



City of El Mirage, Arizona



Project No: **EM22-SD02** Date: **August 20, 2024**
 Materials and/or Services: **1st Avenue Drainage Improvements**

OFFER

To the City of El Mirage:

The undersigned hereby offers and agrees to furnish materials and/or services in compliance with all terms, conditions, specifications and amendments in the Contract Documents except for any written exceptions in the offer. The signature below also certifies his/her understanding and compliance with paragraph one of the City of El Mirage Standard Terms and Conditions.

Arizona Transaction (Sales) Privilege Tax License Number: 10-175725-W

For clarification of this offer contact:

Name: DBA Construction, Inc.

Federal Employer Identification Number: 86-0842477

Telephone: 602-442-6767

DBA Construction, Inc.
Company Name

[Signature]
Authorized Signature for Offer

1833 South 59th Ave
Address

Math Woolwine
Printed Name

Phoenix AZ 85043
City State Zip Code

Preconstruction Manager
Title

ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of El Mirage Use Only)

Your offer is hereby accepted. The Contractor is now bound to sell the materials and/or services listed by the attached award notice based upon the solicitation, including all terms conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the City. The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until Contractor receives an executed *Purchase Order*.

Attested by:

Sharon Antes, City Clerk

City Seal

City of El Mirage, Arizona. Eff. Date: _____

Approved as to form:

Justin Pierce, City Attorney

Awarded on _____, _____

J. Crystal Dyches, City Manager



GENERAL TERMS AND CONDITIONS

DSD – Engineering Division

10000 N. El Mirage Road
El Mirage, AZ 85335

Phone: (623) 972-8116

This project is located within the corporate limits of the City of El Mirage. This project includes drainage improvements for the 1st Avenue cul-de-sac, just north of Gentry Park. Improvements include the installation of a retention basin, storm drain pipe, catch basins, drywell, sidewalk, curb and gutter, pavement repair and decomposed granite.

THE FOLLOWING TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE SOLICITATION AND ANY RESULTANT CONTRACT.

1. **CERTIFICATION:** By signature in the Offer section of the Offer and Contract Award page the Contractor certifies:
 - a. The submission of the offer did not involve collusion or other anti-competitive practices.
 - b. The Contractor shall not discriminate against any employee or applicant for employment.
 - c. The Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the vendor may be debarred.

2. **BRIBES AND KICK-BACKS:** The General 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 Owner, 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.

3. **APPLICABLE LAW:** In the performance of this agreement, contractors 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 agreement.

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 ARS §38-511; the City may cancel this contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the 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 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.



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4. **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.
5. **CONTRACT:** The contract between the City and the Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of work, attachments, price sheet(s) and any amendments thereto, and (2) the offer submitted by the Contractor in response to the solicitation. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. However, the City reserves the right to clarify, in writing, any contractual terms with the concurrence of the Contractor, and such written contract shall govern in case of conflict with the applicable requirements stated in the Solicitation or the Vendor's offer. The Solicitation shall govern in all other matters not affected by the written contract.
6. **CONTRACT AMENDMENTS:** This contract may be modified only by a written Contract Amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.
7. **CONTRACT APPLICABILITY:** The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this Solicitation. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the City are not applicable to this Solicitation or any resultant contract.
8. **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.
9. **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.
10. **RELATIONSHIP TO PARTIES:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venture, 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.
11. **INTERPRETATION-PAROL EVIDENCE:** This contract represents the entire agreement 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.
12. **ASSIGNMENT-DELEGATION:** No right or interest in this contract nor delegation of any duty of Contractor shall be made without prior written permission of the City.



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13. **SUBCONTRACTOR / SUPPLIER CONTRACTS:** The Contractor shall enter into written contracts with its subcontractor(s) and supplier(s), if any, and those written contracts shall be consistent with this Contract for Construction. It is the intent of the Owner and the Contractor that the obligations of the Contractor's subcontractor(s) and supplier(s), if any, inure to the benefit of the Owner and the Contractor, and that the Owner be a third-party beneficiary of the Contractor's agreements with its subcontractor(s) and supplier(s).
- a. The Contractor shall make available to each subcontractor and supplier, if any, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract for Construction, including those portions of the Construction documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractor(s) and supplier(s).
 - b. The Contractor shall engage each of its subcontractor(s) and supplier(s) with written contracts, which preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Contractor's agreements with its subcontractor(s) and supplier(s) shall require that in the event of default under, or termination of, this Contract for Construction, and upon request of the Owner, the Contractor's subcontractor(s) and supplier(s) will perform services for the Owner.
 - c. The Contractor shall include in its agreements with its subcontractor(s) and supplier(s) a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract for Construction that are included by reference in its written contract with the Contractor, and that it will abide by those terms, conditions and requirements.
14. **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.
15. **INDEMNIFICATION:** 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.
16. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill the Contract.



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17. **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.

18. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he/she 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.

19. **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.

20. **WARRANTIES:** Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Contractor's response, the City is responsible for selecting items, their use, and the results obtained from any other items used with the items furnished under this contract. Mere receipt of shipment of the material/service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.

