



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** August 24, 2017

RE: *Construction Agreement between Southern Nevada Health District and Eberhard Southwest Roofing, Inc.*

PETITION #25-17

That the Southern Nevada District Board of Health *approve the Construction Agreement C1800045 between the Southern Nevada Health District and Eberhard Southwest Roofing, Inc. for the removal and placement of a new roof at Health District's main facility.*

PETITIONERS:

Sean Beckham, Facilities Manager *SB*
Andrew J. Glass, FACHE, MS, Director of Administration *AGJ*
Joseph P. Iser, MD, DrPH, MSc, Chief Health Officer *KI*

DISCUSSION:

Currently the roof at 280 South Decatur Blvd is a flat PVC roof that has reached its end of life. This petition is for the complete removal of the existing roof system and installation of a new 60 mil induction welded PVC membrane. The project will include installation of new secondary roof drains next to each primary roof drain, walk off mats, and a fully tampered insulation that will slop towards the roof drains. The new roof will have a 20 year warranty.

The requirement was competitively bid with six bids publicly opened on July 13, 2017. Eberhard was the low bidder and selected for award.

FUNDING:

Firm Fixed Price for demolition of existing roof, placement of new roof and drains - \$1,040,000
Not-to-Exceed for replacement of plywood boarding - \$208,000



CONSTRUCTION AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
EBERHARD SOUTHWEST ROOFING INC
C1800045

This Construction Agreement (“Agreement”) is made as of the 1st day of September, 2017 between the Southern Nevada Health District (“Owner”) a political subdivision of the State of Nevada and Eberhard Southwest Roofing, Inc. (“Contractor”) (may be individually referred to as “Party” and collectively, as “Parties”) for Owner’s Roof Replacement Project (“Project”).

RECITALS

WHEREAS, pursuant to Nevada Revised Statutes (“NRS”) Chapter 439, Owner is the public health authority for Clark County, Nevada and has jurisdiction over all public health matters therein;

WHEREAS, Contractor is a corporation authorized, registered, and licensed to do business in the State of Nevada and Clark County experienced in providing construction, roofing, reroofing, and roof maintenance services; and

WHEREAS, Owner requires a roof replacement at its headquarters located at 280 S. Decatur Boulevard, Las Vegas, Nevada; and

WHEREAS, Contractor has agreed to replace Owner’s roof, and repair/replace the roof’s wood deck under the terms and conditions herein provided; and

NOW, THEREFORE in consideration of the mutual promises and undertaking herein specified, Owner and Contractor agree as follows:

1. AGREEMENT.

1.01 Contractor agrees to perform roofing services for Owner as set forth herein.

1.02 Owner’s engagement of Contractor is based upon Contractor’s representations to Owner as follows:

- i) Contractor represents and affirms that it is fully licensed in accordance with all local, state, and federal requirements to do the Work set forth in the Agreement.
- ii) Contractor has the expertise and ability to provide roofing and waterproofing services that meet Owner’s objectives and requirements and roofing industry standards.

1.03 This Agreement includes the following documents (“Contract Documents”) which are incorporated herein:

- i) This Agreement signed by Owner and Contractor and all attachments and exhibits;

ii) Southern Nevada Health District Request for Proposals SNHD-9-RFP-17-006 dated June 16, 2017, Addendum A01 dated June 27, 2017 and Addendum A02 dated July 6, 2017;

iii) The specifications and drawings prepared by Curtain Wall Design and Consulting, Inc., located at 2400 South Cimarron, Las Vegas, Nevada (“Engineer”), dated June 16, 2017, and as enumerated as follows:

a) Drawings:

Southern Nevada Health District Roofing Project, 280 S. Decatur Avenue [sic], Las Vegas, NV 89107 dated 06/16/2017, pages CS-001, G-001, A-100, A-101, A-102, A-103, A-501, A-501, A-502, and A-601

b) Specifications:

i) Project Manual dated 06/16/2017

- Summary of Work, Section 01 11 00, 8 pages
- Submittal Procedures, Section 01 33 00, 11 pages
- Warranties, Section 01 78 36, 3 pages
- Roof Demolition and Cleanup, Section 02 41 00, 3 pages
- Rough Carpentry, Section 06 10 00, 4 pages
- Polyvinyl Chloride Roofing-Induction Weld, Section 07 54 00, 15 pages
- Sheet Metal Flashing and Trip, Section 07 60 00, 9 pages
- Storm Drainage Piping Specialties, Section 221423, 6 pages

ii) Written orders for changes in the Work issued after execution of this Agreement (“Change Orders”); and

iii) Modifications issued after execution of this Agreement, all of which form the Agreement, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein.

