

**AGREEMENT BETWEEN WEBER COUNTY AND  
CLARK'S QUALITY ROOFING INC.**

This is an agreement between WEBER COUNTY ("Owner"), a political subdivision of the State of Utah, located at 2380 Washington Blvd., Ogden, Utah, 84401, and CLARK'S QUALITY ROOFING INC. ("Contractor"), located at 334 West Anderson Ave., Murray, Utah, 84107, for the replacement of the roof of the Weber County jail. In this agreement, Owner and Contractor shall collectively be referred to as "Parties" and individually as "Party." This agreement takes effect at the time it is signed by the last Party to sign below.

**RECITALS**

**WHEREAS**, Owner owns and operates a jail, located at 1400 S. Depot Drive, Ogden, UT 84404; and

**WHEREAS**, Owner has determined that the roof of the jail needs to be replaced; and

**WHEREAS**, Owner sought and obtained bids to select a contractor to replace the jail roof; and

**WHEREAS**, Contractor submitted the lowest responsive bid and has been chosen to perform the project, subject to meeting all applicable conditions and reaching agreement on a contract;

**NOW THEREFORE**, based upon the mutual promises contained herein and other good and valuable consideration, the Parties agree as follows:

**1. Scope of Work**

- a. Contractor agrees to perform the work specified in the attached Exhibit A, as further specified by the Owner ("Work"). This includes, but is not limited to, removing the existing jail roof and replacing it with a new PVC roof.

**2. Pricing and Payment**

- a. Owner shall pay Contractor the amount of \$929,809.00 for the satisfactory performance of the Work. This amount is based on the amount set forth in Contractor's bid and includes all labor, materials, equipment, disposal and transportation costs, and any other items reasonably necessary for the proper execution and completion of the Work.
- b. Contractor's bid was based on the following good faith estimate(s) of materials costs:
  - i. \$463,537.00 for all materials
- c. One or more suppliers will not commit to a material price until the materials are delivered. The Parties agree that if the material price differs from Contractor's

estimated material price by more than 5%, as established by documentation from the supplier at the time of the delivery, the Parties will execute a change order to adjust the overall contract amount up or down, based on the new price. If the material cost is within 5% of the estimate above, then Contractor shall be responsible for any difference in cost.

- d. Payment shall be due only after Contractor has completed Work to Owner's satisfaction.
  - i. Progress payments may be requested up to once per month and will be made based on the percentage of the overall project that has been satisfactorily completed at the time of the request.
  - ii. Final payment will only be made after Owner has inspected the Work and accepted it, as described in section 4 of this agreement.

### **3. Time of Commencement**

- a. Contractor shall start the Work after receiving written notification to proceed from Owner, in the form of a signed contract and a purchase order.

### **4. Completion, Inspection, and Acceptance**

- a. Contractor shall substantially complete the Work no later than five months after receiving the materials from the supplier. "Substantially complete," for purposes of this agreement, means complete the Work and notify Owner of its completion, so that Owner can inspect the Work to determine whether or not it is satisfactory.
- b. After Contractor substantially completes the Work, Owner shall inspect the Work. Owner shall notify Contractor in writing of any unsatisfactory components of the Work, after which Contractor shall have 15 days to correct the defective Work and notify Owner. Owner shall then inspect the Work within five business days. The inspection, notification, and correction process may be repeated if needed.
- c. When Owner has inspected the Work and determined that it is satisfactory, Owner shall notify Contractor in writing of its acceptance of the Work.
- d. Owner may view and inspect the Work at any time during the performance of the Work, in addition to its completion inspections. Contractor shall facilitate and assist with these inspections, including allowing access to the work area.

### **5. Change Orders**

- a. If circumstances that were not reasonably foreseeable at the time of the bid create a significant impact on Contractor's ability to comply with the terms of this agreement, the Parties may execute a change order to change the scope of work, the time allowed for the Work, and/or the amount Owner will pay for the Work.

