as specified under the Notice provisions of this Agreement, pursuant to the written instructions provided by the City.

i. Termination. This Agreement may be terminated by the City immediately for cause. The City may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Contractor shall be entitled to compensation for services performed up to the effective date of termination.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above.

**CITY OF DESERT HOT SPRINGS**

**ROBERT CLAPPER CONSTRUCTION  
SERVICES, INC.**

\_\_\_\_\_  
Charles Maynard, City Manager

\_\_\_\_\_  
By Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, CMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer Mizrahi, City Attorney

**EXHIBIT “A”**

**SCOPE OF SERVICES**

**SEE ATTACHED PROPOSAL**

**DATED MARCH 5, 2019**

**APPROVED PLANS DATED JANUARY 24, 2019  
AND SPECIFICATIONS DATED JANUARY 27, 2019**

## EXHIBIT "B"

### PAYMENT BOND

We, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, j

**FIVE MILLION EIGHTY EIGHT THOUSAND DOLLARS and No Cents (\$5,088,000).**

CITY and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference, for the construction of improvements for the property referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by CITY and Principal. If Principal or any of Principal's contractors or subcontractors, fails to pay any of the persons named in Section 9000 *et seq.* of the California Civil Code employed in the performance of the agreement for materials furnished or for labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then Surety shall pay the same in an amount not exceeding the sum specified above, and also shall pay, in case suit is brought upon this bond, such reasonable attorneys' fees as shall be fixed by the court.

Surety agrees that it shall pay the amounts due the persons above named and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement. If Surety fails to perform within the times specified in the agreement, Surety shall promptly on demand deposit with CITY such amount as CITY may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall extend, notwithstanding any controversy between Principal and CITY regarding Principal's failure under the agreement. Principal and Surety agree that any payment by Surety pursuant to this paragraph should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligation herein and shall be deemed proper payment as between Principal and Surety.

This bond shall insure to the benefit of any and all of the persons named in Section 9000 *et seq.* of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder, or the plans and specifications, or any matters unknown to Surety which might affect Surety's risk, shall in any way affect its obligation on this bond, and it does hereby waive notice thereof.

Principal and Surety agree that should CITY become a party to any action on this bond, that each will also pay CITY'S reasonable attorneys' fees incurred therein in addition to the above sums.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Seal of Corporation

By \_\_\_\_\_  
Authorized Representative of Principal  
Title \_\_\_\_\_

**(ATTACH ACKNOWLEDGEMENT)**

By \_\_\_\_\_  
Authorized Representative of Principal  
Title \_\_\_\_\_

Any claims under this bond may be addressed to: (check one)

Surety's agent for service  
of process in California:

( ) \_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number

By \_\_\_\_\_  
Attorney in Fact or other  
Representative

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)**

( ) \_\_\_\_\_  
Company Agent

APPROVED AS TO FORM:

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City Attorney

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.

## EXHIBIT "C"

### PERFORMANCE BOND

We, \_\_\_\_\_, as  
Principal, and \_\_\_\_\_, as  
Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Desert Hot Springs ("CITY") for payment of the penal sum of **FIVE MILLION EIGHTY EIGHT THOUSAND DOLLARS and No Cents (\$5,088,000)**. CITY and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference, for the construction of improvements for the property referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by CITY and Principal.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall in all things stand to and abide by, and well and truly keep and perform all of the covenants, conditions, and provisions in said agreement, and any alteration thereof made as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the CITY, CITY'S engineer, and their consultants, and each of their officials, directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety agrees that should it fail to take over and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement, Surety will promptly on demand deposit with CITY such amount as CITY may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall exist, notwithstanding any controversy between Principal and CITY regarding Principal's failure under the agreement, and payment by Surety, should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder or the plans and specifications, or any matters unknown to Surety which may affect Surety's risk shall in any wise affect its obligation on this bond, and it does thereby waive notice thereof.

Principal and Surety agree that if the CITY is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay CITY'S reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Seal of Corporation

By \_\_\_\_\_  
Authorized Representative of Principal  
Title \_\_\_\_\_

By \_\_\_\_\_  
Authorized Representative of Principal  
Title \_\_\_\_\_

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)**

Any claims under this bond may be addressed to: (check one)

Surety's agent for service  
of process in California:

( ) \_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number

By \_\_\_\_\_  
Attorney in Fact or other  
Representative

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)**

( ) \_\_\_\_\_  
Company Agent

\_\_\_\_\_  
Street Number

APPROVED AS TO FORM:

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Telephone

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.