

CITY OF LEWISVILLE, TEXAS

CONSTRUCTION AGREEMENT

Project: Whippoorwill Lift Station Electrical Improvements, Project No. U1703 (the “Project”).

This Construction Agreement (the “Agreement”) is made and entered into by and between the **City of Lewisville**, a Texas home-rule municipal corporation (the “City”) and **Felix Construction Company**, an Arizona corporation authorized to conduct business in the state of Texas (the “Contractor”). The City and Contractor shall be referred to herein collectively as the “Parties.”

1. Services. The Contractor shall commence and complete the construction and engineering for upgrading the electrical and mechanical systems at the City of Lewisville Whippoorwill Lift Station (the “Services”), and all extra work in connection with the Services, under the terms and conditions as stated in the Specifications and Contract Documents for the Construction of Whippoorwill Lift Station Electrical Improvements Project No. U1703 (the “Specifications”), attached hereto as **Exhibit A**, the Technical Specifications for the City of Lewisville Whippoorwill Lift Station Electrical Improvements (the “Plans”), attached hereto as **Exhibit B**, and this Agreement, and at the Contractor’s own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the Services, in accordance with the conditions and prices stated in the Contractor’s Bid (the “Bid”) attached hereto as **Exhibit C**, and in accordance with the Specifications (**Exhibit A**) and Plans (**Exhibit B**), as prepared by the City and attached hereto. The Contractor will perform all Services in a good and professional manner and in accordance with industry standards. The Contractor is responsible for constructing a final product that is fully functional and fit for its intended purposes, and meets all requirements set forth in the Agreement, the Specifications (**Exhibit A**), and the Plans (**Exhibit B**). The City will be the sole judge of the acceptability of all work and Services performed under this Agreement. The City shall perform the Services as outlined in the Specifications (**Exhibit A**), if any.
2. Effective Date; Completion of Services. The effective date of this Agreement shall be the date upon which this Agreement is executed by both Parties. The Contractor hereby agrees to commence work within ten (10) calendar days after the date of the written notice to commence work and to fully complete the same within **450** consecutive calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the Specifications (**Exhibit A**).
3. Agreement Documents. The Agreement shall include the following documents, and this Agreement does hereby expressly incorporate same herein as if set forth verbatim in this Agreement:
 - A. This Agreement
 - B. The Specifications (**Exhibit A**)
 - C. The Plans (**Exhibit B**)
 - D. The Bid (**Exhibit C**)

To the extent that any exhibit or portion thereof is in conflict with provisions of this Agreement or each other, the priority of Agreement documents shall be as outlined in section 105.1.1 of the 2017 edition of the Standard Specifications for Public Works Construction – North Central Texas

(the “Standard Specifications”) which are included by reference in the Specifications (**Exhibit A**), as they may be amended by any special Standard Specifications in the Bid (**Exhibit C**), except as specifically provided for in section 29 of this Agreement. In the exhibits, any reference to “Seller” shall mean “Contractor,” and any reference to “Buyer” shall mean “City.”

Where the Specifications (**Exhibit A**) refer to the Standard Specifications for Public Works Construction – North Central Texas as published under the authority of the North Central Texas Council of Governments, the 2017 standards shall apply.

4. Confidential Information. To the extent allowed by law, the City will safeguard and keep from release any documents marked “proprietary” or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
5. Pricing. The City agrees to pay the Contractor in current funds the price or prices shown in the Bid (**Exhibit C**).
6. Payment. Payments will be subject to the terms outlined in the Specifications (**Exhibit A**). The City shall remit payment within thirty (30) days after receipt of an invoice, in accordance with the Texas Prompt Payment Act (Tex. Gov’t Code Ch. 2251). All original invoices are to be sent to the City of Lewisville, Attention: AP Division, 151 West Church Street, Lewisville, Texas 75057 or P.O. Box 299002, 75029-9002.
7. Change Orders. Any changes to the Services that change the Agreement price or the Agreement time, as specified herein, must be authorized by the City in writing PRIOR to commencement of said work, as provided for in the Specifications (**Exhibit A**). Any work performed without the City’s prior written consent will be at the sole expense of the Contractor.
8. Subcontractors. If subcontractors are used, the subcontractor will be directed and supervised solely by the Contractor, as provided for in the Specifications (**Exhibit A**). The Contractor shall require the subcontractor to hold the same insurance as required of the Contractor under this Agreement.
9. Right of Inspection and Required Repairs. The City shall have the right to observe and check all ongoing work in sufficient detail to determine if the Services are proceeding satisfactorily. The City shall have the right to inspect all Services completed before accepting them and making payments in accordance with this Agreement, as provided for in the Specifications (**Exhibit A**). Should any portion of the completed Services fail to meet the requirements of the City, the Contractor shall repair or replace items failing to meet the requirements until items can be demonstrated to comply.