21. **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 held at Contractor's risk and may be returned to the



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Contractor. If so returned, all costs are the responsibility of the Contractor. The City may elect to do any or all of the following:

- a. Waive the non-conformance.
- b. Stop the work immediately.
- c. Bring material into compliance.

This shall be accomplished by a written determination from the City.

22. **TITLE AND RISK OF LOSS:** The title and risk of loss of material and/or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.
23. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach of the Contract as a whole.
24. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.
25. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.
26. **LIENS:** All materials, service or construction shall be free of all liens, and if the City requests, a formal release of all liens shall be delivered to the City.
27. **LICENSES:** Contractor shall have at the time of proposal 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. By submitting a proposal for this public contract, you agree that, with respect to the contract, 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 proposal submittal. The determination shall be made by the City.
28. **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.
29. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL:** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.
30. **COST OF PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.



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31. **PUBLIC RECORD:** All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code.
32. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.
33. **DELIVERY ORDERS:** The City shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award.
34. **FUNDING:** Any contract entered into by the City of El Mirage is subject to funding availability. Fiscal years for the City of El Mirage are July 1 to June 30. The City Council approves all budget requests. If a specific funding request is not approved, the contract shall be terminated.
35. **PAYMENT:** 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.
36. **MATERIALS, EQUIPMENT, APPARATUS:** or other products are specified by manufacturer, brand name, type of catalog number, such designation is to establish standards of desired quality and style and shall be the basis of the Proposal. Should the Contractor propose to furnish materials and equipment other than those specified, as permitted by the "or approved equal" clauses he/she shall submit a written request as an alternate to the original proposal with a new proposal for any or all substitutions. Such a request shall be accompanied by complete descriptive literature (manufacturer, brand name, catalog number, etc.) and technical data for all items and shall indicate any addition or deduction to the CONTRACT price. Where such substitutions alter the design or space requirements indicated on the plans the Contractor shall include all items of cost for the revised design and construction including cost of all allied trades involved. Acceptance or rejections of the proposed substitutions will be made on the basis of whether or not the specifications are met and the CITY's best interests are served as determined by the authorized representative and the CITY.
37. **SUBCONTRACTOR'S LIST:** The Contractor shall submit a list of subcontractors and major material suppliers as part of the OFFER. The list needs to include any subcontractor or supplier whose contract is anticipated to be above 5% of the total proposal price submitted. The name of any subcontractors or suppliers whose contract is anticipated to be at or below 5% of the total price is not required to be provided on the List.
38. **FEDERAL AND STATE EMPLOYMENT IMMIGRATION LAWS.** To the extent applicable under A.R.S. § 41-4401, Contractor warrants its and its subcontractors compliance with all federal immigration laws and regulations that relate to their compliance with the E-verify requirements under A.R.S. § 23-214(A). Contractor's or its subcontractors' breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City of El Mirage. The City of El Mirage retains the legal right to randomly inspect the papers and records of Contractor and its subcontractors to ensure that the Contractor and its subcontractors are complying with the above-mentioned warranty.

The Contractor warrants to keep the papers and records open for random inspection during normal business hours by the City of El Mirage. The Contractor shall cooperate with the City of El Mirage's random inspections including granting the City entry rights to Contractor's property to perform the random inspections and waiving its right to keep such papers and records confidential. The failure of Contractor to comply with this warranty regarding the keeping of papers and records and cooperating with the City's random inspections shall constitute a material breach of the Agreement and the City shall have the right to immediately terminate the Agreement.



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The Contractor further agrees to include the following language in all subcontracts entered into by Contractor with any person or entity to perform work on the Agreement and to terminate the agreement with any subcontractor who violates any of the warranties set forth in said language below.

To the extent applicable under A.R.S. § 41-4401, Subcontractor warrants to Contractor and the City of El Mirage Subcontractor’s compliance with all federal immigration laws and regulations that relate to its compliance with the E-verify requirements under A.R.S. § 23-214(A). Subcontractor’s breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the subcontract by Contractor at the direction of the City of El Mirage. Subcontractor further acknowledges the City of El Mirage’s right to randomly inspect the papers and records of Subcontractor to ensure that Subcontractor is complying with the above-mentioned warranty.

Subcontractor warrants to keep the papers and records open for random inspection during normal business hours by City of El Mirage. Subcontractor shall cooperate with City of El Mirage’s random inspections including granting the City entry rights to Subcontractor’s property to perform the random inspections and waiving their respective rights to keep such papers and records confidential. The failure of Subcontractor to comply with this warranty regarding the keeping of papers and records and failure to cooperate with the City’s random inspections shall constitute a material breach of the Agreement and the City shall have the right to immediately require Contractor to terminate the Agreement with Subcontractor.

