

## **DUCT AND HANDHOLE INSTALLATION AGREEMENT BETWEEN CITY OF APACHE JUNCTION AND MEARS GROUP, INC.**

THIS AGREEMENT made and entered into this 2<sup>nd</sup> day of May, 2023, by and between CITY OF APACHE JUNCTION hereinafter designated as “City of Apache Junction” or “City”, an Arizona municipal corporation, and MEARS GROUP, INC., a Delaware corporation, hereinafter “Contractor”, both of which may be identified as the “Parties” collectively or as a “Party” individually.

### **RECITALS**

A. In response to City’s request for proposal, Contractor submitted a proposal in which Contractor asserted its willingness, ability and qualifications to provide this work and service (the “Work” as more fully identified in Attachment A).

B. City and Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall render the services.

### **AGREEMENT**

NOW, THEREFORE, City retains Contractor to perform, and Contractor agrees to render the Work in accordance with the terms and conditions set forth as follows:

1. **PROJECT DESCRIPTION**: Contractor shall do and perform or cause to be done and performed in a good workmanlike manner, the Work in accordance with and as more fully described in the proposal (the “Project”) and in accordance with specifications, set forth in Attachment “A” hereinafter referred to as the “Contract Documents” which also includes this agreement, all incorporated by reference.

2. **PAYMENTS & COMPLETION**: The total amount payable by City to Contractor is an amount not to exceed Three Hundred Twenty-Seven Thousand Five Hundred Seventy-Two Dollars and No Cents (\$327,572.00) (the “Contract Sum”) for the performance of the Work under the Contract Documents. Upon notice that the Work is ready for final inspection or acceptance, City representative shall promptly cause to be made an inspection. When City finds the Work acceptable under the Contract Documents, City shall promptly submit for processing a certificate for payment stating that to the best of their knowledge, information and belief and on the basis of its observation and inspection, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that partial payment or the entire balance due Contractor is payable. Such payment to Contractor shall be made no later than thirty (30) calendar days from City’s receipt of Contractor’s invoice for the Work performed. No final payment shall become due until Contractor submits

to all required lien waivers, releases and any other data establishing payment or satisfaction of all Contractor's obligations which shall be conditioned upon Contractor's receipt of payment. If any subcontractor refuses to furnish a release or waiver required by City, Contractor shall furnish a bond to indemnify City against any such lien. If any such lien remains unsatisfied after all payments are made, Contractor shall refund to City all monies that the latter may be compelled to pay in discharging such liens, including all costs and reasonable attorney fees.

3. **CONTRACT TIME:** The term of this agreement is May 2, 2023 to October 31, 2023. Upon failure to complete Work within the time specified, Contractor shall pay as liquidated damages for the loss of use of the benefit of this project the sum as provided in Table 108 of the Maricopa Association of Governments ("MAG") Specifications per day for each day the Work remains unfinished; provided, however, in no event: a) shall Contractor's liability for liquidated damages exceed an amount equal to twenty-five percent (25%) of the Contract Sum, b) shall Contractor be liable for any other damages related to delays hereunder, and c) shall Contractor's overall liability relating to this Agreement exceed an amount equal to 100% of the Contract Sum.

4. **INDEPENDENT CONTRACTOR:** Contractor shall at all times during Contractor's performance of the services retain Contractor's status as an independent contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall supervise and direct the Work to be done using his best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work required by the contract documents. Contractor shall be responsible to City for the acts and omissions of its employees, sub-contractors and their agents and employees and other persons performing any of the Work under any Contract Document.