## 6. Contractor's Work

- a. Contractor shall perform the Work as an independent contractor pursuant to the terms of this agreement. All persons employed by Contractor in the performance of services hereunder shall be under the sole and exclusive direction and control of Contractor, and for no purpose shall they be considered Owner's employees. Contractor shall be responsible for and shall promptly pay all federal, state, and local taxes chargeable or assessed with respect to Contractor's employees.
- b. Contractor shall supervise and direct the Work using Contractor's best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this agreement.
- c. Unless otherwise specifically noted, Contractor shall provide and pay for all labor, expertise, materials, freight and delivery equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services reasonably necessary for the proper execution and completion of the Work.
- d. Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the task assigned to him or her.
- e. Contractor warrants to Owner that all materials incorporated in the Work will be new unless otherwise specified and that all Work will be of good quality, free from faults and defects, and in conformance with this agreement. All Work not conforming to these standards may be considered defective.
- f. Regardless of any statutory or contractual obligation to the contrary, Contractor agrees to the following workmanship and materials warranties:
  - i. Contractor will provide all necessary labor and services to make repairs covered under the manufacturer's warranty and will recover the cost from the manufacturer.
  - ii. For a period of one year from the date the Work is accepted in writing by Owner, if the roof or any component of the roof is found to be defective, and the cost of the repair is not covered by the manufacturer's warranty, then Contractor shall repair or replace, at Contractor's election and at Contractor's cost (including parts and labor), the defective item or workmanship. This one-year warranty period shall restart after completion of the repair, for the portions repaired under the provisions of this paragraph, and shall continue until the repaired portions last an entire year with no need for further repair or replacement.
- g. Contractor shall, at all times, keep the premises free from accumulation of waste materials and debris caused by Contractor's operations. At the completion of the

Work, Contractor shall leave the jail property in a neat and orderly condition. If Contractor fails to do so, Owner may perform the clean-up and deduct its costs from the final payment amount.

- h. Contractor shall, at all times, allow Owner to continue to use the jail fully, without disruption, unless otherwise agreed to by the Parties.

## **7. Indemnification**

- a. Contractor shall indemnify and hold harmless Owner and its agents and employees from and against any and all claims, costs, damages, losses, and expenses, whether direct, indirect, or consequential, arising out of or resulting from Contractor's acts or omissions related to this agreement. Contractor's acts or omissions shall also include the acts or omissions by any subcontractor, any person or organization directly or indirectly employed by Contractor or any subcontractor to perform or furnish any of the Work, or anyone for whose acts any of them may be liable. Contractor's obligation to indemnify Owner is not limited or waived in any way by compliance or non-compliance with the insurance requirements of this agreement. Contractor will be required to indemnify Owner to the fullest extent allowed by law, regardless of whether Contractor has sufficient insurance to cover this obligation.

## **8. Contractor's Insurance**

- a. Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations of Contractor. If any of the required coverage is provided on a claims-made basis, then Contractor shall maintain the policy for no less than four years after termination of this agreement. If it is provided on an occurrence basis, then it must be maintained until the completed Work has been accepted by Owner and Contractor is no longer performing any operations or activities on Owner's property under this agreement.
  - i. Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of the Work under this agreement.
  - ii. Commercial General Liability insurance with contractual liability coverage to cover Contractor's obligations under the Indemnification section of this agreement, with minimum combined single limits of \$2,000,000 for each occurrence and \$5,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for

explosion and collapse. The policy shall be primary and noncontributory to any other policy or coverage available to Owner, whether such coverage be primary, contributing, or excess.

- iii. Commercial Automobile Liability insurance that provides coverage for owned, hired, and non-owned automobiles, in the minimum amount of \$1,000,000 per person, \$2,000,000 per accident, and, for property damage, \$500,000 per occurrence, or a combined single limit of \$5,000,000.
  - iv. Professional/Contractor Liability insurance with minimum limits of \$1,000,000 for each occurrence and \$1,000,000 aggregate.
- b. A certificate of insurance shall be completed by Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Owner prior to commencement of the Work. The certificate shall provide that the coverages afforded under the policies shall not be cancelled, terminated, or materially changed until at least 30 days' prior written notice has been given to Owner.
  - c. Failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this agreement upon which Owner may immediately terminate this agreement, or at its discretion Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Contractor to Owner upon demand, or Owner may offset the cost of the premiums against any monies due to Contractor from Owner.