- 39. **ISRAEL BOYCOTT:** Per A.R.S. § 35-393 and 35-393.01, Contractor certifies that they are not currently engaged in, and agrees for the duration of the agreement to not engage in, a boycott of Israel.
- 40. **NO USE OR PURCHASES FROM FORCED LABOR OF UYGHURS:** Pursuant to and in compliance with A.R.S. § 35-394, Contractor hereby agrees and certifies that it does not currently, and agrees for the duration of this Agreement that Contractor will not, use: (1) the forced labor of ethnic Uyghurs in the People’s Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; or (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. Contractor also hereby agrees to indemnify and hold harmless the City, its officials, employees, and agents from any claims or causes of action relating to the City’s action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the City in defending such an action.

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STANDARD TERMS AND CONDITIONS

DSD – Engineering

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1. **DEFINITIONS:** The terms, as used in or pertaining to the contract, are defined as follows:

CITY: The word “City” shall refer to the City of El Mirage, Arizona.

CONTRACTOR: The word “Contractor” is defined as the person, firm or corporation with whom the contract is made by the City.

CONTRACT: The word “Contract” will include the Performance Bond, Payment Bond, Notice of Award, Notice to Proceed, Change Order, Certificate of Insurance & Schedule A, Certificate of Completion, Contractor’s Affidavit Regarding Settlement of Claims, Standard Terms & Conditions, General Terms & Conditions, Special Terms & Conditions, Special Provisions, Contractor Proposal, Plans and Addenda thereto.

ENGINEER: The word “Engineer” is defined as the person, firm or corporation duly authorized by the City to act as agent in providing professional services including studies, planning, engineering design and construction administration services, inspecting materials and construction, and interpreting plans and specifications.

MATERIALS: The word “Materials” will include, in addition to materials incorporated in the project, equipment and other material used and/or consumed in the performance of the work.

SUBCONTRACTOR: The word “Subcontractor” is defined as those persons or groups of persons having a direct contract with the contractor and those who furnish material worked to a special design according to the plans and/or specifications for this work, and includes those who merely furnish materials not so worked.

WORK: The word “Work” shall include all labor necessary to accomplish the construction required by the Contract and all materials and equipment incorporated or to be incorporated in said construction.

2. **REFERENCE STANDARDS:**

a. The “Uniform Standard Specifications for Public Works Construction” and the “Uniform Standard Details for Public Works Construction”, latest editions, which are sponsored and distributed by the Maricopa Association of Governments (MAG), and which are hereinafter referred to as the “MAG Specifications,” are hereby adopted as part of these contract documents.

b. If any contradiction exists between “MAG Specifications” and this solicitation document, the solicitation language shall prevail.

3. **LAWS AND REGULATIONS:** The Contractor shall keep himself/herself fully informed of all existing and future City and County ordinances and regulations and state and federal laws and Occupational Safety and Health Standards (OSHA) in any manner affecting the work herein specified. He/She shall at all times observe and protect and indemnify the City of El Mirage, Arizona, and its officers and agents against any claim or liability arising from or based on the violation of any such ordinances, regulations or laws. It is the responsibility of the Contractor to obtain any and all information regarding the laws and regulations, which may be referenced in the Specifications.

4. **RIGHTS OF WAY:** The City will provide Rights-of-Way and easements for all work specified in this contract, and the Contractor shall not enter or occupy with men, tools, equipment or materials any private ground outside the property of the City of El Mirage, Maricopa County, Arizona, without the consent of the owner.



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The Contractor, at his/her own expense, is responsible for the acquisition of any additional easements or rights-of-way that he/she may desire to complete the work of this contract.

5. **PROPOSAL QUANTITIES:** It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and the material to be furnished under this Contract, which have been estimated as stated in the Proposal, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the proposals offered for the work under this Contract. The Contractor further agrees that the City of El Mirage will not be held responsible if any of the quantities shall be found incorrect; and the Contractor will not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done. If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not invalidate this Contract or the whole or any part of the work in accordance with the Specifications and Plans herein mentioned, and for the prices herein agreed upon and fixed therefore, or excuse him/her from any of the obligations or liabilities hereunder, or entitle him/her to any damage or compensation except as may be provided in this contract.
6. **FEDERAL FUNDING:** It is the responsibility of the Contractor to determine on any project if federal wage rates apply. It is also the responsibility of the Contractor to incorporate any necessary amounts in the Proposal to accommodate for required federal record keeping and necessary pay structures. The Contractor should contact the City of El Mirage regarding any applicable Davis Bacon wage rates.
7. **PAYMENTS TO CONTRACTOR:** Payments will be made on the basis of itemized statements provided by the Contractor in accordance with these Specifications. One (1) copy of an itemized statement should be submitted to the City's Project Manager. After verification, payments will be processed and mailed by the Finance Department. The City will make a payment to the Contractor on the basis of an estimate prepared by the Contractor, and approved by the City Engineer, for work completed through the last day of preceding pay period. When required by the City Engineer or his/her authorized representative for the purposes of determining the equitableness of the Contractor's payment request, the Contractor shall furnish evidence satisfactory to the City Engineer or his/her authorized representative, of the sums paid by the Contractor for materials, supplies and other items of expense (i.e., lien releases).
8. **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 his/her own cost and expense.
9. **CHARACTER AND STATUS OF WORKMEN:** Only skilled foremen and workmen shall be employed on work requiring special qualifications.

