SECTION 1300

CONTRACT

THIS CONTRACT, by and between the CITY OF CATHEDRAL CITY, a municipal corporation, herein referred to as "**City**, and ALL AMERICAN ASPHALT, herein referred to as, "**Contractor.**"

W I T N E S S E T H:

In consideration of their mutual covenants, the parties hereto agree as follows:

1. Contractor shall furnish all necessary labor, material, equipment, transportation and services for **Bid No. B18-02E, Project No. CIP 2518 and 8839** (the "Work") in the City of Cathedral City, California. The Work shall be done in strict conformity with this Contract, approved Change Orders, the Invitation to Bid dated May 18, 2018, Instructions to Bidders, permits issued by the City or other agencies, the General and Specific Project Requirements, Standard Specifications, Plans, Referenced Specifications, the General Conditions, Supplementary Conditions the Contractor's Bid dated June 5, 2018, and any addenda thereto (the "Contract Documents") all of which shall be considered a part hereof as though fully set herein.

2. Contractor will comply with all Federal, State, County, and City of Cathedral City laws, regulations and policies, which are, as amended from time to time, incorporated herein by reference.

3. All work shall be done in a workman like manner and to the satisfaction of the City Engineer.

4. Time is of the essence in Contractor's performance of the Work for this Contract. Contractor agrees to diligently pursue the performance and completion of the Work in every detail to the satisfaction of the City. Contractor shall commence work after the issuance of a written Notice to Proceed and agrees to have all work completed within **45 working days** from the date of Notification to Proceed.

5. In consideration of said Work, City agrees to pay Contractor such sums as shall be approved by the City Engineer at lump sums and/or unit prices stated in the **Contractor's** Bid. The total compensation to Contractor for all Work shall not exceed Two Million Twenty-Three Thousand Nine Hundred Twenty-Three Dollars ($2,023,923.00). All payments shall be subject to approval by the City Engineer and shall be in accordance with the terms, conditions, and procedures provided in the Contract Documents.

6. The Contractor, and any subcontractor engaged by Contractor, shall not pay less than the general prevailing rate for per diem wages, as determined by the State of California Department of Industrial Relations and referred to in the Invitation to Bid, to any workman employed for the work to be performed under this contract; and the Contractor shall forfeit as a penalty to the City up to Two Hundred Dollars ($200.00) for each calendar day, or fraction thereof, for every workman paid by Contractor or by any subcontractor engaged by Contractor, in violation of this provision (Sections 1770-1777, Labor Code of California).

7. Concurrently with the execution of this Contract, Contractor shall furnish bonds of a surety satisfactory to City, as provided in the Contract Documents, the cost of which shall be paid by Contractor.

8. 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 City, its City Council 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.

9. Except as otherwise required, Contractor shall concurrently with the execution of this Contract, furnish the City satisfactory evidence of insurance of the kinds and in the amounts provided in the Contract Documents. This insurance shall be kept in full force and effect by Contractor during this entire contract and all

premiums thereon shall be promptly paid by it. Each policy shall further state that it cannot be canceled without 30 days unconditional written notice to the City and shall name the City as an additional insured. Contractor shall furnish evidence of having in effect, and shall maintain Workers Compensation Insurance coverage of not less than the statutory amount or otherwise show a certificate of self-insurance, in accordance with the Workers Compensation laws of the State of California. Failure to maintain the required amounts and types of coverage throughout the duration of this Contract shall constitute a material breach of this Contract.

10. Contractor shall forfeit as a penalty to City $25.00 for each laborer, workman, or mechanic employed in the execution of this Contract by said Contractor, or any subcontractor under it, upon any of the work herein mentioned, for each calendar day during which such laborer, workman, or mechanic is required or permitted to work at other than a rate of pay provided by law for more than 8 hours in any one calendar day and 40 hours in any one calendar week, in violation of the provisions of Sections 1810-1815 of the Labor Code of the State of California.

11. 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 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status 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.

12. Contractor also agrees that for contracts in excess of $30,000 that apprentices will be employed without discrimination in an approved program in a ratio established in the apprenticeship standards of the craft involved (Sections 1777.5 and 1777.6, Labor Code of California). Contractors who willfully fail to comply will be denied the right to bid on public projects for a period of six months in addition to other penalties provided by law.