1.04 In the event of a conflict between the Contract Documents, the order of priority shall be:

i) This Agreement; then

ii) RFP and RFP Amendments or Addenda

iii) Contractor’s Proposal, and, if any, updates/revisions with the latest taking precedence and chronologically thereafter.

2. REPRESENTATION.

2.01 Owner’s representative is Sean Beckham, Facilities Manager (“Owner Representative”). The Engineer’s representative for the Project is Jon Belnap (“Engineer Representative”). The Contractor’s representative is Miguel Pascual (“Contractor Representative”). Neither Owner Representative nor Contractor Representative shall be changed without ten days’ prior written notice to the other Party.

3. SCOPE OF WORK. Contractor shall provide all labor and materials and perform all Work necessary to replace and waterproof Owner’s roof, including the repair/replacement of the roof’s wood deck (collectively, the “Services” or “Work”). Services will be performed at Owner’s property located at 280 S. Decatur Boulevard, Las Vegas, Nevada 89107 (“Worksite”).

- 3.01 Before commencement of Work, Contractor shall submit for Owner's approval, a schedule for the performance of Services which may be adjusted at Owner's sole discretion as the Project proceeds. Time limits established by the schedule approved by Owner ("Schedule") shall not be exceeded by Contractor unless pre-approved by Owner.
- 3.02 Contractor shall furnish all Services in a timely, workman-like manner consistent with professional roofing industry standards.
- 3.03 Contractor shall insure all specifications, documents, or materials provided or prepared by Contractor are:
- i) Sufficient, complete, accurate, and adequate to meet the minimum applicable standard;
 - ii) Consistent with Owner's aesthetic, functional, and operational objectives as expressed in the RFP or as amended by mutual agreement;
 - iii) Consistent with Owner's budget requirements for the Services and Schedule;
 - iv) Compliant with all laws, statutes, regulations, and building codes which apply to or govern the Services;
 - v) Meeting or exceeding the current building code for roofing and waterproofing.
- 3.04 Owner may make changes to the Scope of Work, including changes to the drawings and specifications, from time to time during the construction of the Project. However, any such change or modification shall only be made by written Change Order signed by both Parties. Owner agrees to pay any increase in the cost of the Project as a result of a Change Order. In the event the cost of a Change Order is not known at the time a Change Order is executed, Contractor shall estimate the cost thereof and Owner shall pay the actual cost.
- 3.05 Contractor acknowledges that its failure to timely perform Services pursuant to this Agreement may cause Owner to sustain loss and damages that if proven to be the responsibility of Contractor shall be recoverable by Owner from Contractor.
4. **TERM AND TERMINATION.** Contractor shall commence the Work on the date set by the Owner in the Notice to Proceed, and shall complete the Work ninety (90) consecutive calendar days thereafter unless modified as provided in the Contract Documents. Time is of the essence in the performance and completion of this Agreement.
- 4.01 **Termination for Convenience.** Owner may, at any time, terminate the Agreement, in whole or in part, for its own convenience by delivering to Contractor a written notice of termination identifying the extent to which performance of the Work is terminated and the effective date of termination ("Termination Date"). Contractor shall be entitled to receive payment for Work due, but not yet paid, for Work completed prior to the Termination Date executed, and reasonable direct costs incurred by reason of such termination.
- 4.02 **Termination for Cause.** Owner may terminate the Agreement if Contractor ceases Work or fails to adhere to the Schedule for a continuous and uncorrected period of thirty (30) days; or upon the occurrence, without limitation, of any one or more of the following events ("Event of Default"):

