



*Finance Department*

10000 N. El Mirage Road, El Mirage 85335

623-876-2953; Fax 623-972-8110; TDD 623-933-3258

www.elmirageaz.gov

<b>CONTRACT NO.: PW19-JOC02</b>	<b>AMENDMENT NO. 2.- Water and Wastewater Projects</b>
<b>Felix Construction Company</b>	

In accordance with the provisions of the above referenced contract, the contract is amended as follows:

1. **TERM OF AGREEMENT**

This Agreement shall be effective as of the date first set forth above and shall expire on January 31, 2024 unless terminated, cancelled, or extended as otherwise provided herein.

David Giannetto  
Felix Construction Company  
2530 S 52nd Ave  
Phoenix, AZ 85043  
[DAVIDG@FELIXCONSTRUCTION.COM](mailto:DAVIDG@FELIXCONSTRUCTION.COM)

**ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.**

Contractor hereby acknowledges receipt of, and agreement with, the amendment. A signed copy must be filed with the City of El Mirage Procurement Office. The above referenced Contract Amendment is hereby executed:

For the Contractor:

For the City:

By: 

By: 

Name: David Giannetto

Name: J. Crystal Dyches

Title: Principal

Title: City Manager

Date: 1/9/2023

Date: 9-19-23



**CITY OF EL MIRAGE  
JOB ORDER CONTRACT  
WATER AND WASTEWATER PROJECTS - PW19 - JOC02**

THIS CONTRACT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“Effective Date”), by and between the City of El Mirage, an Arizona municipal corporation (“City”), and Felix Construction Company, a(n) Arizona corporation (“Contractor”).

**RECITALS**

- A. The City of El Mirage is authorized and empowered by provisions of the City Code to execute contracts for professional services by and through its City Manager;
- B. The City desires to provide construction services on an as-needed basis to support the work for the Water and Wastewater Job Order Contract program, as more fully described in the Scope of Work and referred to as the “Project;”
- C. The City requires professional services for this Project and desires to contract with the Contractor to provide these services.
- D. Contractor is duly qualified to perform the requested services.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

**1. PROJECT DESCRIPTION**

This Job Order Contract (JOC) is for the Contractor to perform a broad range of on-call maintenance, repair, rehabilitation and construction projects relating to water and wastewater maintenance, repair, and construction services in the City of El Mirage and City of Surprise Original Town Site. For projects determined by the City to be appropriate for this JOC, the City will request the Contractor prepare a scope of work, cost proposal, and project schedule. If acceptable, the City will issue an individual job order agreement and direct the Contractor to proceed with the work. The Contractor is neither guaranteed a minimum amount of work nor any jobs at all. The City reserves the right and will issue job order agreements based on the ability of the Contractor to meet the City’s work schedule and the availability of trades and expertise in relation to each project.

**2. SCOPE OF WORK**

The City of El Mirage owns and maintains a network of water and wastewater facilities and infrastructure. Currently the City owns one (1) water reclamation facility, ten (10) water production facilities, one (1) wastewater lift station, approximately one hundred twenty (120) miles of water distribution lines and approximately sixty (60) miles of sewer lines.

The scope of work will include work tasks as requested and described below relating to a variety of water and wastewater projects. These projects will include any or all of the following: earthwork and landscaping, structural, electrical, mechanical, instrumentation and control, and any other related functions required.

The following activities may be included in individual projects. If the Contractor does not have direct expertise in some of these areas, they must demonstrate the knowledge needed to act as the general

contractor utilizing specialty subcontractors for specific work elements.

Work Activities (including but not limited to):

- a. Permitting – obtain all necessary permits required to complete projects, including but not limited to; off-site/right-of-way, building safety, dust control, traffic control, etc.
- b. Installation of new water, reclaimed water, wastewater, and storm drainage and pipelines and all appurtenances including related work.
- c. Rehabilitation of new water, reclaimed water, wastewater, and storm drainage and pipelines and all appurtenances including related work.
- d. Asphalt/concrete repair – Ensure proper repair or replacement including full depth section, overlays, and patches to restore damaged areas.
- e. Installation of landscaping to restore areas damaged by construction.
- f. Utility locating (potholing) underground utilities and obstructions.
- g. Preparation of construction estimates – City staff may desire to use the Contractor during capital project planning or design stages to perform construction estimates.