10. Termination. This Agreement may be terminated by the City under the terms outlined in the Specifications (**Exhibit A**).
11. Insurance. During the period of this Agreement, the Contractor will maintain, at its expense, insurance meeting or exceeding the requirements outlined in the Specifications (**Exhibit A**). All insurance must be reviewed and approved by the City **prior to commencement of work**.
12. Bonds and Warranties. The Contractor shall provide bonds and warranties as required by the Specifications (**Exhibit A**) **prior to commencement of work**.
13. Retainage. The Services shall be considered substantially complete when the construction and upgrades of the electrical and mechanical systems at the City of Lewisville Whippoorwill Lift Station have been installed, tested, and City staff are fully trained on their use. The City will release all or a portion of the retainage for substantially completed portions of the Services or fully completed and accepted portions of the Services as provided for in the Specifications (**Exhibit A**). All other testing requirements for the project must be met, all punch list items must be addressed to the satisfaction of the inspector assigned to the Project and redline drawings, and all bond documentation must be submitted to the engineer to release full retainage.
14. Worker's Compensation. The Contractor shall abide by the workers compensation requirements outlined in the Specifications (**Exhibit A**).
15. Independent Contractor. Contractor shall be considered an independent contractor and not an agent, servant, employee, or representative of the City in the performance of the work and Services. No term or provision herein or act of the City shall be construed as changing that status.
16. Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including, but not limited to the Immigration Reform and Control Act (IRCA).
17. Governing Law and Venue. Venue and governing law shall be as provided for in the Specifications (**Exhibit A**).
18. Arbitration. In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
19. Tax Exempt Status. The City is exempt from and shall not pay state and local sales and use taxes on labor and materials incorporated into the Project. If necessary, it is the responsibility of the Contractor to obtain from the State Comptroller's Office a sales tax permit, resale certificate, and exemption certificate that will enable the Contractor to buy any materials for the Services and

then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

20. Entire Agreement; Amendments. This Agreement and its exhibits contain the entire agreement of the Parties with respect to the matter contained herein. All provisions of this Agreement shall be strictly complied with and conformed to by the Contractor, and no amendment to the Agreement shall be made except through a written agreement which has been executed by an authorized representative of both Parties, which shall not be construed to release either party from any obligation of the Agreement except as specifically provided for in such amendment.
21. Assignment. This Agreement may not be assigned or transferred, in whole or in part, except as provided for in the Specifications (**Exhibit A**). Any such prohibited assignment or transfer shall be void.
22. Governmental Immunity. Unless otherwise required under the law, the Parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.
23. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the address thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the Parties shall be as follows:

If to Contractor, to: Felix Construction Company
Attn: Ryan Koontz, General Manager
403 International Parkway, Suite 500
Richardson, TX 75081

If to City, to: City of Lewisville
Attn: Earl Whitaker, Purchasing Manager
151 W. Church Street
Lewisville, Texas 75057
24. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
25. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

26. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.
27. Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, order of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.
28. Waiver. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.
29. **INDEMNIFICATION.** CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF

THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONTRACTOR'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY PERSON OR ENTITY. ANY INDEMNIFICATION AGREED TO BY THE CITY IS ONLY TO THE EXTENT ALLOWED BY LAW.

Section A.19 of the Special Specifications outlined in the Specifications (Exhibit A) shall control regarding indemnification of the Engineer, as that term is defined therein.

30. Limitation of Liability. In the event that the Bid (**Exhibit C**) should contain any provision limiting the Contractor's liability arising out of or resulting from Contractor's performance under this Agreement, the Parties agree that such provision is void.
31. Indemnification or Hold Harmless by City. In the event that the Bid (**Exhibit C**) should contain any provision requiring that the City indemnify or defend Contractor or hold Contractor harmless under any circumstance, the Parties agree that such provision is void.
32. Immigration Reform and Control Act (8 U.S.C. 1324a). The City supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Contractor shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor and its Subcontractors shall at all times during the term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate a contract with the Contractor if the City determines that (a) the Contractor or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Contractor fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Contractor or its Subcontractors fail to timely notify the City of an IRCA violation.
33. ADA Compliance. All goods and services provided to the City must be compliant with the Americans with Disabilities Act and any amendments thereto (the "ADA") and all regulations promulgated pursuant to the ADA. Contractor may be required to certify compliance, if applicable.
34. Protection of Resident Workers. The City actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired,

which includes completing the Employment Eligibility Verification Form (I-9) for every worker performing services under the Agreement. The Contractor and its Subcontractors shall establish appropriate procedures and controls so no services or products under the Agreement will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit Contractor's or Subcontractor's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services or manufacturing products under the Agreement. The audit will be at the City's expense.

35. Advertising. Contractor shall not advertise or publish, without the City's prior consent, the fact that the Contractor has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

36. Disclosure. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City or submits to the City an application, response to a request for Bid or bid, correspondence, or another writing related to a potential agreement with the City. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. An offense under Chapter 176 is a Class C misdemeanor.

Contractor should consult with legal counsel if they have questions regarding their compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City to comply with the filing requirement of Chapter 176.