- i) Contractor violates any material provision of this Agreement.
- ii) Contractor persistently fails to promptly and diligently prosecute the Work; supply enough properly skilled workmen or materials to perform the Work; or disregards any applicable laws, statutes, codes, rules, regulations, or directive of any public agency or authority.
- iii) Contractor abandons the performance of the Work.
- iv) Contractor fails to make payments when due to any subcontractor, material supplier; or its own employees for earned wages or benefits.
- v) Contractor submits an Application for Payment, sworn statement, waiver of lien, affidavit or other document is intentionally falsified.
- vi) A mechanic's lien is filed against the Work or the Project Site for labor and materials for which Contractor was paid and Contractor fails or refuses to bond or discharge the lien.
- vii) Filing against the Contractor of a petition under any Federal or State bankruptcy or insolvency law, or a receiver, liquidator or trustee is appointed on account of the Contractor's bankruptcy or insolvency.
 - a) When Owner terminates the Agreement for any Event of Default, Contractor shall be responsible for paying all actual costs incurred to cure plus reasonable overhead, and any legal or design fees incurred in curing same.

4.03 If Owner Representative fails to certify payment or make payment as provided in Payment/Progress Payments for a period of 30 days through no fault of Contractor, Contractor may give Owner notice of intent to stop work. If payment is not made within ten (10) days of the notice to stop work, Contractor may terminate the Agreement upon fifteen (15) additional days' written notice to Owner. Contractor may recover from Owner payment for Work executed including reasonable overhead, and direct costs incurred by reason of such termination.

5. CONTRACTOR CARE, CUSTODY AND CONTROL OF THE WORK.

- 5.01 Upon commencement of Work, Contractor shall be fully responsible for the care, custody, and control of the Worksite until Services have been completed.
- 5.02 Contractor shall be solely responsible for the safety, efficiency, and adequacy of its equipment, tools, and materials.
- 5.03 Contractor shall at all times keep the Worksite free from accumulations of waste materials or rubbish caused by the Work, its employees, or sub-Contractor(s). Upon completion of each day, Contractor shall be responsible for the organization, cleanup, or removal of all unused materials, tools, equipment, scraps and debris resulting from the Services provided. At the completion of the Project, Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of all waste materials.

6. CONTRACT PRICE.

- 6.01 For satisfactory performance of the Services, subject to additions and deductions by Change Orders:
 - i) The Contract Sum is \$1,040,000.00, and includes all items and services necessary for the proper execution and completion of the Services; and

- ii) Unit cost to repair/replace deteriorated wood deck at \$3.50 per square foot, not-to-exceed \$208,000.00. For the duration of this Agreement, Contractor shall guarantee the unit cost as set forth herein.
- 7. PAYMENTS/PROGRESS PAYMENTS. Invoices for Payment shall be submitted to Owner or Owner Representative monthly. Monthly progress payments will be made after Owner verifies and approves the percentage of Work as detailed in the Invoice was completed pursuant to the terms and conditions of this Agreement.
 - 7.01 Invoices for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered. Based upon verified and approved Invoices for Payment submitted to Owner Representative by Contractor and Certificates for Payment issued by Owner Representative to Owner, Owner shall make progress payments to Contractor as follows:
 - i) Monthly progress payment requests shall be remitted within thirty (30) days of issuance of Certificates for Payment by Owner Representative to Owner.
 - ii) 5% of each amount certified for payment shall be retained by Owner until at least 50% of the Work required by the Agreement has been completed.
 - iii) Once 50% of Work has been completed, Owner will pay Contractor 50% of the amount of any retainage previously withheld, and withhold 2.5% of the amount of the remaining progress payments.
 - 7.02 Each Application for Payment shall be based on the most recent schedule of values submitted by Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Price among the various Services.
 - i) The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as Owner Representative may require. This schedule, unless objected to by Owner Representative, shall be used as a basis for reviewing Contractor's Applications for Payment.
 - 7.03 If Work is suspended at any time by Owner, in whole or in part, Contractor is to be paid for Work performed prior to receipt of written notice from Owner of such suspension. Owner shall determine the percentage of completion.
 - 7.04 Upon receipt of payment from Owner, Contractor shall promptly pay each subcontractor and supplier an amount determined in accordance with the terms of the applicable subcontract(s) and purchase order(s).
 - 7.05 Neither Owner nor Owner Representative shall have responsibility for payments to a subcontractor or supplier.
 - 7.06 Neither a Certificate for Payment, nor a progress payment by Owner shall constitute acceptance of Work not in accordance with the requirements of this Agreement.
- 8. FINAL PAYMENT. To obtain final payment, Contractor must submit to Owner:
 - 8.01 A final payment application confirming that 100% of all required Work, including Change Order Work has been completed.
 - 8.02 A Certificate of Completion of all Work, stating all Work including Change Orders, and punchlist items, have been performed in accordance with the Contract