### **3. LOCATION OF THE WORK**

All work is located within the City of El Mirage and the City of Surprise Original Town Site, Maricopa County, Arizona.

### **4. CONTRACTORS LICENSE**

Contractor shall be a licensed contractor through the Arizona Registrar of Contractors and have the proper classification to perform the work specified in this contract.

### **5. CONTRACT TERM**

This Contract is a three (3) -year contract and commences on February 1, 2019, and expires January 31, 2022. The City may at its sole option and with the consent of the Contractor, extend the period of this Contract up to two (2) additional years in one (1) -year increments. The Contractor shall be notified in writing when the contract renewal has been approved within thirty (30) days of contract expiration.

Either party has the right to cancel this contract at any time with a thirty (30) -day written notice.

### **6. GUARANTEE**

The Contractor shall guarantee all work and operation of materials provided for one (1) year after completion of the work.

### **7. ORDERING WORK**

- a. Contractor shall provide the City with a written cost proposal for each project.

Proposals shall be itemized per the job pricing matrix and the job order cost proposal. Estimates are binding on the Contractor. However, conditions which will alter the original estimate may be brought to the attention of the City's Project Manager ("Project Manager") for approval. Such notification will occur quickly enough so as not to delay any project underway.

- b. Contractor shall proceed with work only upon obtaining an off-site/ROW permit from the Engineering Department and the receipt of a purchase order. The City will waive any City of El Mirage permit fees.

### **8. SCOPE OF WORK MEETING**

Prior to the commencement of any work on a project, a scope meeting will be held. Minimum attendance of the Contractor's staff shall include a responsible company official and the job superintendent. The agenda will include:

- Critical elements of the work schedule.
- The traffic control plans in writing.
- Coordination with the involved utility firms.
- Emergency telephone numbers for all representatives involved in the course of construction.
- Names and telephone numbers for all subcontractors proposed for use on the project.

**9. CONTRACTOR'S CONSTRUCTION SCHEDULE**

The Contractor shall prepare and submit for approval a construction schedule outlining the proposed sequence of operations. The schedule shall conform to specific limitations of operations specified herein and to the approved traffic control plan.

**10. CHANGES IN THE WORK**

The Public Works Director may at any time, as the need arises, order changes within the scope of work of any job order agreement without invalidating the agreement. If such changes increase or decrease the amount due under the Contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by written change order.

The Public Works Director also, may at any time, by issuing a written field order, make changes in the details of the work for any job order agreement. The Contractor shall proceed with the performance of any changes in the work so ordered unless the Contractor believes that such written field order entitles him/her to a change in Contract price or time, or both, in which event Contractor shall give the City written notice thereof within three (3) days after the receipt of the field ordered change, and the Contractor shall not execute such changes pending the receipt of an executed change order or further written instruction from the City.

**11. LAYOUT, FIELD MEASUREMENTS AND INSPECTION OF SURFACES**

Contractor shall be solely responsible for the accuracy of measurements and laying out their own work and shall make good any errors due to faulty measurements taken, information obtained, layout, or failure to report discrepancies. The City will assist the Contractor in establishing preliminary working lines and benchmarks.

The Contractor shall notify the Project Manager in writing of any defects noted in such surfaces that are to receive their work. The Project Manager will direct such surfaces to be remedied.

**12. INSPECTION**

City Inspectors ("Inspectors") will monitor the work site(s) to report as to the progress of the work, the manner in which it is being performed, and report whenever it appears that material furnished or work performed by the Contractor fails to fulfill the requirements of the job order agreement. The Inspectors may direct the attention of the Contractor to such failures or infringement.

In a case of a dispute arising between the Inspector and the Contractor as to material furnished or the manner of performing the work, the Inspector shall have the authority to reject materials or suspend the work until the question and issue can be referred to and decided by the Public Works Director or designee. Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the specifications. Inspectors shall in no case act as foremen or perform other duties for the Contractor or interfere with the management of the work by the Contractor.

Inspection or supervision by the Public Works Director or designee shall not be considered as direct control of the individual worker and/or their work. The direct control shall be solely the responsibility of the Contractor.