5. **LABOR AND MATERIALS:** Unless otherwise provided in the Contract Documents, Contractor shall provide, pay and insure under the requisite laws and regulations for all labor, materials, equipment, tools and machinery, water, heat, utilities, transportation, other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

6. **INSPECTIONS AND QUALITY OF WORK:** Contractor understands and specifically agrees that all Work is to be performed pursuant to the Project Specifications, and current Maricopa Association of Governments specifications and details, ("MAG specifications and details") with Apache Junction additions. Contractor agrees that it will conduct at least one pre-construction meeting before any Work commences. While performing the services, Contractor shall exercise the reasonable professional care and skill customarily exercised by reputed members of Contractor's profession practicing in the Phoenix metropolitan area and shall use reasonable

diligence and best judgment while exercising its professional skill and expertise. Contractor shall also be responsible for all errors and omissions Contractor commits in the performance of this Agreement. Contractor understands and agrees that inspection of the Work being performed hereunder will occur by City. Contractor agrees that City will have the exclusive right to determine, in its sole and reasonable discretion, whether the Work has been performed in accordance with the Contract Documents, including MAG specifications and details. Contractor further agrees to make such corrections to the Work as may be directed by City to conform to said Contract Documents including MAG specifications and details, without requirement of change order or any additional charge or cost to City whatsoever. Contractor further agrees to make such corrections to the Work within the time allowed for completion as long as it does not affect the overall deadline of completion set forth in Section 3.

7. **WARRANTY:** Contractor shall guarantee the Work against defective workmanship or materials for a period of one year from the date of its final acceptance under the contract; ordinary wear and tear, alterations or repairs carried out by persons not authorized by Contractor and unusual abuse or neglect excepted. Any omission on the part of City to identify defective Work or materials at the time of construction shall not be deemed an acceptance and Contractor will be required to correct defective Work or materials at any time before final acceptance; and within one year from the date of final acceptance due to faults in workmanship or materials, Contractor shall begin making the necessary repairs to the satisfaction of City within fourteen calendar days of receipt of written notice from City. Such Work shall include the repair or replacement of other Work or materials damaged or affected by Contractor making the above repairs or corrective Work all at no additional cost to City. In the case of Work materials or equipment for which warranties are required by the Contract Documents, Contractor shall provide or secure from the appropriate sub-contractor or supplier such warranties addressed to and in favor of the City and deliver same to the City prior to final acceptance of the Work. Delivery of such warranties shall not relieve Contractor from any obligation assumed under any other provision of the contract. The warranties and guarantees provided in this subsection shall survive the expiration of this Agreement for the time period mentioned above. The warranties of contractor set forth in this agreement are exclusive and in lieu of all other warranties, (including, but not limited to, all warranties of merchantability and fitness for a particular purpose) and all warranties arising from course of dealing and usage of trade.

8. **TAXES:** Contractor shall pay all license, sales, consumer, use and other similar taxes for the Work or portions thereof provided by Contractor which are legally enacted at the time bids are received whether or not yet effective or subsequently applicable due to acts of jurisdictions or bodies other than City.

9. **PERMITS & FEES:** Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all applicable permits, governmental fees, licenses and inspections necessary for the proper execution and completion of Work. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public

authority bearing on the performance of the Work. City permits for this Work will be provided to Contractor at no cost. Contractor represents and warrants that any license necessary to perform the Work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes “doing business in the City of Apache Junction” and Contractor agrees to obtain a business license pursuant to Chapter 8 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement and after termination of this Agreement any time Work is performed pursuant to the warranty provisions set forth in Section 7. Contractor also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by the city code. Any activity by subcontractors within the corporate city limits will invoke the same business license regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any required licenses. Further, Contractor agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

10. **SUPERINTENDENT**: Contractor shall employ a competent project superintendent who shall be in attendance at the project site during the progress of the Work. Superintendent shall represent and be the community agent of Contractor and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. The designated superintendent shall be:

Dominic DeLarosa  
6909 E. Greenway Pkwy., Suite 175  
Scottsdale, AZ 85254  
480-427-5572

11. **PROGRESS SCHEDULE**: Contractor shall, immediately after entering into this Agreement, reaffirm or revise the estimated progress schedule as submitted with the bid proposal. Said progress schedule shall be maintained and updated during the project.