Documents and that all payments received were consistent with the terms herein.

- 8.03 Contractor's Certification confirming satisfaction of all indebtedness associated with the Project including:
- i) All bills for material and equipment;
 - ii) All required payments to subcontractors;
 - iii) All payroll and benefits to all labor directly employed by it; and
 - iv) Payment of all fees, taxes and other expenses incurred in performing the Work.
- 8.04 A final release and waiver covering all monies and claims on the Project, for Contractor, subcontractors, and suppliers.
- 8.05 Proof of inspection and approvals or sign-offs from any governmental authority and close out of any open permits.
- 8.06 All manufacturers' and suppliers' warranties and guarantees.
- 8.07 A list of any outstanding known and unreported Worksite accidents or injuries involving Contractor's employees or subcontractors.
- 8.08 Complete sets of "as built" drawings showing the Work in place.
- 8.09 Upon receipt of a final Application for Payment, Owner Representative will inspect the Work. When Owner Representative finds the Work acceptable and the Agreement fully performed, Owner Representative will promptly issue a final Certificate for Payment to Owner which will include all remaining monies due to Contractor, including any retainage still held by Owner.
- 8.10 Contractor's acceptance of final payment constitutes a waiver of all claims, except those previously made in writing and identified by Contractor as unsettled at the time of final Application for Payment.
- 8.11 In issuing the final payment, Owner expressly reserves any claims:
- i) Previously asserted in writing and currently pending;
 - ii) Relating to liens, security interests, and other encumbrances against the Project that remain unsettled or are later asserted;
 - iii) Arising from the failure of the Work to comply with the Contract Documents;
 - iv) Arising from latent defects in the work; or
 - v) Related to any warranties or guarantees under the Agreement.

9. PREVAILING WAGE.

- 9.01 In providing the Services under this Agreement, Contractor agrees to comply with the state of Nevada's Prevailing Wage Act, NRS 338.020-090.

10. INSURANCE.

- 10.01 Owner and Contractor shall procure and maintain insurance as set forth in Attachment A, Insurance and Bonds, which is incorporated by reference herein.
- 10.02 Contractor shall provide bonds as set forth in Attachment A. No Work is authorized until such time as Owner has received a Certificate of Insurance in compliance with this Section.

11. OWNER RIGHTS AND RESPONSIBILITIES.

- 11.01 Owner's Right to Stop the Work. If Contractor fails to correct Work which is not in accordance with the Contract Documents, Owner may direct Contractor in writing to stop the Work until the correction is made.
- 11.02 Owner's Right to Carry out the Work. In the Event of Default or Contractor otherwise neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from Owner to correct such default or cease such neglect with diligence and promptness, Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due Contractor.
- 11.03 Owner, at its sole discretion, may direct Contractor, at no additional cost to Owner, to promptly and satisfactorily correct any Services that are found to be defective or not in compliance with the requirements of this Agreement, or the requirements of any laws, statutes, rules, regulations, ordinances, building codes, and Owner's guidelines which apply to or govern the Services provided.