When required by the City Engineer, the Contractor shall discharge any person who is, in the opinion of the Engineer, 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.

10. **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 the contract within the time limit specified.

Except as is otherwise specified, the Contractor's procedure and methods of construction may, in general, be of his/her 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.



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The work covered by this Contract 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. He/She shall conduct his/her construction operations in such a manner as to avoid injury to his/her personnel and to avoid damage to all utilities. Any damage done will be repaired without delay and at the expense of the Contractor.

11. **PRE-CONSTRUCTION CONFERENCE:** Within 30 days of the issuance of the Notice of Award, the Contractor is required to attend a Pre-construction Conference. The city will contact the Contractor to schedule a specific date, time and location for the Pre-construction conference. The purpose of the meeting is to outline specific construction items and procedures and to address items which require special attention on the part of the Contractor. The Contractor may also present proposed variations in procedures which the Contractor believes may improve constructability of the project, reduce cost, or will reduce inconvenience to the public. Any necessary coordination and procedures for Construction inspection and staking will be addressed during the Pre-construction Conference. The Contractor will be required to provide the following information at the Pre-construction Conference:

- a. Names and emergency telephone numbers of key personnel involved in the project.
- b. Names and telephone numbers of all subcontractors proposed for use on the project.
- c. A construction progress schedule showing the estimated time for start and completion of the major items of work.
- d. A payment schedule showing the estimated dollar volume of work for each calendar month during the life of the project.
- e. A written proposal outlining the intended plans for maintaining continuous access to residences and businesses along the construction site, and traffic control.
- f. An itemized list of all required shop drawings, material and equipment submittals and a schedule indicating the dates each of these items will be transmitted to the City for review.

Each of the above items is subject to the review and approval by the City.

12. **NOTICE TO PROCEED:** Within 45 days of the issuance of the Notice of Award, the City may issue a written Notice to Proceed. The Notice to Proceed shall stipulate the actual contract start date, the contract duration and the contract completion date. The time required for the Contractor to obtain permits, licenses and easements shall be included in the contract duration and shall not be justification for a delay claim by the Contractor. The time required for the Contractor to prepare, transmit and obtain approval of applicable submittals shall be included in the contract duration and shall not be justification for a delay claim by the Contractor.

No work shall be started until after all required permits, licenses, and easements have been obtained.

No work shall be started until all applicable submittals have been submitted and returned approved by the Owner's Representative.

The Contractor shall notify the City of El Mirage's Project Manager or Engineer at least seventy-two (72) hours before the following events:



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- a. The start of construction in order to arrange for inspection;
- b. Shutdown of City water, sewer, drainage, irrigation and traffic control facility.
- c. Shutdown of existing water wells and booster pumps. Shutdown shall not exceed seventy-two (72) hours for any installation. Only one installation may be shutdown at any time;
- d. The coordination of all draining and filling of water lines, irrigation laterals and all operations of existing valves or gages with the Project Manager;
- e. The start-up or testing of any water well or booster pump to be connected to any part of the existing City water system. This includes operation of existing valves necessary to accommodate the water.

13. **TRAFFIC REGULATIONS:** All traffic affected by this construction 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 Engineer for interpretation.

At the time of the pre-construction conference, the Contractor shall designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring and altering traffic control measure, as necessary. At the same time the City will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried through the work area in an effective manner and that motorist, pedestrians, bicyclists and workers are protected from hazard and accidents.

- a. The following shall be considered major streets: All major Parkway, mile (section line), arterial and collector (mid-section line and quarter section line) streets so classified by the City of El Mirage.
- b. All traffic control devices required for this project shall be the responsibility of the Contractor. The Contractor shall place advance warnings; **REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT** and **DO NOT PASS** signs in accordance with the Traffic Barricade Manual.
- c. The Contractor shall provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals and signs, and shall take all necessary precautions for the protection of the work and safety of the public. The Contractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes.
- d. All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the Contractor shall conform to the standard design, generally accepted for such purposes, and payment for all such services and materials shall be considered as included in the other pay items of the Contract.
- e. The Contractor shall insure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Contractor shall notify the Inspector at least forty eight (48) hours in advance for City personnel to temporarily relocate said signs. The City Engineer will re-set all traffic and street name signs to permanent locations when notified by the Engineer that construction is complete unless otherwise stated in the specifications. Payment for this item shall be made at the contract lump sum price for TRAFFIC CONTROL.



