

CITY OF APACHE JUNCTION

CONSTRUCTION AGREEMENT

PROJECT: PWC#2018-02

"Grand View Neighborhood Infrastructure Improvements"

THIS AGREEMENT made and entered into by and between the CITY OF APACHE JUNCTION ("City"), an Arizona municipal corporation, and DBA Construction Inc., an Arizona corporation ("Contractor"), sometimes collectively referred to as the "Parties" or individually as the "Party".

RECITALS

- A. Contractor asserts its willingness, ability and qualifications to provide the services and infrastructure (the "Work") called for in Grand View Neighborhood Infrastructure Improvements PWC#2018-02 and Contractor's estimate dated March 14, 2019 (the "Contract Documents").
- B. City and Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall render such Work.
- C. City has complied with the public bidding requirements under Arizona Revised Statutes Title 34 and Apache Junction City Code Vol. I, Chapter 3, Administration, Article 3-7, Procurement Procedures.

AGREEMENT

NOW, THEREFORE, City retains Contractor to perform, and Contractor agrees to render the Work in accordance with the terms and conditions set forth as follows:

1. PROJECT DESCRIPTION: Contractor shall do and perform or cause to be done and performed in a good workmanlike manner, the Work in accordance with and as more fully described in Grand View Neighborhood Infrastructure Improvements PWC#2018-02 and Contractor's estimate dated March 14, 2019 including, but not limited to:

- A. This federally funded Community Development Block Grant project known as the "Grand View Neighborhood Infrastructure Improvements" project, will include the following "Work": curb & gutter, sidewalk, drainage, and other street related improvements".

November 8, 2017

- B. All Work shall be completed in accordance with the following (hereinafter referred to as the "Contract Documents": 1) the construction plans entitled "City of Apache Junction Public Works Department Grand View Neighborhood Infrastructure Improvements, Project Number PWC2018-02"; 2) the latest "Uniform Standard Specifications and Details for Public Works Construction" by the Maricopa Association of Governments; and 3) Engineering Standards and Details of the City of Apache Junction, all of which are hereinafter referred to as the "Contract Documents".

2. PAYMENTS & COMPLETION: The total amount payable by the City to the Contractor in the amount not to exceed five hundred fifty five dollars six hundred ninety and 98/cents (\$555,690.98) (the "Contract Sum") for the performance of the Work under the Contract Documents except for changes authorized by properly executed Change Orders. All contracts will be operable for their full term at the rates quoted in the initial bid proposal, unless otherwise extended in writing by the City. Upon notice that the Work is ready for final inspection or acceptance, a City representative shall promptly cause an inspection to be made. Once City finds the Work acceptable under the Contract Documents, City shall promptly submit for processing a certificate for payment stating that, to the best of its knowledge, information and belief on the basis of its observation and inspection, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that partial payment or the entire balance due the Contractor is payable. Final payment shall not become due until the Contractor submits to the City all required lien waivers, releases and any other data establishing payment or satisfaction of all Contractor's obligations. If any Subcontractor refuses to furnish a release or waiver required by City, Contractor may furnish a bond satisfactory to the owner to indemnify City against any such lien. If any such lien remains unsatisfied after all payments are made, Contractor shall refund to City all monies that the latter may be compelled to pay in discharging such liens, including all costs and reasonable attorneys fees.

3. CONTRACT TERM: Contractor hereby fixes the time for completion of said Work as June 30, 2019. This provision does not limit the liability of Contractor for actual damages sustained by City as a result of any breach of contract or warranty by Contractor. Extensions may be approved at times as the Parties mutually deem fit.

4. LABOR AND MATERIALS: Unless otherwise provided in the Contract Documents, Contractor shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, tools and machinery, water, heat, utilities, transportation, other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

5. INSPECTIONS AND QUALITY OF WORK: Contractor understands and agrees that inspection of the Work performed hereunder will occur by City. Contractor agrees that City will have the exclusive right to determine, in its sole discretion, whether the Work has been performed in accordance with the Contract Documents. Contractor further agrees to make such corrections to the Work as may be directed by City to conform to said Contract Documents without requirement of a Change Order or any additional charge or cost to City whatsoever.