12. CONTRACTOR RESPONSIBILITIES

- 12.01 Contractor shall promptly review, approve in writing, and submit to Owner Representative, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents.
- 12.02 If Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Contractor shall assume full responsibility for such Work and bear attributable costs.
- 12.03 Contractor shall promptly correct Work rejected by Owner Representative as failing to conform to the requirements of Contract Documents. Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing. If Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct it in accordance with Section 11.
- 12.04 Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Agreement is executed.
- 12.05 Tests and Inspections
- i) At the appropriate times, Contractor shall arrange and bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents or applicable federal, state, or local laws, codes, ordinances, regulations and rules.
 - ii) Contractor shall perform such additional tests as requested by Owner Representative.
- 12.06 Contractor shall take reasonable precautions to prevent damage, injury or loss to its employees at the Worksite, the Work, materials, and other property at the site or adjacent thereto. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, or by anyone for whose acts Contractor may be liable.
- 12.07 In addition to Contractor's other obligations including warranties under this Agreement, Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

- 12.08 Contractor shall supervise and direct its employees and subcontractors using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.
- 12.09 Contractor shall furnish in writing to Owner the names of subcontractors or suppliers for each portion of the Work. Contractor shall not contract with any subcontractor or supplier to whom Owner has made a timely and reasonable objection.
- 12.10 Contractor and any of its subcontractors will be mutually bound by the terms of this Agreement as they apply to the Work performed by subcontractor.

13. LABOR AND MATERIALS

- 13.01 Unless expressly provided in the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other services necessary for proper execution and completion of the Work.
- 13.02 Contractor shall guarantee all material to be as specified. Any alteration or deviation from these specifications involving extra costs will be approved only upon a Change Order executed by both Parties.

14. WARRANTY.

- 14.01 Contractor's warranty shall be limited to defects in workmanship within the Scope of Work performed by Contractor and which arise and become known within one (1) year from Project completion. All said defects arising after one (1) year and defects in material are not warranted by Contractor. Contractor hereby assigns to Owner all warranties on materials as provided by the manufacturer of such materials.
- 14.02 Contractor warrants to Owner that:
- i) Title to any Work covered by Contractor's Application for Payment will pass to Owner no later than the time of payment.
 - ii) Upon submittal of an Application for Payment, all Work for which Certificates for Payment have been issued and payments received shall, to the best of Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to Owner's interests.
 - iii) Materials and equipment furnished under the Agreement will be new and of good quality unless otherwise required or permitted by the Contract Documents.
 - iv) The Work will be free from defects not inherent in the quality required or permitted and will conform to the requirements of the Contract Documents.

15. WARRANTY INSPECTION

- 15.01 Contractor and Owner Representative shall visit the Project prior to the expiration of Contractor's one (1) year warranty period; Owner shall note any breaches or violations of the guarantees provided by Contractor, and report the same if any are observed or discovered, in writing to Contractor for remediation within a reasonable time.

16. CHANGES IN THE WORK.

- 16.01 Owner, without invalidating the Agreement, may order changes in the Work within the general scope of the Agreement consisting of additions, deletions, or other revisions, the Contract Price and Contract Time being adjusted accordingly in writing. If Owner and Contractor cannot agree to a change in the Contract Price, Owner shall pay Contractor its actual cost plus reasonable overhead.
- 16.02 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Price and Contract Time shall be subject to equitable adjustment.

17. SUBSTANTIAL COMPLETION

- 17.01 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so Owner can utilize the Work for its intended use.
- 17.02 When the Work is substantially complete, Owner Representative will make an inspection to determine whether the Work is substantially complete. When the Owner Representative determines that the Work is Substantially Complete, Owner Representative shall prepare a Certificate of Substantial Completion that establishes the date of Substantial Completion, the responsibilities of Owner and Contractor, and fixes the time within which Contractor shall complete all items on the list accompanying the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work.

18. COMPLIANCE/LICENSES.

- 18.01 Contractor, its employees, subcontractors or assigns, shall obtain, at its own expense, all licenses, permits, and other authorizations necessary to comply with all applicable federal, state and local laws and regulations relating to the performance of the Agreement.
- 18.02 Contractor is responsible for compliance with all labor, employment, and tax laws pertaining to its employees, subcontractors, officers, and agents and shall indemnify and hold Owner harmless from any failure by Contractor to comply with such laws.