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- f. When construction activities or traffic hazards at the construction site require the use of flagmen, it shall be the Contractor’s responsibility to provide adequate personnel including flagmen to direct traffic safely.
- g. Manual traffic control shall be in conformity with the Traffic Barricade Manual, except the liaison officer shall be contacted at the El Mirage Police Department at telephone number (623) 933-1341.
- h. When traffic emergencies at construction sites warrant the use of certified police personnel to direct traffic, arrangement should be made with the liaison officer at the El Mirage Police Department at telephone number (623) 933-1341.
- i. The assembly and turnarounds of the Contractor’s equipment shall be accomplished using adjacent local streets when possible.
- j. Equipment used and/or directed by the Contractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Provide a flagman or officer to assist with this operation.
- k. During construction, it may be necessary to alter traffic control. Alterations shall be in accordance with the Traffic Barricade Manual.
- l. No street within this project may be closed to through traffic or to local emergency traffic without prior written approval of the City Engineer of the City of El Mirage at least two weeks prior to the scheduled closure. The Contractor must allow for the notification of the public at least six (6) working days in advance of such closing with VMS signs explaining the closure at all approaches to the project area. Partial closure of streets within the project shall be done in strict conformity with written directions to be obtained from the City Engineer.
- m. Caution should be used when excavating near intersections with traffic signal underground cable. Notify the City Engineer twenty four (24) hours in advance of any work at such intersections. The Contractor shall install and maintain temporary overhead traffic signal cable as specified by the City Engineer when underground conduit is to be severed by excavations at intersections. The Contractor shall provide an off-duty uniformed police officer to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items shall be repaired and restored to the City Engineer’s satisfaction. Magnetic detector loops shall under no circumstances be spliced.
- n. The Contractor shall address how local access to adjacent properties will be handled in accordance with the specification herein.
- o. Where crossings of existing pavements occur, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow as determined by the City Engineer or his/her authorized representative. If plates cannot be used, crossings shall be back-filled or the Contractor shall provide a detour.

14. OUTDOOR CONSTRUCTION RESTRICTIONS: Outdoor construction is restricted as listed below in the following table:

	Construction Type	May 1 – September 30	October 1 – April 30
A	All Construction Work – Monday through Saturday	6:00 a.m. to 7:00 p.m.	7:00 a.m. to 7:00 p.m.
B	All Construction Work – Sunday	8:00 a.m. to 7:00 p.m.	8:00 a.m. to 7:00 p.m.

The above hours must be adhered to under all circumstances unless prior authorization is obtained in writing by the City of El Mirage City Engineer or their designee. Any Friday, night or weekend work within the City’s right of way also requires written approval from the City.



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15. **SURVEY CONTROL POINTS:** Existing survey markers (either brass caps or iron pipes) shall be protected by the Contractor or removed and replaced under direct supervision of the City Engineer or his/her authorized representatives. Survey monuments shall be constructed to the requirements of MAG Specifications, Section 405, and Standard Details. Lot corners shall not be disturbed without knowledge and consent of the property owner.

The Contractor shall replace benchmarks, monuments, or lot corners moved or destroyed during construction at no expense to the Owner. Contractor and his/her sureties shall be liable for correct replacement of disturbed survey benchmarks except where the Owner elects to replace survey benchmarks using his/her own forces.

16. **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 Engineer. The Contractor shall turn over the entire work in full accordance with these Specifications before final settlement shall be made.

17. **STOCKPILE OF MATERIALS:**

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

18. **EXCESS MATERIALS:** When excavations are made, resultant loose earth shall be utilized for filling by compacting in place or disposed of off the site.

Excess or unsuitable material, broken asphaltic concrete and broken Portland cement concrete excavated from the right-of-way shall be removed from the project and disposed of by the Contractor. Disposal of material within the El Mirage City Limits or Planning Area must be approved by the City Engineer or his/her authorized representative.

Waste material shall not be placed on private property without express permission of the property owner.

The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by his/her operations. At the completion of the work, he/she shall remove all equipment, tools and surplus materials, and shall completely clean the premises, removing and disposing of all debris and rubbish, and cleaning all stains, spots, marks, dirt, smears, etc. When work premises are turned over to the City, they shall be thoroughly clean and ready for immediate use.

Clean-up shall include removal of all excess pointing mortar materials within pipes and removal of oversized rocks and boulders left after finish grading. The Contractor shall provide for the legal disposal of all waste products debris, etc., and shall make necessary arrangements for such disposal.

19. **DUST CONTROL AND WATER:** The dust control measures shall be in accordance with the requirements of the "Maricopa County Health Department Air Pollution Control Regulations," namely Regulation II, Rule 21, subparagraph C and Regulation III, Rule 310 shall be rigidly observed and enforced. Water or other approved dust palliative in sufficient quantities shall be applied during all phases of construction involving open earthwork to prevent unnecessary discharge of dust and dirt into the air. The Contractor shall be responsible for compliance with these regulations. A Notice to Proceed will not be issued until the City of El Mirage has received a copy of the Contractor's Dust Control Permit and Plan.

The Contractor shall be required to obtain the necessary permit and all pertinent information from the Maricopa County Air Quality Department, 1001 North Central Avenue, Suite 125, Phoenix, Arizona, (602) 506-6010.



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The Contractor shall keep suitable equipment on hand at the job site for maintaining dust control on the project streets, and shall employ sufficient labor, materials and equipment for that purpose at all times during the project to the satisfaction of the City Engineer.

Watering shall conform to the provisions of Section 230 of the MAG Standard Specifications. The cost of watering will be included in the price for the construction operation to which such watering is incidental or appurtenant.