6. WARRANTY: Contractor shall guarantee the Work against defective workmanship or materials for a period of one (1) year from the date of its final acceptance under the contract, ordinary wear and tear and unusual abuse or neglect excepted. Any omission on the part of City to condemn defective work or materials at the time of construction shall not be deemed an acceptance and Contractor will be required to correct defective work or materials at any time before final acceptance. Within one (1) year from the date of final acceptance due to faults in workmanship or materials, Contractor shall begin making the necessary repairs to the satisfaction of City within fourteen (14) calendar days of receipt of written notice from City. Such work shall include the repair or replacement of other work or materials damaged or affected by making the above repairs or corrective work all at no additional cost to City. In the case of work materials or equipment for which warranties are required by the special provisions of the Contract Documents, Contractor shall provide or secure from the appropriate subcontractor or supplier such warranties addressed to and in favor of City and deliver same to City prior to final acceptance of the Work. Delivery of such warranties shall not relieve Contractor from any obligation assumed under any other provision of the contract. The warranties and guarantees provided in this subsection of the Contract Documents shall be in addition to and not in limitation of any other warranties, guarantees or remedies required by law, and shall survive the expiration of this Agreement for the time period mentioned above.

7. TAXES: Contractor shall pay all license, sales, consumer, transaction privilege, use and other similar taxes for the Work or portions thereof provided by Contractor which are

legally enacted at the time bids are received whether or not yet effective or subsequently applicable due to acts of jurisdictions or bodies other than City.

8. PERMITS & FEES: Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits, government fees, licenses and inspections necessary for the proper execution and completion of work which are customarily secured after execution of the contract and which are legally required. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. City permits for this Work will be provided to Contractor at no cost. Contractor represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Contractor agrees to obtain a business license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement and after termination of this Agreement any time work is performed pursuant to the warranty provisions set forth in Section 6. Contractor also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by the city code. Any activity by subcontractors within the corporate city limits will invoke the same licensing regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any and all applicable licenses. If there are taxable activities, a business license shall be converted to a transaction privilege tax license by the Contractor and any subcontractors through the City Clerk's Office. Further, Contractor agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

9. INDEPENDENT CONTRACTOR: Contractor shall at all times during Contractor's performance of the services retain Contractor's status as an independent contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes, or provide workers compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall supervise and direct the delivery of the materials using its best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work required by the Contract Documents. Contractor shall be responsible to City for the acts and omissions of its employees,

subcontractors and their agents and employees and other persons providing any of the materials under any contract document.

10. SUPERINTENDENT: Contractor shall employ a competent project superintendent who shall be in attendance at the project site during the progress of the Work. The superintendent shall represent and be the community agent of Contractor and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. The designated superintendent shall be designated for each project and communicated to City before work is performed.

11. PROGRESS SCHEDULE: Contractor shall, immediately after entering into this Agreement, generate an estimated progress schedule, which shall be maintained and updated during the project. Work may progress during regular City business hours only if it is determined by City not to disturb normal operations.

12. INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this Agreement. Contractor's duty to defend, hold harmless and indemnify City, its Special Districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services Contractor may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

13. SUBCONTRACTORS: All subcontractors chosen by Contractor will be subject to City's approval. All subcontractors shall be identified by Contractor prior to award

of contract. Contractor shall make no substitutions for any subcontractor, person or entity previously selected without the approval of City.

14. APPLICABLE LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

15. INSURANCE: Contractor, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed in the State of Arizona with policies and forms satisfactory to City.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or

self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Contractor shall be solely responsible for the deductible and/or self retention and City, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, City's right to insist on strict fulfillment of Contractor's obligations under this Agreement.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Agreement, shall name City, its agents, officers, officials and employees as Additional Insureds.

REQUIRED COVERAGE

Commercial General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement, which coverage will be at least as broad as that on Insurance Service Office, Inc. Policy Form No. CG 00011093, or any replacements thereof.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

If required by this Agreement, if Contractor sublets any part of the Work, services or operations, Contractor shall purchase and maintain, at all times during prosecution of the Work, services or operations under this Agreement, an Owner and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of Contractor's work, service or operations under this Agreement. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Contractor's Commercial General Liability insurance.

Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

Workers' Compensation

Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the Work or services; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

By execution of this Agreement, Contractor certifies as follows:

"I am aware and understand the provisions of A.R.S. § 23-900 et seq. which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of this chapter, and I will comply with such provisions before commencing the performance of the Work of this Agreement."

If Contractor has no employees for whom workers' compensation insurance is required, Contractor shall submit a declaration or affidavit to City so stating and covenanting to obtain such insurance if and when Contractor employs any employees subject to coverage.

In case any work is subcontracted, Contractor will require subcontractors to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of Contractor.

Professional Liability

Contractor retained by City to provide the Work or service required by this Agreement will maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the Work or services performed by Contractor, or any person employed by Contractor, with a limit of not less than \$1,000,000 each claim.