19. ENGINEER.

- 19.01 Upon request by Owner Representative, Engineer will:
- i) Promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
 - ii) Visit the site to become generally familiar with the progress and quality of the Work.
 - iii) Not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.

20. DISPUTE RESOLUTION.

- 20.01 If a claim relates to or is the subject of a mechanic's lien, the party asserting such claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.
- 20.02 If a dispute arises out of or relates to this Agreement, the Parties agree first to try in good faith to settle the dispute through negotiation. If negotiation is unsuccessful, the Parties agree to refer the issue(s) in dispute to mediation administered under the American Arbitration Association before resorting to litigation, or some other dispute resolution procedure.
- 20.03 The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

21. NOTICE.

- 21.01 All notices required or permitted under this Agreement shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the receiving Party from time to time) and delivered by personal delivery, via overnight courier (with all fees pre-paid), or certified or registered mail, return receipt requested, postage pre-paid. Except as otherwise provided in this Agreement, a Notice is effective only: a) upon receipt by the receiving Party, and b) if the Party giving the Notice has complied with the requirements of this Section.

OWNER

Southern Nevada Health District
Financial Services Department
Materials Management Supervisor
280 S. Decatur Boulevard
Las Vegas, NV 89107

CONTRACTOR

Eberhard Southwest Roofing, Inc.
Attn: Miguel Pascual
3995 West Dewey Drive
Las Vegas, NV 89118

22. GENERAL CONDITIONS.

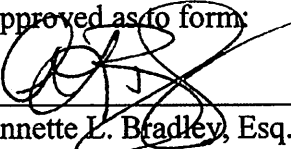
- 22.01 Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties and supersedes prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only by a written modification.
- 22.02 Assignments. Neither Party shall assign this Agreement without the prior written consent of the other Party.
- 22.03 Ownership and Use of Engineer's Drawings, Specifications and Other Documents. Documents prepared by the Engineer are instruments of the Engineer's service for use solely with respect to this Project. Contractor, subcontractors, and material or equipment suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may be used by Owner for other projects or for additions to this Project outside the Scope of Work without the Engineer's specific written consent.
- 22.04 Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to the laws of the State of Nevada, notwithstanding conflict of laws principles, with Clark County, Nevada as the

exclusive venue of any action or proceeding related to or arising out of this Agreement.

- 22.05 **Appropriation of Funds:** The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by Owner for the performance of this Agreement. If sufficient appropriations and authorizations are not made by Owner, this Agreement shall terminate, without penalty or expense to Owner of any kind whatsoever, upon written notice being given by Owner to Contractor.
- 22.06 **Right to Audit.** Records subject to audit, inspection, examination, and evaluation shall include, but not be limited to, those records necessary to evaluate and verify prices, reimbursable services, etc. as they may apply to costs, matters or items associated with this Agreement. For the purpose of such audits, inspections, examination, and evaluations, Owner's agent or authorized representative shall have access to said records for the duration of the Work and until five (5) years after the date of final payment by Owner to Contractor pursuant to this Agreement (collectively the "Records"). Such Records shall be open to inspection, audit and/or reproduction, during normal working hours by Owner's agent or its authorized representative to the extent necessary to evaluate and verify applications for payments, invoices, or claims submitted by Contractor or any of its payees relative to the Project.
- 22.07 **Public Records:** Pursuant to NRS Chapter 239, information or documents, including this Agreement, and any other documents generated incidental thereto may be opened by Owner to public inspection and copying. Owner will have a duty to disclose unless a particular record is made confidential by law or common law balancing of interests. Contractor is responsible for and will work with Owner to respond to a properly submitted request for information or documents to the extent such information or documents are in Contractor's care, custody, and control.
- 22.08 **Authority:** Owner and Contractor each represent and warrant to each other that each respectively has the authority to execute and deliver this Agreement and perform their respective obligations there under and that the execution, delivery and performance of this Agreement have been duly authorized by all necessary action by each respective Party.
- 22.09 **Counterparts:** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.
- 22.10 **Limited Liability:** Owner will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626. Agreement liability of Owner and/or Contractor shall not be subject to punitive damage.
- 22.11 **Indemnification.** Neither Party waives any right or defense to indemnification that may exist in law or equity.
- 22.12 **Non-Discrimination:** Contractor shall not discriminate, on the basis of race, sex, color, religion, age, ancestry, national origin, marital status, gender identity or expression, status as a disabled veteran, or veteran of the Vietnam era, disability or sexual orientation against any employee, applicant for employment, or subcontractor for any Services provided by Contractor under this Agreement.