The Contractor shall obtain a fire hydrant meter via the City’s online Permit Portal located on the City’s website at <https://ci-elmirage-az.smartgovcommunity.com/Public/Home>. Installation and removal of fire hydrant meters should be scheduled at least forty-eight (48) hours in advance through the Customer Service Department. Contractors shall not relocate hydrant meters themselves. A deposit and account activation fee is required for each meter. The cost of the water is at the prevailing rate plus a recharge fee of \$2.60 per 1,000 gallons of water.

20. **TEMPORARY SANITARY FACILITIES:** The Contractor shall provide ample toilet facilities with proper enclosures for the use of workmen employed on the work site. Toilet facilities shall be installed and maintained in conformity with all applicable state and local laws, codes, regulations and ordinances. They shall be properly lit and ventilated, and kept clean at all times.

Adequate and satisfactory drinking water shall be provided at all times and under no circumstances and under no conditions will the use of common cups be permitted. The Contractor must supply sanitary drinking cups for the benefit of all employees.

21. **ELECTRIC POWER, WATER AND TELEPHONE:** Unless otherwise specified, the Contractor shall make his/her own arrangements for electric power, water and telephone. Subject to the convenience of the utility, he/she may be permitted to connect to existing facilities where available, but he/she shall meter and bear the cost of such power or water, and installation and disconnect of such power, water and telephone services.

22. **ENERGIZED AERIAL ELECTRICAL POWER LINES:** The utility company may maintain energized aerial electrical power lines in the immediate vicinity of this project. Do not consider these lines to be insulated. Construction personnel working in proximity to these lines are exposed to an extreme hazard from electrical shock. Contractors, their employees and all other construction personnel working on this project must be warned of the danger and instructed to take adequate protective measure, including maintaining a minimum ten (10) feet clearance between the lines and all construction equipment and personnel. (see: OSHA Std. 1926.550 (a) 15).

As an additional safety precaution, Contractors should also be instructed to call the utility company to arrange, if possible, to have these lines de-energized or relocated when the work reaches their immediate vicinity. The cost of such temporary arrangements shall be borne by the contractor. The utility company can often respond to such request if two (2) days advance notice is given, but some situations may require up to sixty (60) days lead time for relocation or other arrangements.

Electrical utility companies may maintain energized underground electrical power lines in the immediate vicinity of this project. These power lines represent an extreme hazard of electrical shock to any construction personnel or equipment coming in contact with them. Arizona law requires all parties planning excavations in public rights-of-way to contact all utility firms for locations of their underground facilities. Contractors, their employees, and all other personnel working near any underground power lines must be warned to take adequate protective measure. (see: OSHA Std. 1926-651).



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1. **PURPOSE:** Pursuant to provisions of the City Procurement Code, the City of El Mirage, Development Services Department – Engineering Division intends to establish a contract for the **1st Avenue Drainage Improvements** project.
2. **AUTHORITY:** This Solicitation as well as any resultant contract is issued under the authority of the City. No alteration of any resultant contract may be made without the express written approval of the City Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.
3. **CONDITIONS OF WORK:** Contractor must inform himself/herself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve the Contractor of his/her obligation to furnish all material and labor necessary to carry out the provisions of this Contract. Insofar as possible the Contractor, in carrying out his/her work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.
4. **TIME OF COMPLETION:** The Contractor shall commence work under this project on or before the fifth (5) day following the project start date indicated on the “Notice to Proceed” issued by the City of El Mirage and shall fully complete all work under the project within **90 calendar days**. The Contractor shall, at all times, during the continuance of the Contract, prosecute the work with such force and equipment as is sufficient to complete all work within the time specified.
5. **EQUAL OPPORTUNITY EMPLOYMENT:** It is the policy of the City of El Mirage that suppliers of goods or services to the City adhere to a policy of non-discrimination, equal access, equal employment opportunity and demonstrate an affirmative effort to recruit, hire, and promote regardless of race, color, religion, gender, national origin, age, disability, political affiliation or belief.
6. **APPROVAL OF SUBSTITUTIONS:** The materials, products, and equipment described in the Documents and Addenda establish a standard or required function, dimension, appearance, and quality to be met by any proposed substitution. No substitute will be considered unless written request for approval has been received and approved by the City or its representative. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including any drawings, cut sheets, performance, and test data and any other information necessary for evaluation of the substitute. If a substitute is approved, the approval shall be acknowledged in writing. Contractor shall not consider approvals made in any other manner.
7. **USE OF EQUALS:** When the specifications for materials, articles, products, and equipment state “*or equal*”, Contractor may use materials, articles, products, and equipment which will perform equally the duties imposed by the general design. The City Engineering Division will have the final approval of all materials, articles, products, and equipment proposed to be used as an “equal.” It shall not be purchased or installed without prior written approval from the City or its representative.