Certificates of Insurance

Prior to commencing work or services under this Agreement, Contractor shall furnish City with Certificates of Insurance, or formal endorsements as required by the Agreement, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. The form of the certificates of insurance and endorsements shall be subject to the approval of the Apache Junction City Attorney's Office, shall comply with the terms of this Agreement, and shall be issued and delivered to City Attorney, City of Apache Junction, 300 East Superstition Boulevard, Apache Junction, AZ, 85119.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City thirty (30) calendar days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. Policies or certificates and completed forms of City's Additional Insured Endorsement (or a substantially equivalent insurance company form acceptable to the City Attorney) evidencing the coverage required by this section shall be filed with the City and shall include the City as an additional insured. The policy or policies shall be in the usual form of a public liability insurance, but shall also include the following provision:

"Solely as respects work done by or on behalf of the named insured for the City of Apache Junction, it is agreed that

the City of Apache Junction and its officers and employees are added as additional insureds under this policy."

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days' prior written notice to City.

16. CHANGE ORDERS: A Change Order is a written order to Contractor, approved by a City representative, issued after execution of this construction agreement authorizing a change in the Work or an adjustment in the construction agreement sum or the construction agreement time. A Change Order signed by Contractor indicates his agreement therewith. City may, without invalidating this construction agreement, order changes in the Work within the general scope of this construction agreement consisting of additions, deletions or other revisions, the construction agreement sum and the construction agreement being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of this construction agreement. City representative shall have authority to order minor changes in the Work not involving an adjustment in the construction agreement sum or extension of construction agreement time and not inconsistent with the intent of this construction agreement. All such changes shall be effected by written order and shall be binding upon City and Contractor. All change order disagreements of the Contractor shall be submitted in writing to the City Manager within five (5) calendar days after the difference of opinion or grievance occurs. Within five (5) calendar days of receiving a written grievance, the City Manager shall respond in writing to the Contractor and city staff representative. The City Manager's decision shall be final and binding.

17. SUCCESSORS & ASSIGNS: City and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the contract documents. Neither Party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall Contractor assign any monies due or to become due to or to become due to it without the previous written consent of City.

18. WRITTEN NOTICE: Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity, or to an office of the corporation for whom it was intended or if delivered at or sent registered or certified mail, return receipt requested, and first class postage

prepaid to the last business address known to them who gives the notice.

19. CLAIMS FOR DAMAGES: Should either Party to the contract suffer injury or damage to personal property because of any act or omission of the other Party or of their employees or agents for whose acts they are legally liable, claims shall be made in writing to such other Parties within a reasonable time after the first observance of such injury or damages.

20. LABOR & MATERIAL PAYMENT BOND: City shall have the right to require Contractor to furnish bonds covering the faithful performance of the contract and the payment of all obligations arising hereunder. Attached are standard bond forms which must be completed by Contractor, and Contractor agrees to conform to all provisions set forth in such forms.

21. SAFETY: Contractor and/or its subcontractors shall be solely responsible for job safety at all times.

22. RIGHTS & REMEDIES: The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any action or failure to act constitute an approval of or an acquiescence to any breaches hereunder except as may be specifically agreed to in writing.

23. FORCE MAJEURE: Neither City nor Contractor, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from

unavailability for any reason of labor shortages, or the unavailability for any reason of particular Contractors, subcontractors, vendors or investors desired by Contractor in connection with the obligations under this Agreement. Contractor agrees that Contractor alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

24. TERMINATION BY CITY:

A. TERMINATION BY CITY: City shall be permitted to terminate this Agreement if in the discretion of the Public Works Director or his or her designee, believes Contractor has failed to meet the terms of this Agreement. City shall provide Notice of Termination to Contractor by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

B. TERMINATION BY CONTRACTOR: Contractor may terminate this Agreement if City fails to make payment as agreed upon in this document. Any other termination will be deemed a breach of contract by Contractor. Contractor shall provide Notice of Termination to City by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

25. RECORDS: Records of Contractor's labor, payroll and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Contractor shall maintain records for a period of at least five (5) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

26. AMENDMENT: It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that oral understandings or agreements not incorporated herein shall not be binding on the parties. The representatives of the Parties (signatory for Contractor noted below or his or her designee, and the City Manager, or his or her

designee) shall be authorized to execute future amendments or extensions of this Agreement.

27. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Contractor and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

28. SEVERABILITY: City and Contractor each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or City Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

29. TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement. In addition, failure of Contractor to meet construction final completion deadline of June 30, 2019 will result in liquidated damages as set forth in MAG Detail Standard § 108.

30. CONFLICT OF INTEREST: The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.

31. PROHIBITION TO CONTRACT WITH CONTRACTORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL: The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Contractors who engage in boycotts of the State of Israel. Should Contractor under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated. Any such boycott is a material breach of contract and will subject Contractor to monetary damages, including but not limited to, consequential and liquidated damages.