37. Preservation of Contracting Information. In accordance with Section 552.372 of the Texas Government Code, if this Agreement has a stated expenditure of, or will result in the expenditure during the City's fiscal year of, at least one million dollars (\$1,000,000.00) in public funds for the purchase of goods or services, the Contractor shall:

- A. Preserve all contracting information related to this Agreement for the duration of this Agreement;
- B. Promptly provide to the City any contracting information related to this Agreement that is in the custody or possession of the Contractor on request of the City; and
- C. On completion of this Agreement, either:
 - i. Provide at no cost to the City all contracting information related to this Agreement that is in the custody or possession of the Contractor, or
 - ii. Preserve the contracting information related to this Agreement as follows:
 1. Construction projects: permanently
 2. All other projects: four (4) years following completion of the Agreement.

For the purposes of this section, "contracting information" shall have the meaning given in Section 552.003 of the Texas Government Code.

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

38. Texas Government Code Chapter 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.
39. Texas Government Code Chapter 2271. Pursuant to Texas Government Code Chapter 2271, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement. This section shall not apply if Contractor employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00.
39. Texas Government Code Chapter 2274. Pursuant to Texas Government Code Chapter 2274, Contractor affirms that execution of this Agreement serves as written verification that Contractor (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as those terms are defined in that chapter; and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

This section shall not apply if Contractor employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2274. Any terms used in this section which are defined in Texas Government Code Chapter 2274 shall have the meaning given therein.

40. Texas Government Code Chapter 2275. Pursuant to Texas Government Code Chapter 2275, Contractor verifies it is not:
 - (a) Owned by or the majority of stock or other ownership interest of the company is held or controlled by:
 - (i) Individuals who are citizens of China, Iran, North Korea, Russia, or other designated country, as that term is defined in Texas Government Code Section 2275.0101; or
 - (ii) A company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country, as that term is defined in Texas Government Code Section 2275.0101; or
 - (b) Headquartered in China, Iran, North Korea, Russia, or other designated country.

The City may terminate this Agreement immediately without any further liability if the City determines, in its sole judgment, that Contractor has not provided accurate information in response to this section. This section is not applicable if the Agreement does not grant the Contractor direct or remote access to or control of critical infrastructure as defined in the Texas Government Code

Section 2275.0101, except as specifically allowed by the City for product warranty and support services.

41. Texas Government Code Chapter 2276. Pursuant to Texas Government Code Chapter 2276, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott energy companies, as defined by Texas Government Code Section 809.001; and (2) will not boycott energy companies during the term of this Agreement.

This section shall not apply if Contractor employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2276.

42. No Obligation. The City shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by Contractor. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.
43. Certification of Execution. The Contractor and the person or persons signing and executing this Agreement on behalf of the Contractor, or representing themselves as signing and executing this Agreement on behalf of the Contractor, do hereby warrant and certify that this Agreement has been approved by appropriate action of the Contractor, and that the person or persons signing and executing this Agreement have been duly authorized by the Contractor to sign and execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all terms and conditions herein set forth.
44. Closure. By signature below, the Parties hereby bind themselves to the terms stated herein, including all attachments referred to herein.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties, by their duly authorized agents, have executed and entered into this Agreement on the ____ day of ____, 2024.

CITY OF LEWISVILLE, TEXAS
Approved by the Lewisville City
Council _____

FELIX CONSTRUCTION COMPANY

By:

By:

Claire Powell, City Manager



Ryan Koontz, General Manager

Date:

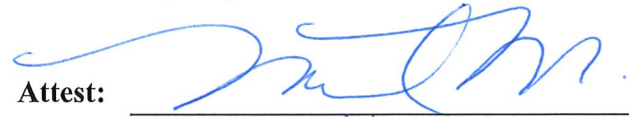
Date:

9/4/24

Attest:

Attest:

Thomas Harris III, City
Secretary



Maribel Medina

CITY OF LEWISVILLE
151 West Church Street
Lewisville, Texas 75057

FELIX CONSTRUCTION COMPANY
403 International Parkway, Suite 500
Richardson, TX 75081

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

CORPORATION EVIDENCE OF AUTHORITY

The following individual(s) are authorized to execute, sign and submit proposals, pay applications, contract amendments, contracts and contract bonds on behalf of the corporation, Felix Construction Company.

- | | | | |
|----|--|---|-----------------------------------|
| 1. | <u>Archie Lopez</u>
(Print Name) | <u></u>
(Signature) | <u>President</u>
(Title) |
| 2. | <u>David Giannetto</u>
(Print Name) | <u></u>
(Signature) | <u>Vice-President</u>
(Title) |
| 3. | <u>Matt Phillips</u>
(Print Name) | <u></u>
(Signature) | <u>Vice-President</u>
(Title) |
| 4. | <u>Kevin Felix</u>
(Print Name) | <u></u>
(Signature) | <u>Secretary</u>
(Title) |
| 5. | <u>Joel Felix</u>
(Print Name) | <u></u>
(Signature) | <u>Treasurer</u>
(Title) |
| 6. | <u>Ryan Koontz</u>
(Print Name) | <u></u>
(Signature) | <u>General Manager</u>
(Title) |