**13. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK**

The Contractor shall properly guard and protect all finished or partially finished work, and shall be responsible for the same until the entire contract is completed and accepted by the City. Partial payment on work so completed shall not release the Contractor from such responsibility, but they shall turn over the entire work in full accordance with these specifications before final settlement shall be made.

**14. STOCKPILE OF MATERIALS**

The Contractor may, if approved by the Project Manager, place materials in the public right-of-way provided they do not prevent access to adjacent properties or prevent compliance with traffic regulations. Traffic shall not be required to travel over stockpiled materials, and proper dust control shall be maintained.

**15. SUPERVISION BY CONTRACTOR**

The Contractor shall supervise and direct the work and shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor shall employ and maintain at the work site a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The representative shall have full authority to act on behalf of the Contractor and all communications given to the representative shall be as binding as if given to the Contractor. The representative shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

**16. STANDARD SPECIFICATIONS AND DETAILS**

Except as otherwise noted, construction of this project and all work done under this Contract shall be in accordance with these specifications and all applicable Uniform Standard Specifications For Public Works Construction sponsored and distributed by Maricopa Association of Governments (MAG), MAG Standard Details, the City of El Mirage supplements to MAG Standard Details, and City of Surprise supplements to MAG Standard Details, including the latest approved revisions thereto in force at the time of bid advertisement, which shall be referred to hereinafter as the "Standard Specifications." In all cases where accepted standards (American Water Works Association (AWWA), American National Standards Institute (ANSI), American Association of State Highway and Transportation Officials (AASHTO), Arizona Department of Transportation (ADOT), American Society for Testing and Materials (ASTM), MAG, etc., are referred to in the "Standard Specifications," the latest revisions as of bid advertisement shall prevail.

**17. DUMPING AND DISPOSAL OF WASTE**

The Contractor is responsible for the cost to dispose of all waste products including excess earth material which will not be incorporated into the work under this contract. The waste product referred to herein shall become the property of the Contractor, unless otherwise directed by the Public Works Director.

**18. CLEAN UP**

Clean up shall include the removal of all excess materials in conjunction with the project accumulated on any driveways, curbs, landscaping, or any other surface. No special payment will be made for this item.

The Contractor shall, upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public right-of-way in a neat and clean condition. No special payment will be made for this item.

**19. DUST PREVENTION**

The Contractor shall take whatever steps, procedures or means required to prevent abnormal dust conditions due to construction operations in connection with this contract. The dust control measures shall be maintained at all times during construction of the project to the satisfaction of the Public Works Director and in accordance with the requirements of the Maricopa County Health Department Air Pollution Control and Environmental Protection Agency (EPA) regulations. Contractor will work under the City's Dust Control permit.

**20. MISCELLANEOUS REMOVAL AND RELOCATIONS**

Miscellaneous removals and relocations shall be construed to mean the removal of all unsuitable materials whether designated or implied by the plans and specifications and shall include but not be limited to the removal of such items as pipes, concrete, asphalt, block, brick, rock, metal, etc. of every nature and description, unless such items are specifically designated in a separate line item. Certain items require

temporary removal and reinstallation such as mail box stands, sign posts, survey monument frames and covers, etc., and are included in this category.

## **21. TRAFFIC CONTROL**

Most projects will be small enough where major traffic control will not be required. Quotes will be requested for each project. If the need for major traffic control arises for a certain project the cost for traffic control can be added as a separate line item. Any revisions shall be submitted to Public Works for review and approval.

All traffic shall be regulated in accordance with MAG Specifications; the City of Phoenix Traffic Barricade Manual, latest edition; and the Manual on Uniform Traffic Control Devices (MUTCD).

The Contractor shall have the full responsibility and liability for traffic control under each job order agreement. The Contractor shall submit a Traffic Control Plan to the Public Works Department for approval prior to beginning any work under any job order agreement. It shall be noted that Traffic under this Contract shall include all motor vehicles, bicyclists, and pedestrians.

The Contractor shall notify all adjacent or affected residents or businesses at least 48 hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

Access shall be maintained to adjacent businesses at all times during construction. Where property has more than one point of access, no more than one access shall be restricted or closed at any one time. Access to adjacent private driveways shall be maintained during all non-working hours.

No measurement will be made for traffic control. No payment will be made for traffic control. The cost thereof shall be included in the price bid submitted for the construction or installation of the items to which such traffic control is incidental or appurtenant.