13. This Contract shall not be assignable by Contractor without the written consent of City.

14. Contractor shall notify the City Engineer (in writing) forthwith when the Contract is deemed completed.

15. In accepting this Contract, Contractor certifies that no member or officer of the firm or corporation is an officer or employee of the City except to the extent permitted by law.

16. Contractor certifies that it is the holder of any necessary California State Contractor's License and authorized to undertake the Work. Contractor must, at Contractor’s sole expense, obtain all necessary permits and licenses required for the Work, and give all necessary notices and pay all fees and taxes required by law, including, without limitation, any business license tax imposed by City. Contractor represents and declares to Agency that it has all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession.

17. 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.

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

19. The Contractor shall maintain all such records in the City of Cathedral City. 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.

20. In entering into this Contract or a contract with a subcontractor to supply goods, services, or materials pursuant to this Contract, Contractor and any or subcontractor is deemed to have offered and agreed to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700 of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials for the Contract. This assignment will be deemed made and will become effective at the time City tenders final payment to Contractor,

without further acknowledgement by the Parties.

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates stated below.

"CITY"

CITY OF CATHEDRAL CITY,
a California municipal corporation

By:_____ **Dated:_____**

Charles P. McClendon, City Manager

ATTEST:

_____ **Dated: _____**
Gary F. Howell, City Clerk

APPROVED AS TO FORM:

_____ **Dated: _____**
Eric Vail, City Attorney

"CONTRACTOR"

Dated:_____

By: _____
Name: _____
Title: _____

Dated:_____

By: _____
Name: _____
Title: _____

[CONTRACTOR SIGNATURES MUST BE NOTARIZED. IF CONTRACTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, TWO SIGNATURES MUST BE PROVIDED.]

SECTION 1310

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT the City of Cathedral City, a municipal corporation, hereinafter designated the City, has, **on June 13, 2018, awarded to All American Asphalt,** hereinafter designated as the Principal, a Contract for **Bid No. B18-02E, Project No. CIP 2518 and 8839, Dinah Shore Drive/Date Palm Drive Intersection Reconstruction and Dinah Shore Drive Pavement Rehabilitation,** and

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract:

NOW, THEREFORE, we, the Principal, and _____, as Surety, are held and firmly bound unto the City in the just and full amount of **(2,023,923.00)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the said contract and any alterations made as therein provided, on his or their part to be kept and performed, at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless, the City, its officers and agents as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

It is acknowledged that the Contract provides for one-year guarantee period, during which time this bond remains in full force and effort.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument under their

seals this _____ day of _____, 2018, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

_____
Principal

(Seal)

_____
Signature for Principal

_____
Title of Signatory

_____
Surety

(Seal)

_____
Signature for Surety

_____
Title of Signatory

_____
Address of Surety

_____
Phone # of Surety

_____
Contact Person For Surety

SECTION 1320

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT the City of Cathedral City, a municipal corporation, hereinafter designated the City, has, **on June 13, 2018, awarded to All American Asphalt,** hereinafter designated as the Principal, a Contract for **Bid No. B18-02E, Project No. CIP 2518 and 8839, Dinah Shore Drive/Date Palm Drive Intersection Reconstruction and Dinah Shore Drive Pavement Rehabilitation**, and

WHEREAS, said Principal is required to furnish a bond in connection and with said Contract, providing that if said Principal, or any of it or its subcontractors shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth:

NOW, THEREFORE, we, the Principal, and_____, as Surety, are held and firmly bound unto the City in the just and full amount of ($2,023,923.00) , executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, it or its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind or for amount due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts due, or to be withheld pursuant to Sections 18806 of the Revenue and Taxation Code of the State of California with respect to such work or labor, then said surety will pay the same in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney's fees to the City as shall be fixed by the court.

