

**PUBLIC WORKS CONSTRUCTION AGREEMENT
BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
AND
All American Asphalt**

THIS PUBLIC WORKS CONSTRUCTION AGREEMENT ("Agreement") is made and entered into this 19th day of November, 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 All American Asphalt, a California Corporation, hereinafter referred to as "Contractor."

RECITALS

WHEREAS, the City desires to retain Contractor, on an independent contractor basis, to perform Street Lighting and Street Improvements 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.

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, IN CONSIDERATION OF THE MUTUAL PROMISES AND RELEASES CONTAINED HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, 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:

**Palm Drive Street Lighting and Safety Improvement Project
City Project No. 2017-14
(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 Contractor. 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.

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: Palm Drive from Two Bunch Palms Trail to Pierson Blvd as depicted in Contractor's proposal dated November 12th, 2019, including the approved project plans and specifications incorporated herein by reference dated October 16th, 2019. 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: Construction and installation of electrical system for new street lights, the installation of additional conduit for future fiber connection and traffic signal interconnection to traffic signals, a combination of full reconstruction and road surface rehabilitation of Asphalt, and new stripping including narrower driving lanes, new bike lanes with green markings, and crosswalks, in the City of Desert Hot Springs, California, as set forth in the Scope of Services.
- License classification applicable to Project: **Class A General Engineering Contractor's License**
- Approximate start date: **January 6, 2020 (estimated)**
- Approximate completion date: **June 6, 2020 – (will be adjusted after Notice To Proceed is issued)**
- 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 specifications, standards, and procedures set forth in the 2015 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: All American Asphalt
- Address: PO Box 2229 Corona CA 92878
- License Number: 267073
 - Class A – General Engineering Contractor
 - Class C12 – Earthwork and Paving

4. Insurance Coverage

a. Contractor shall procure and maintain at its own expense, until expiration of the term of this Agreement as defined in Section 9, commercial general liability insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers and agents and

independent contractors. Contractor shall provide insurance on an occurrence, not claims-made basis. Contractor acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess insurance, personal and advertising injury coverage shall be triggered by an "offense" while bodily injury and property damage coverage shall be triggered by an "occurrence" during the policy period.

b. Contractor shall further procure and maintain at its own expense, until expiration of the term of this Agreement as defined in Section 9, commercial vehicle liability insurance covering personal injury and property damage, of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, and Two Million Dollars in the aggregate (\$2,000,000), covering any vehicle utilized by Contractor or its officers, employees, servants, volunteers and agents and independent contractors in performing the services required by this Agreement.

c. Unless Contractor has no employees and is exempt from worker's compensation requirements, Contractor shall further procure and maintain at its expense, until expiration of the term of this Agreement as defined in Section 9, workers' compensation insurance providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by the Contractor pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City. Contractor agrees to waive its statutory immunity under any workers' compensation or similar statute, as respecting the City, and to require any and all subcontractors and any other person or entity involved in the Project to do the same.

Worker's Compensation Insurance:

- Contractor has no employees and is exempt from workers' compensation requirements.
- Contractor carries workers' compensation insurance for all employees.

d. All policies required by this section shall be secured from insurers authorized to do business in the State of California with an "A" policyholder's rating or better and a financial rating of at least Class VII, in accordance with the current Best's Ratings.

e. Contractor agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Contractor enters into contracts or whom Contractor hires or retains pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required herein, at minimum, and name as additional insureds the parties to this Agreement. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this

Section.

f. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Contractor agrees to maintain all coverages required herein until the City provides written authorization to terminate the coverages following the City's review and determination that all liability posed under this Agreement as to the party providing insurance has been eliminated.

g. Contractor agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any subcontractors or others involved in any way with the Project, Contractor shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the City, and/or their officers, employees, servants, volunteers, agents and independent contractors.

5. Insurance Documentation

a. Contractor shall provide certificates of insurance with original endorsements to the City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Contractor shall ensure that the most current certification of insurance shall be delivered to and retained by the City at all times until expiration of the term of this Agreement as defined in Section 9.

b. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the comprehensive general liability and commercial vehicle liability policies shall bear endorsements whereby it is provided that the City, and its officers, employees, servants, volunteers, agents and independent contractors are named as additional insureds. Additional insureds shall be entitled to the full benefit of all insurance policies in the same manner and to the same extent as any other insureds and there shall be no limitation to the benefits conferred upon them other than policy limits to coverages.

c. Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the City, and their officers, employees, servants, volunteers, agents and independent contractors.

d. Each policy required herein must be endorsed to provide that the policy shall not be cancelled or non-renewed by either party, or reduced in coverage or limits (except by paid claims) unless the insurer has provided the City with at least thirty (30) days prior written notice of said cancellation, non-renewal, or reduction, with the exception that only ten (10) days prior written notice shall be required in the event of cancellation for nonpayment of premium.

e. All insurance policies required to be provided by Contractor or any other party must be endorsed to provide that the policies shall apply on a primary and

noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the City, and their officers, employees, servants, volunteers, agents and independent contractors.

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 **Two Million Ninety Nine Thousand Two Hundred Twenty-Two Dollars and Zero Cents (\$2,099,222.00)**, 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 **Two Million Ninety Nine Thousand Two Hundred Twenty-Two Dollars and Zero Cents (\$2,099,222.00)**, 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 **Two Million Ninety Nine Thousand Two Hundred Twenty-Two Dollars and Zero Cents (\$2,099,222.00)**, 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. 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.

9. Term

Contractor will perform the services set forth in the Scope of Services and in any approved change orders pursuant to section 1 of this Agreement, the term of which shall commence as of November 19th, 2019, and shall expire one (1) year following the City's acceptance of the Project pursuant to this Agreement, or upon release of the Performance Bond in accordance with Section 6.d. of this Agreement, whichever occurs first.

10. 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.

11. 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 favor at the time of executing the release, which if known by him must have materially affected his 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.

Initials

12. 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.

13. 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 9, 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.

14. Indemnification

a. Contractor shall defend, indemnify and hold harmless the City, their officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith) arising out of the performance of this Agreement, except for any such claim arising out of the sole or active negligence or willful misconduct of the City, or their officers, agents, employees 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 the City and each of its officers, officials, employees, agents and volunteers to the same extent as Contractor is required in 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.

15. 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.

16. 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.

17. 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.

18. 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:	Public Works Director City of Desert Hot Springs 65-950 Pierson Blvd. Desert Hot Springs, CA 92240 Telephone: (760) 329-6411
--------------	--

To Contractor: Mark Luer, President
All American Asphalt
PO Box 2229
Corona, CA 92878
Telephone: (7149) 632-6699

- 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.

19. 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

All American Asphalt

Charles Maynard, City Manager

Mark Luer, President

ATTEST:

Jerryl Soriano, CMC, City Clerk

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

See Plans and Specifications Dated October 16th, 2019

**SEE ATTACHED PROPOSAL
DATED November 12, 2019**

EXHIBIT "B"

PAYMENT BOND

We, _____, as Principal, and _____, as Surety, jointly and severally, attached hereto and made part hereof as Exhibit "C," or deposit an amount with the City equal to **Two Million Ninety Nine Thousand Two Hundred Twenty-Two Dollars and Zero Cents (\$2,099,222.00)**. 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 attached hereto and made part hereof as Exhibit "C," or deposit an amount with the City equal to **Two Million Ninety Nine Thousand Two Hundred Twenty-Two Dollars and Zero Cents (\$2,099,222.00)**. 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.