## **22. SURVEY CONTROL POINTS**

Existing survey monuments shall be protected by the Contractor or removed and replaced under the direct supervision of the City Public Works Department. Prior to construction, it is the responsibility of the Contractor to notify the City of any survey monuments which need to be referenced off. Any monuments which are lost and have not been referenced off due to the Contractor's negligence and lack of notification to the City shall be replaced at the Contractor's expense. Lot corners shall not be disturbed without knowledge and consent of the property owner and only after such corner has been properly referenced for replacement.

## **23. PROTECTION OF EXISTING FACILITIES**

The Contractor shall protect all existing facilities during construction. Utility poles that may be affected by the construction activities shall be protected and/or braced by the Contractor. The Contractor shall notify the appropriate Utility Company or agency of any construction that may affect their facilities and state the course of action, which will be taken to protect same.

## **24. TESTING OF MATERIALS**

Most projects will be small enough where testing is not required. All tests shall be done according to City of El Mirage Material Testing Guidelines and results certified by an independent laboratory approved by the City. All material testing should be included in the project price.

## **25. COOPERATION WITH UTILITIES**

- a. The Contractor shall assume full responsibility for all damage to all utilities, the locations of which have been made known to them due to their operations, and shall repair the damaged utilities as required herein, at their own expense.
- b. The Contractor shall contact the City's Public Works Department for blue-staking of all traffic signals, when required.

- c. The Contractor shall comply with the requirements of the A.R.S 40-360.21 through 40-360.29 in notification to the interested utility owners prior to the start of construction and shall ascertain the approximate locations of the various underground utilities shown on the plans, and as may be brought to their attention. The exact location of these underground utilities shall be determined by excavations made by the Contractor prior to any trenching operations. When the Contractor's operations result in damage to any utility, the location of which has been brought to their attention, they shall assume full responsibility for such damage.
- d. It is the Contractor's sole responsibility to coordinate with the utility companies to have any conflicts between existing utilities and the new construction project resolved. The City will not be held responsible for any delay claims due to such conflicts.
- e. Any waterlines or fire hydrants damaged during construction shall be replaced at the Contractor's expense as per the requirements of the MAG Standard Specifications.
- f. No water valve, sewer manhole or clean out shall be left damaged or inaccessible for more than seven (7) working days. If deficiencies are not corrected within the prescribed time period, the necessary repairs will be affected by the City at the Contractor's expense.

## **26. PROJECT COMPLETION**

Project Completion is full completion of all construction associated with a job order agreement, including, but not limited to, punch list items, close out documentation, Operation & Maintenance manuals, warranties, and record drawings as certified by the Architect or Engineer of record.

## **27. FINAL ACCEPTANCE**

Final Acceptance shall mean a written final acceptance of the work by the Public Works Director who shall make the final acceptance promptly after all work under the contract has been completed in accordance with the job order agreement and after final inspection.

## **28. APPLICABLE LAW**

In the performance of this contract, Contractor shall abide by and conform to any and all laws of the United States, State of Arizona and City of El Mirage including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Contract. It is the policy of the City of El Mirage that suppliers of goods or services to the City adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, and promote regardless of race, color, religion, gender, national origin, age or disability.

This Contract shall be governed by the City. City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this Contract or in statutes pertaining specifically to the City. This Contract shall be governed by the laws of the State of Arizona. Any lawsuit pertaining to this Contract may be brought only in courts in the State of Arizona.

This Contract is subject to the provisions of A.R.S. §38-511. The City may, within three (3) years after its execution, cancel this Contract, without penalty or further obligation, made by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the City or any of its departments or agencies is, at any time while the Contract or any extension of the contract is in effect, an employee or agent of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.

## **29. LEGAL REMEDIES**

All claims and controversies shall be subject to resolution according to the terms of the City of El Mirage Procurement Code. In the event either party brings any action for any relief, declaratory or otherwise,

arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury or arbitration board, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment or by arbitration award.

### **30. ASSIGNMENT – DELEGATION**

No right nor interest in this Contract nor delegation of any duty of Contractor shall be made without prior written permission of the City.

### **31. RIGHTS AND REMEDIES**

No provision in this document or in the vendor's offer shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the City to insist upon the strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the City's acceptance of and payment for materials or services, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.