32. COMPLIANCE WITH FEDERAL AND STATE LAWS: Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor will verify the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works under this Agreement to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized representative as of this ____ day of _____, 2019.

DBA Construction Inc., an Arizona corporation

By: _____
Its: _____

CITY OF APACHE JUNCTION, ARIZONA,
an Arizona municipal corporation

By: Jeff Serdy
Its: Mayor

ATTEST:

Kathleen Connelly
City Clerk

APPROVED AS TO FORM:

Richard J. Stern
City Attorney

**STATUTORY PAYMENT BOND PURSUANT TO TITLE 34,
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond MUST be 100% of the Contract Amount)**

KNOW ALL MEN BY THESE PRESENTS:

That, _____ hereinafter called the Principal), as Principal, and _____, a company/corporation holding a Certificate of Authority to transact surety business in the State of Arizona as issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, with its principal office in the City of _____ (hereinafter called the Surety) are held and firmly bound unto the City of Apache Junction (hereinafter called the Obligee), in the amount of _____ Dollars(\$_____), for the payment whereof, the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated _____ day of _____, 2011 to _____ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to Principal or Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation shall be void. Otherwise it remains in full force and effect:

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Title, Chapter and Article, to the same extent as if they were copies at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees as may be fixed by the judge of the court.

Witness our hand this _____ day of _____, 20__.

PRINCIPAL

SEAL

BY: _____

AGENCY OF RECORD

AGENCY ADDRESS

SURETY

SEAL

BY: _____

ATTORNEY IN FACT

**STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond MUST be 100% of the Contract Amount)**

KNOW ALL MEN BY THESE PRESENTS:

That,
(hereinafter called the Principal), as Principal, and _____, a
company /corporation holding a Certificate of Authority to transact surety
business in the State of Arizona as issued by the Director of the Department
of Insurance pursuant to Title 20, Chapter 2, Article 1, with its principal
office in the City of _____ (hereinafter called the
Surety) are held and firmly bound unto the City of Apache Junction
(hereinafter called the Obligee), in the amount of
_____ Dollars (\$_____), for the
payment whereof, the said Principal and Surety bind themselves, their heirs,
administrators, executors, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the
Obligee, dated _____ day of _____, 2011, to which contract is hereby
referred to and made a part hereof as fully and to the same extent as if
copied at length herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if the
Principal faithfully performs and fulfills all of the undertakings, covenants,
terms, conditions and agreements of the contract during the original term of
the contract and any extension of the contract, with or without notice to the
surety, and during the life of any guaranty required under the contract, and
also performs and fulfills all of the undertakings, covenants, terms,
conditions and agreements of all duly authorized modifications of the contract
that may hereafter be made, notice of which modifications to the surety being
hereby waived, the above obligation is void. Otherwise it remains in full
force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of
Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all
liabilities on this bond shall be determined in accordance with the provisions
of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extend as
if they were copies at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the
judgment reasonable attorney fees as may be fixed by the judge of the court.

Witness our hand this __ day of _____, 20__.

PRINCIPAL

SEAL

BY: _____

AGENCY OF RECORD

AGENCY ADDRESS

SURETY

SEAL

BY: _____

ATTORNEY IN FACT

CERTIFICATE OF INSURANCE
CITY OF APACHE JUNCTION
PROJECT: PWC#2018-02

The _____ certifies that the following insurance policies have been issued on behalf of:

NAME OF INSURED:

ADDRESS OF INSURED:

	Type of Insurance	Policy Number	Effect. Date	Expire Date	Limits of Liability
1.	Workers' Compensation				\$100,000 Each Accident; \$100,000 Each Disease, \$500,000 Disease Policy Limit
2.	Commercial General Liability				\$1,000,000 Each Occurrence; \$2,000,000 Products/Completed Operations Aggregate; \$2,000,000 General Aggregate Limit
3.	Contractual Bodily Injury & Property Damage				\$1,000,000 Each Occurrence
4.	Automobile Bodily Injury & Property Damage				\$1,000,000 Each Occurrence

It is further agreed that these policies shall not expire, be canceled or changed until all work has been completed and the project has been accepted by the City of Apache Junction. If a policy does expire during the life of the contract, a renewal Certificate of the required coverage must be sent to the City of Apache Junction not less than thirty (30) calendar days prior to expiration date. This Certificate is not valid unless countersigned by an authorized representative of the Insurance Company. The Certificate of Insurance must also provide that the City, its officers, employees and agents are additional insured parties.

Date: _____ Countersigned by: _____
 Title: _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 20__

by _____ as Insurer.

 Notary Public My Commission Expires: _____