Approvals for “equals,” may be requested in writing to the City Engineering Division or its representative for approval. The request shall state the name of the material, article, product, or equipment for which the item is sought to be considered and equal and a complete description of the proposed equal including any drawings, cut sheets, performance specifications, test data and any other information necessary for approval of the equal. If an “equal” is approved, the approval will be acknowledged in writing. The Contractor shall not consider approvals made in any other manner.
8. **CITY OF EL MIRAGE PERMIT:** The Contractor shall obtain a no fee permit from the City. The Contractor will be responsible for any required Maricopa County (i.e., Dust Control Permit, etc.) or other agency permits (i.e., Notice of Intent, etc.).



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9. INDEPENDENT CONTRACTOR:

a. General

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

b. Liability

- i. The City of El Mirage shall not be liable for any acts of Contractor outside the scope of authority granted under this Agreement or as the result of Contractor's acts, errors, misconduct, negligence, omissions and intentional acts.
- ii. 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 acknowledges that he/she is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Contractor.

10. KEY PERSONNEL: It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.

- a. The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City.
- b. If key personnel are not available for work under this contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.



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11. **LIQUIDATED DAMAGES:** Liquidated Damages shall be assessed for each calendar day of delay. Liquidated damages shall be per MAG Specifications, Section 108.9.

- a. If the contract is not terminated, the contractor shall continue performance and be liable to the City for the liquidated damages until the products are delivered or services performed.
- b. In the event the City exercises its right of termination, the contractor shall be liable to the City for any excess costs, and in addition, for liquidated damages until such time the City may reasonably obtain delivery or performance of similar supplies or services.

12. **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.

13. **INSURANCE REQUIREMENTS:** The Contractor, at Contractor’s own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. Rating of “A-“. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies who are authorized to do business in the State of Arizona, provided that said insurance companies meet approval of the City. The form of any insurance policies and forms must be acceptable to the City.

All insurance required herein shall be maintained in full force and effect until all work required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; 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 provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Contractor shall be solely responsible for deductible and/or self-insured retention and the City, at its option, may require the Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

The City reserves the right to request and to receive, within 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.



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14. 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 \$2,000,000 Products and Completed Operations Aggregate and \$2,000,000 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. The coverage shall not exclude X, C, U.

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

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CG20101185, and shall include coverage for Contractor's operations and products and completed operations.

Any Contractor subcontracting 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 \$1,000,000 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 will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off-loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

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 will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

15. **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.



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In the event any insurance policy(ies) required by this contract is(are) written on a “claims made” basis, coverage shall extend for two years past completion and acceptance of the Contractor’s work or services and as evidenced by annual Certificates of Insurance.

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.

All Certificates of Insurance required by this Contract shall be identified with a serial number and title. A \$25.00 administrative fee shall be assessed for all Certificates received without the appropriate serial number and title.

16. **CANCELLATION AND EXPIRATION NOTICE:** Insurance required herein shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to the City.

17. **PERFORMANCE BOND:** The contractor shall be required to furnish non-revocable security binding the contractor to provide faithful performance of the contract in the amount of 100% of the total contract price payable to the City of El Mirage.

Performance security shall be in the form of a performance bond, certified check or cashier’s check. This security must be in the possession of the City of El Mirage, Finance Department within the time specified or ten (10) days after Notice of Award if no period is specified. If the contractor fails to execute the security document as required, the contractor may be found in default and the contract terminated by the City. In case of default the City reserves all rights.

All performance bonds shall be executed on the Performance Bond form included in this Document, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the owner and holding a Certificate of Authority to transact surety business in the State of Arizona, by the Arizona Department of Insurance. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the Proposal and A.M. Best’s Key Rating Guide of “A-” or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company, payable without condition to the Owner.

18. **PAYMENT BOND:** The contractor shall be required to furnish non-revocable security for the protection of all persons supplying labor and material to the contractor or any subcontractor for the performance of any work related to the contract. Payment security shall be in the amount of 100% of the total contract price and be payable to the City of El Mirage.

Payment security shall be in the form of a payment bond, certified check or cashier’s check.

All payment bonds shall be executed on the Payment Bond form included in this Document, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the owner and holding a Certificate of Authority to transact surety business in the State of Arizona, by the Arizona Department of Insurance. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the Proposal an A.M. Best’s Key Rating Guide of “A-” or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company, payable without condition to the Owner.

19. **TAX FORMULA:** The Contractor shall apply the appropriate Transaction Privilege Tax in accordance with the Department of Revenue rules and procedures.

20. **CONTRACT DEFAULT:** The City, by written notice of default to the contractor, may terminate the whole or any part of this contract in any one of the following circumstances:



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- a. If the contractor fails to make delivery of the materials/supplies or to perform the services within elements of the project schedule or the time specified; 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 ten (10) days after receipt of notice.

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CONTRACTOR'S LICENSE

DSD – Engineering

10000 N. El Mirage Road
El Mirage, AZ 85335

Project Number: EM22-SD02

Phone: (623) 972-8116

Attach a copy of your Contractor's License



LIST OF SUBCONTRACTORS

DSD – Engineering

10000 N. El Mirage Road
El Mirage, AZ 85335

Phone: (623) 972-8116

Project Number: EM22-SD02

The below list needs to include any subcontractor or supplier whose contract is anticipated to be above 5% of the total Contract price submitted. The name of any subcontractors or suppliers whose contract is anticipated to be at or below 5% of the total Contract price is not required to be included.