### **32. FORCE MAJEURE**

Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

Force majeure shall not include the following occurrences:

- a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed *Certified-Return Receipt* and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

### **33. BRIBES AND KICK-BACKS**

The Contractor shall not by any means:

- a. Induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

- b. Confer on any governmental, public or quasi-public official having any authority or influence over the project, any payment, loan subscription, advance, deposit of money, services or anything of value, present or promised;
- c. Offer nor accept any bribes or kick-backs in connection with the project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of project goods and materials; or,
- d. Without the express written permission of the City, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the General Contractor has a direct or indirect proprietary or other pecuniary interest.

**34. RIGHT TO ASSURANCE**

Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**35. RIGHT TO AUDIT RECORDS**

The City may, at reasonable times and places, audit the books and records of any Contractor as related to any contract held with the City.

**36. LICENSES**

Contractor shall have at the time of bid submittal, and shall maintain in current status, all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract. The conclusion of the issuing authority in each case is to be deemed conclusive for the purposes of complying with this provision. Substantial compliance does not meet the minimum requirements of this or any provision hereof, or of any applicable law or other authority, and that strict compliance alone is adequate to meet those requirements, unless the City consents to such substantial compliance in writing at the time of bid submittal. The determination shall be made by the City.

**37. PATENTS AND COPYRIGHTS**

All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.

**38. ADVERTISING**

Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.

**39. WORK METHODS**

The methods, equipment and appliances used on the work shall be such as will produce a satisfactory quality of work, and shall be adequate to complete any job order agreement within the time limit specified.

Except as is otherwise specified, the Contractor's procedure and methods of construction may, in general, be of their own choosing, provided they follow best general practice and are calculated to secure results which will satisfy the requirements of the specifications and the supervision of the work.

The work covered by any job order agreement shall be carefully laid out in advance and performed in a manner to minimize interference with normal operation and utilization of the roads. The Contractor shall exercise caution during the course of this construction work to avoid damage to all known existing or possible unknown existing underground utilities. They shall conduct their construction operations in such a

manner as to avoid injury to their personnel and to avoid damage to all utilities. Any damage done will be repaired without delay and at the expense of the Contractor.

#### **40. CITY PERMITS**

The Contractor shall obtain a no fee engineering permit from the City of El Mirage and the City of Surprise. The Contractor will be responsible for any required Maricopa County permits or other agency permits.

#### **41. INDEPENDENT CONTRACTOR**

##### **a. General**

- i. The Contractor acknowledges that all services provided under this Contract are being provided as an independent contractor, not as an employee or agent of the City of El Mirage.
- ii. Both parties agree that this Contract is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing their profession elsewhere.

##### **b. Liability**

The City of El Mirage shall not be liable for any acts of Contractor outside the scope of authority granted under this Contract or as the result of Contractor's acts, errors, misconduct, negligence, omissions and intentional acts.

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any 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 any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the 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.

##### **c. Other Benefits**

The Contractor is an independent contractor; therefore, the City will not provide the Contractor with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Further, Contractor is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Contractor.

#### **42. WARRANTY**

Each offer shall provide a one year warranty/guarantee against defects in materials, faulty workmanship and/or performance for all items required of the specifications. Contractor further warrants that all services provided under any job order agreement resultant of this Contract shall conform to the specifications of this Contract and any resulting job order agreement.

#### **43. PAYMENT TERMS**

If payment terms are not indicated, terms of NET 30 days shall be applied by the City. Payment terms to apply after receipt of invoice or final acceptance of the products/services, whichever is later. Payment terms offering less than twenty (20) days for payment will not be considered. A separate invoice shall be issued

for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or services and correct invoice.

**44. PROVISIONS REQUIRED BY LAW**

Each and every provision of law and any clause required by law to be in the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract will forthwith be physically amended to make such insertion or correction.

**45. SEVERABILITY**

The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

**46. RELATIONSHIP TO PARTIES**

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.

**47. INTERPRETATION-PAROL EVIDENCE**

This Contract represents the entire Contract of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this contract are hereby revoked and superseded by this contract. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this contract. This Contract may not be changed, modified or rescinded except as provided for herein, absent a written agreement signed by both Parties. Any attempt at oral modification of this contract shall be void and of no effect.