- 22.13 **Marketing.** Contractor may not use Owner's name or logo in its marketing materials without Owner's prior written consent. Contractor is strictly prohibited from releasing any statements to the media regarding work performed under this Agreement without the review and express prior written approval of Owner. Owner's approval is at its sole discretion; however, such approval will not be unreasonably withheld.
- 22.14 **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, the Parties shall not be held liable for any failure or delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this Agreement shall otherwise remain in effect.
- 22.15 **Third Party.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person, or entity, including but not limited to any subcontractor or supplier, any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 22.16 **Relationship of the Parties.** Contractor shall be considered an independent contractor and nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Parties and their respective employees, agents, subcontractors or assigns, during or after the term of the Agreement. Both Parties are free to enter into Agreements with other Parties for similar services. Contractor is responsible for submitting legally required tax returns to the Federal Government.

This Agreement entered into as of the day and year first written above.

<p>OWNER:</p> <p>SOUTHERN NEVADA HEALTH DISTRICT</p> <p>By: _____ Andrew J. Glass, FACHE, MS Director of Administration</p> <p>Approved as to form:  _____ Annette L. Bradley, Esq. Southern Nevada Health District, General Counsel</p>	<p>CONTRACTOR:</p> <p>EBERHARD SOUTHWEST ROOFING INC</p> <p>By: _____ Miguel Pascual Title: Project Manager License No: 39099 Jurisdiction: Nevada State Contractors Board</p>
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**ATTACHMENT A
INSURANCE AND BONDS**

All policies and coverages required below shall remain in effect until all Services covered under this Agreement have been performed by Contractor and accepted by Owner:

1. Owner. The Owner will secure and maintain sufficient insurance coverage to cover the existing structure and its contents during this Project.
2. Contractor.
 - A. Certificates of Insurance. Contractor shall provide certificates of insurance acceptable to Owner evidencing compliance with the requirements of this Agreement prior to commencement of the Work, upon renewal or replacement of each required policy of insurance, and upon Owner's written request.
 - B. Additional Insured Obligations. Contractor's additional insured coverages shall be primary and non-contributory to any of Owner's general liability insurance policies and shall apply to both ongoing and completed operations.
 - C. Contractor's Required Insurance Coverage. Contractor shall purchase and maintain the following types and limits of insurance:
 - i) Comprehensive Commercial General Liability. Insurance for the Project written on an occurrence form with policy limits of not less than one million dollars (\$1,000,000) each occurrence, two million dollars (\$2,000,000) general aggregate, and two million dollars (\$2,000,000) aggregate.
 - ii) Automobile Liability. Insurance shall cover owned and non-owned vehicles used by Contractor with policy limits of not less than one million dollars (\$1,000,000) for any one occurrence and one million dollars (\$1,000,000) aggregate for damages for all occurrences.
 - iii) Workers Compensation. Contractor shall maintain worker's compensation insurance in compliance with the state of Nevada requirements.
 - D. Contractor's Coverage. Insurance selected and described in this Attachment shall be purchased from an insurance company or companies lawfully authorized to issue insurance in the state of Nevada, Clark County. The coverage required shall extend to all Contractor's employees and subcontractors. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period.
 - E. Performance Bond and Payment Bond. Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the state of Nevada, Clark County, as follows:

Type	Penal Sum (\$0.00)
Payment Bond	\$1,040,000.00
Performance Bond	\$1,040,000.00

Payment and Performance Bonds shall be current as of the date of this Agreement.
 - F. All premiums, costs, and expenses for the requirement of Contractor's insurance and bonds shall be paid for by Contractor.