## **9. Bonds**

- a. Contractor shall obtain and provide to Owner a payment bond and a performance bond, each in the overall contract amount of \$929,809.00, from a company lawfully authorized to issue surety bonds in Utah.

## **10. Default**

- a. In the event of a material default by either Party in the performance of any of the terms and conditions of this agreement, the other Party may give written notice of such default to the defaulting Party. If the default is not reasonably resolved within thirty days of receipt of notice, this agreement may be terminated immediately by the Party not in default, and the Party in default shall be liable for all costs, damages, and expenses resulting from such termination.
- b. Neither Party will be liable for any default or delay in the performance of its obligations under this agreement, to the extent that such default or delay is caused, directly or indirectly, by events beyond the reasonable control of such

Party, including, but not limited to, fire, flood, earthquake, elements of nature or acts of God, epidemic, pandemic, civil disorder, strike, lock-out, or embargo.

- c. Contractor and Owner recognize that Owner might suffer financial loss if the project is not completed by five months after Contractor receives the materials for the Work from the supplier, but that the amount of the financial loss is difficult to predict and may be difficult to determine after the fact. Therefore, except as provided in paragraph 10.b, above, the Parties agree that if substantial completion is not achieved by that date, Contractor shall pay, as liquidated damages, \$100.00 per day for each day after that date that Contractor has not achieved substantial completion.

## **11. Term of Agreement**

- a. This agreement shall remain in force and effect until the Work has been completed, payment has been made, and all applicable time periods described in or necessarily implied by this agreement have expired. This includes, but is not limited to, the warranty and indemnification provisions of this agreement, and any other provisions related to the liability of the Parties, which shall continue in force until all applicable statutes of limitations have run and until all legal proceedings arising out of this agreement have reached final resolution.
- b. Owner reserves the right to terminate this agreement at any time, with or without cause. In the event of such termination, Owner shall give written notice to Contractor. Contractor shall be compensated for all Work performed, and expenses incurred, before receipt of Owner's notice of termination. With respect to materials purchased by Contractor before receipt of the notice of termination, Owner shall only be responsible to pay for materials that Contractor cannot reasonably use in the course of its business by making reasonable efforts to mitigate its damages.

## **12. Miscellaneous**

- a. Severability. The invalidity of any portion of this agreement shall not be deemed to affect the validity of any other provision, and the remainder of the agreement will remain in full force and effect, unless the invalidation of the term materially alters this agreement. If the invalidation of the term materially alters the agreement, then the Parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the Parties.
- b. No Waiver. The failure of either Party to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of the agreement, shall not be construed as subsequently waiving any terms and conditions.
- c. Governing Law. This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

- d. Notices. Any notice provided for or concerning this agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the current or last known address of the other Party.
- e. Entire Agreement. This agreement represents the entire and integrated agreement between Owner and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended only by written instrument signed by both Owner and Contractor.
- f. Assignment and Subcontracting.
  - i. Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other Party hereto and to partners, successors, assigns, and legal representatives of the other Party in respect to covenants, agreements, and obligations contained in this agreement.
  - ii. Neither Party shall assign the agreement without written consent of the other. If either Party attempts to make such an assignment without consent, that Party shall nevertheless remain legally responsible for all obligations under the agreement.
- g. Interpretation of Terms. In this agreement, any reference to a Party includes that Party's heirs, executors, administrators, successors, and assigns; and singular includes plural, and vice versa.
- h. Litigation Costs. If any litigation arises from this agreement, each Party shall be responsible for its own attorneys' fees and other litigation-related expenses.

Executed on behalf of Owner on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BOARD OF COUNTY COMMISSIONERS  
OF WEBER COUNTY

By \_\_\_\_\_  
Scott K. Jenkins, Chair

Executed on behalf of Contractor on this 9 day of November, 2022

By Carl Clark

Printed name Carl Clark

Title Owner/President





# **EXHIBIT A**

## **WORK TO BE PERFORMED**

- Remove and dispose of the existing roof at the Weber County jail at 1400 S. Depot Drive, Ogden, Utah.
- Install a new roof with 80 mil PVC material.
- Replace metal drip edge with new ½ inch Dens decking or equivalent on the entire roof.
- The roof needs to be a mechanically attached roof system.
- Install new counter flashing.