**48. INSPECTION**

All material and/or services are subject to inspection and acceptance by the City. Materials and/or services failing to conform to the specifications of this Contract will be remedied immediately by the Contractor.

**49. COMPLIANCE**

The Contractor's products, services, and facilities shall be in full compliance with all applicable Federal, State, and local health, environmental, and safety laws, regulations, standards, and ordinances, regardless of whether or not they are referred to by the City. All transactions related to this Contract and any order resulting from it shall be governed by the laws of the State of Arizona. Contractor is to supply Safety Data Sheets (S.D.S.) in accordance with Federal requirements. Contractor entering the City workplace with hazardous materials or using hazardous materials on any City property or right-of-way shall supply the City with a S.D.S. covering those particular products the Contractor may expose City employees or the general public to while working at the site. The S.D.S. must be in compliance with OSHA Regulation 1910.1200, paragraph g.

**50. LOSSES AND DAMAGES**

All loss or damage arising out of the nature of the work to be done or from the action of the elements or from any unforeseen circumstances in the prosecution of the same, or from any unusual obstructions or difficulties which may be encountered in and/or during the prosecution of the work, or from any casualty whatsoever of every description, shall be sustained and borne by the Contractor at its own cost and expense.

**51. CHARACTER AND STATUS OF WORKERS**

Only skilled supervisors and workers shall be employed on work requiring special qualifications. When required by the Public Works Department, the Contractor shall discharge any person who is, in the opinion of the Public Works Director, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. The Contractor shall keep the City harmless from damages or claims for compensation that may occur in the enforcement of this section. The Contractor shall be responsible for assuring the legal working status of its employees and its subcontractor's employees.

**52. TRAFFIC**

All traffic affected by services performed pursuant to this contract shall be regulated in accordance with the *City of Phoenix -Traffic Barricade Manual*, latest edition and the City of Phoenix in the Traffic Barricade Manual shall be referred to as the City of El Mirage City Engineering Department for interpretation.

**53. INSURANCE REQUIREMENTS**

The Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies possessing a current A.M. Best, Inc. Rating of A- and duly licensed to do business in the State of Arizona with policies and forms satisfactory to the City. All insurance required herein shall be maintained in full force and effect at all times during the term and any extension of this contract; failure to do so may, at the sole direction of the City, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance, and any insurance or self-insurance maintained by the City shall not contribute to it. Any failure to comply with the claim reporting provisions of the policies or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's work or service.

The insurance policies may contain deductibles which shall not exceed twenty-five percent (25%) of the contract price. The Contractor shall be solely responsible for deductible retention and the City, at its option, may require the Contractor to secure the payment of such deductible. No insurance required under this contract may be written on a "claims made" basis.

The 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. The 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 the City's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

The insurance policies, except Workers' Compensation, required by this Contract shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

**54. REQUIRED INSURANCE COVERAGE**

a. General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$3,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed

operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 000211093 or any replacement thereof.

Any Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Work or Contractor's operations under this Contract. 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 the Contractor's Commercial General Liability insurance.

b. 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 \$300,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage shall 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.

c. Workers' Compensation

The 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; 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.

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

**55. CERTIFICATES OF INSURANCE**

Prior to commencing Services under this Contract, Contractor shall furnish the City with Certificates of Insurance (naming the City as additionally insured), or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect. If a policy does expire during the life of the contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

**56. CONTRACT DEFAULT**

The City, by written notice of default to the Contractor, may terminate the whole or any part of this contract immediately in any one of the following circumstances:

- a. If the Contractor performs the services in a manner the City determines creates an unreasonable risk of harm or injury to the public or any property of the City; or
- b. If the Contractor fails to perform any of the other provisions of this contract; and fails to remedy the situation within a period of five (5) calendar days after receipt of notice.

**57. TERMINATION FOR CONVENIENCE**

The City reserves the right to terminate any contract, with or without cause, upon thirty (30) days written notice. The City shall be responsible for the payment for services completed by Contractor prior to the effective date of the termination.

**58. DELAY IN EXERCISING CONTRACT REMEDY**

Failure or delay by the City to exercise any right, power, or privilege shall not be deemed a waiver thereof.