LIST OF SUBCONTRACTORS To Accompany the OFFER

The following Subcontractors will be employed to perform the designated categories of Work under this Contract:

CATEGORY of Work*	FIRM NAME AND BUSINESS ADDRESS of Subcontractors	PHONE
Dry Well	DBD 4, LLC. 1831 - N. Rochester Mesa, AZ 85205	480-833-8268
Survey	Metro Survey & Engineering 7777 North 70th Ave Glendale, AZ 85303	623-466-6640
Traffic Control	Metro Traffic Control LLC. 4950 W. Watkins St Phoenix, AZ 85043	623-879-0660

ATTEST: *[Signature]*
Authorized Officer

DATE: 7/31/24

DBA Construction, Inc.
NAME OF FIRM

* Place title of subcontractor specialty.



PERFORMANCE BOND

DSD – Engineering

10000 N. El Mirage Road
El Mirage, AZ 85335

Phone: (623) 972-8116

Project Number: EM22-SD02

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____
(hereinafter called Principal), as Principal, and _____
_____, a corporation organized and existing under the laws of
the State Of _____, with its principal office in the City of,
_____ (hereinafter called the Surety), as Surety, are
held and firmly bound unto the City of El Mirage (hereinafter called the Obligee) in the amount of
_____ (Dollars) (\$ _____), for the payment whereof, the said
Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the
_____ day of _____ 20____, for the material, service or construction
described as _____
_____ is hereby
referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

The prevailing party in a suit on this bond shall recover as part of his/her judgment such reasonable attorneys' fees
as may be fixed by a judge of the Court.

Witness our hands this _____ day of _____ 20_____

Principal Seal

BY: _____

Surety Seal

BY: _____

Agency of Record PERFORMANCE BOND



PAYMENT BOND

DSD – Engineering

10000 N. El Mirage Road
El Mirage, AZ 85335

Phone: (623) 972-8116

Project Number: EM22-SD02

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____
(hereinafter called Principal), as Principal, and _____
_____, a corporation organized and existing under the laws
of the State Of _____, with its principal office in the City of,
_____ (hereinafter called the Surety), as Surety, are held and
firmly bound unto the City of El Mirage (hereinafter called the Obligee) in the amount of
_____ (Dollars) (\$ _____), for the payment whereof, the said
Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the
_____ day of _____ 20____, for the material, service or construction
described as _____ which contract
is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to him/her or his/her subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void. Otherwise it remains in full force and effect.

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

The prevailing party in a suit on this bond shall recover as part of his/her judgment such reasonable attorneys' fees as may be fixed by a judge of the Court.

Witness our hands this _____ day of _____ 20_____

Principal Seal

BY: _____

Surety Seal

BY: _____

Agency of Record PAYMENT BOND



CONSENT OF SURETY

DSD – Engineering

10000 N. El Mirage Road
El Mirage, AZ 85335

Phone: (623) 972-8116

Project Number: EM22-SD02

CONSENT OF SURETY

DATE: _____

TO: City of El Mirage

Gentlemen:

The Contractor, _____, for City of El Mirage Contract Number: **EM22-SD02, 1st Avenue Drainage Improvements**, in Maricopa County, whose performance we have guaranteed by our Bond Number _____, has requested that we give our consent to the payment, at your option, of all monies due on his/her final estimate according to the provisions of his/her contract.

We hereby give our consent to the payment of the final estimate and agree that such action on your part will not operate to qualify or invalidate the Bond.

Sincerely,

By: _____

Seal of Surety

The Consent of Surety should be prepared on the surety's official stationery and it must be signed by a general officer of the corporation or by an attorney-in-fact. If signed by an attorney-in-fact, a power of attorney must be attached giving the attorney-in-fact specific authority to write Consent authorizing the release of monies and it must also bear the corporate seal.



AFFIDAVIT FOR SETTLEMENT OF CLAIMS

DSD – Engineering
10000 N. El Mirage Road
El Mirage, AZ 85335
Phone: (623) 972-8116

Project Number: EM22-SD02

**CONTRACTOR'S AFFIDAVIT
SETTLEMENT OF CLAIMS**

DATE: _____

PROJECT NO: EM22-SD02

NAME: 1st Avenue Drainage Improvements

TO: City of El Mirage

Gentlemen:

This is to certify that all lawful claims for materials, rental of equipment, and labor used in connection with the construction of the above, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of \$ _____, as set forth in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of this project. The undersigned further agrees to indemnify and hold harmless _____ against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which _____ may suffer arising out of the failure of the undersigned to pay for all labor performance and materials furnished for the performance of said project.

Signed at _____, this _____ day of _____, 20____.

(CONTRACTOR)

BY: _____

STATE OF ARIZONA)
)§
COUNTY OF MARICOPA)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

My Commission Expires: _____