This bond shall insure to the benefit of any and all persons, companies, and corporations named in Section 3181 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition of the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations of this bond, and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the contract or to the work or to the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument under their seals this _____ day of _____, 2018, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

_____
Principal

(Seal)

_____
Signature for Principal

_____
Title of Signatory

_____
Surety

(Seal)

_____
Signature for Surety

_____
Title of Signatory

_____
Address of Surety

_____
Phone # of Surety

_____
Contact Person For Surety

SECTION 1330

WORKERS' COMPENSATION INSURANCE CERTIFICATE

In accordance with California Labor Code Section 1861, prior to commencement of work on the Contract, the Contractor shall sign and file with the City the following certification:

> "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

_____
Signature

_____
Title

_____
Date

SECTION 1340

LIABILITY AND INSURANCE REQUIREMENTS

1.0 INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless the City, City Council and each member thereof, and every officer, employee and agent of City, from any claim, demand, damage, liability, loss, cost or expense (including, without limitation, attorney's fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of the Contractor, or any of the Contractor'' employees, or any of its subcontractors arising out of work under this Contract.

The City does not, and shall not, waive any rights that it may have against Contractor, any of the Contractor's employees, or any of its subcontractors 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 Contract. 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, damage, liability, loss, cost or expense described herein. The City will not be liable for any accident, loss, or damage to the work prior to its completion and acceptance.

2.0 INSURANCE REQUIREMENTS

2.1 General

After award of Contract, the Contractor shall promptly obtain, at its own expense, all the insurance required by Paragraph 1340-2.0, INSURANCE REQUIREMENTS, and shall submit coverage verification for review and approval by the City upon execution of the Contract.

The Notice to Proceed with the Work under this Contract will not be issued, and the Contractor shall not commence work, until such insurance has been approved by the City. The Contractor shall not allow any subcontractors to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and verified by Contractor. Such insurance shall remain in full force and effect at all times during the prosecution of the Work and until the final completion and acceptance thereof.

The Notice to Proceed does not relieve the Contractor of the duty to obtain such insurance as required by Paragraph 1340-2.0 INSURANCE REQUIREMENTS.

2.2 Commercial General Liability Policy

The Contractor shall take out and maintain during the life of the Contract, a Commercial General Liability Policy, on an occurrence basis, with a minimum limit of not less than One Million Dollars ($1,000,000) combined single limit for bodily injury and property damage for any one occurrence and a Two Million Dollar ($2,000,000) annual project aggregate, for all of the following:

a. Premises Operations, including Explosion, Collapse and Underground (X, C, and U) Coverage.

b. Completed Operations/Products, including X, C, and U Coverage.

c. Independent Contractors.

d. Blanket Contractual.

e. Deductible shall not exceed One Thousand Dollars ($1,000).

2.3 Commercial Business Auto Policy

The Contractor shall take out and maintain during the life of this Contract a Commercial Business Auto Policy, on an occurrence basis, with a minimum amount of not less than One Million Dollars ($1,000,000) combined single limit for bodily injury and property damage, providing at least all of the following coverage:

a. Coverage shall be applicable to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Contract.

b. Any and all mobile equipment, including cranes, which is not covered under said Commercial Business Auto Policy shall have said coverage provided for under the Commercial General Liability Policy.

c. Deductible shall not exceed One Thousand Dollars ($1,000).

2.4 **Workers' Compensation Insurance**

The Contractor shall take out and maintain during the life of the Contract, Worker's Compensation and Employers' Liability insurance providing coverage for any and all employees of Contractor:

a. The required policy shall provide coverage for Workers' Compensation (Coverage A).

b. This policy shall provide coverage for One Million Dollars ($1,000,000) Employers' Liability (Coverage B).

2.5 **Endorsements**

All of the following endorsements are required to be made a part of the policies described in this Section hereof:

a. "The City, City employees and officers, the City Engineer, its consultants, elected officials, agents, and sub-consultants are hereby added as additional insured insofar as Work done under this Contract is concerned."

b. "This policy shall be considered primary insurance as respects any other valid and collectible insurance, including self-insured retention, the City may possess, and any other insurance the City does possess shall be considered excess insurance only."

c. "This insurance shall act for each insured, and additional insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.

d. "Thirty (30) days prior written notice of cancellation shall be given to the City. Such notice shall be sent to:

Tami Scott, Administrative Services Director
City of Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234

2.6 **Change in Terms**

The Contractor shall provide immediate written notice to the City of any change in terms and conditions and/or reduction in the coverage of any nature to the insurance policies. The notice shall be sent to the location identified in Paragraph 1340-2.6.d, Endorsements. The Contractor shall be obligated to pay any extra premium for maintaining the insurance requirements specified herein.