**59. TAX EXEMPTION**

The City is exempt from paying Federal Excise Taxes and shall furnish an exemption certificate upon request.

**60. LATE SUBMISSION OF CLAIM**

The City will not honor any invoices or claims which are tendered more than six (6) months after the last item of the account accrued.

**61. LIABILITY**

Except for the negligence of the City, its officers, managers, employees, or agents, Contractor shall be liable to the City for any physical damage to City property or for the death of, or personal injury to, City personnel arising out of Contractor's occupancy, maintenance, repair, replacement, installation and/or any other work performed pursuant to the contract. Contractor agrees to indemnify, defend and hold the City harmless from any claim or loss arising from such damage or injury.

**62. CONTRACT SUBJECT TO APPROPRIATIONS**

Payments by the City required under the terms of this contract are subject to appropriation by the Council of the City of El Mirage. The obligation of City to make any payment pursuant to this contract is a current expense of the City, payable exclusively from annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the fee amounts as set forth in this contract during any succeeding fiscal year, City shall provide Contractor written notice that this contract shall terminate at the end of the current fiscal year and that City shall be relieved of any subsequent obligation of payment under this contract upon such termination and neither the City nor any official or employee of the City shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

**63. COOPERATIVE USE OF CONTRACT**

In addition to the City of El Mirage, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

**64. AUTHORITY AND APPROVALS**

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

City of El Mirage,  
an Arizona municipal corporation

\_\_\_\_\_  
By: J. Crystal Dyches  
Its: City Manager

ATTEST

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Felix Construction Company \_\_\_\_\_,  
a(n) Arizona Corporation \_\_\_\_\_

\_\_\_\_\_  
By: David Giannetto \_\_\_\_\_

Its: Principal \_\_\_\_\_



**REQUEST FOR COUNCIL ACTION**

<b>DATE SUBMITTED:</b> 09/07/2023	<b>TYPE OF ACTION:</b> Purchase	<b>SUBJECT:</b> Consideration and action to approve the purchase of goods and services from Felix Construction to restore the Varney Road well site property to its previous condition in an amount not to exceed \$73,741.98 and authorize finance to make any necessary transfers. (Public Works)
<b>DATE ACTION REQUESTED:</b> 09/19/2023		
<b>AGENDA SECTION:</b> Consent		

<b>TO:</b> Mayor and Council
<b>FROM:</b> Nick Russo, Public Works Director

**RECOMMENDATION:**

Approve the purchase of goods and services from Felix Construction to restore the Varney Road well site property to its previous condition in an amount not to exceed \$73,741.98 and authorize finance to make any necessary transfers.

**PROPOSED MOTION:**

I move to approve the purchase of goods and services from Felix construction as presented.

**BACKGROUND:**

The Varney Road well site at 11311 N. Dysart Road was damaged in a vehicle accident. The block wall on the property's boundary was destroyed, in addition to mechanical components on the inside of the site. The City's insurance provider evaluated the damage, and the City was paid \$52,655.84 for the value of the damaged property and will be further reimbursed up to \$14,238.25 upon completion of the repairs. Public Works has received an estimate from Felix Construction to complete the repairs to the well site through the use of City contract PW19-JOC02 in an amount not to exceed \$73,741.98. This estimate from Felix Construction includes repairs for the damage caused by the accident (\$66,894.09) and existing electrical repairs to the site (\$6,847.89). The budget exists in the water fund 511-5-7115-255 to cover this purchase. This item seeks approval for the use of Felix Construction for this project and to authorize finance to make any necessary transfers. This item was tabled at the 8/22/23 City Council meeting for further research into the project costs and coverage by the City's insurance provider. A detailed breakdown of the costs is attached to this request in response to this inquiry. The restitution process for the damage by the responsible party is being coordinated by the City's insurance provider.

<b>BUDGETED:</b> No	<b>SUFFICIENT FUNDS:</b> Yes
<b>CIP:</b> No	<b>MULTI-YEAR:</b> No

**Fiscal Impact**

<b>AMOUNT REQUESTED:</b>	\$73,741.98
<b>FISCAL YEAR:</b>	FY24
<b>ACCOUNT TO BE CHARGED:</b>	511-5-7115-255

**Attachments**

Varney Repairs - Detailed Breakdown

Felix JOC extension

Varney Well Property Repairs