12. **INDEMNIFICATION**: To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including reasonable attorney and expert witness fees, arising from, or alleged to have arisen from, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, Work or services of Contractor, its agents, employees, or any tier of Contractor’s subcontractors in the performance of this Agreement, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or its subcontractors in the performance of the Work under this Agreement or any subcontract. Contractor’s duty to defend, hold harmless and indemnify City, its special districts, elected and

appointed officers, officials, agents, 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 an Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, Work or services Contractor may be legally liable, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or any tier of Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, Work or services Contractor may be legally liable in the performance of the Work under this Agreement or subcontract. 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. The rights and obligations under this Section shall survive termination of this Agreement.

13. **SUB-CONTRACTORS:** All subcontractors chosen by Contractor will be subject to City's approval. All subcontractors shall be identified by Contractor prior to award of contract. Contractor shall make no substitutions for any subcontractor, person or entity previously selected without the approval of City.

14. **GOVERNING LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any terms of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing Party in such action shall recover all costs including reasonable attorney fees to be determined by the court in such action.

15. **INSURANCE:** Contractor, at its own expense, shall purchase and maintain the herein stipulated insurance with companies duly licensed in the State of Arizona, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed in the State of Arizona with coverages and forms reasonably satisfactory to the City.

All insurance required herein shall be maintained in full force and effect until all Work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respect to City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies

or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers' Compensation, shall contain waiver of transfer rights of recovery (subrogation) against City, its Board, agents, officers, appointees, officials and employees where and to the extent permitted by law, except to the extent any loss, claim, damage, etc. is caused by the negligence, recklessness or willful misconduct of any party indemnified hereunder by Contractor for Contractor's expressly assumed indemnity obligations under this Agreement.

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 City under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and City, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

City reserves the right to request and to receive within ten (10) working days, copies of any or all of the herein required insurance endorsements. 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 City's right to insist on strict fulfillment of Contractor's obligations under this Agreement.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Agreement, shall name City, its Board, agents, officers, appointees, officials and employees as additional insured parties pursuant and subject to ISO Endorsement Form CG 20 10 12 19 and/or CG 20 37 12 19 for Commercial General Liability, and standard forms for policies other than Commercial General Liability, but only to the extent of, and to no greater extent than is necessary to provide insurance coverage to the additional insureds for, Contractor's expressly assumed indemnification obligations under this Agreement.

## **REQUIRED COVERAGE**

### **Commercial General Liability**

Contractor shall maintain Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including the liability assumed under the indemnification provisions of this Agreement.

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

The Commercial General Liability additional insured endorsement shall include coverage for Contractor's operations and products and completed operations.

If required by this Agreement, if Contractor sublets any part of the Work, services or operations, Contractor shall purchase and maintain, at all times during prosecution of the Work, services or operations under this Agreement, an Owner and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of Contractor's Work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit of \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Contractor's General Liability insurance.

#### Workers' Compensation

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 or services; and Employer's Liability insurance of \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease polity limit.

In case any Work is subcontracted, Contractor will require subcontractors to provide Workers' Compensation and Employer's Liability to the same extent as required of the Contractor.

#### Professional Liability

Contractor will maintain Professional Liability insurance covering Contractor's expressly assumed indemnity obligations under this Agreement during the performance of the Work or services performed by Contractor, or any person employed by Contractor, with a limit of \$1,000,000 each claim.

#### Certificate of Insurance

Prior to commencing Work or services under this Agreement, Contractor shall furnish City with Certificates of Insurance, or formal endorsements as required by Agreement, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's Work or services and as evidenced by annual

Certificates of Insurance, to be filed with the City Clerk of the City of Apache Junction.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City thirty (30) calendar days prior to the expiration date. All Certificates of Insurance shall be identified with bid serial number and title.

**Cancellation and Expiration Notice**

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days' prior written notice to City.

16. **CHANGE ORDERS:** A change order is a written order to Contractor, approved by City's Engineer, issued after execution of the contract authorizing a change in the Work or an adjustment in the contract sum or the contract time. A change order signed by Contractor indicates agreement with the change. City may, without invalidating the contract, order changes in the Work within the general scope of the contract consisting of additions, deletions or other revisions, the contract sum, and the contract being adjusted accordingly. All such changes in the Work shall be authorized by change order and shall be performed under the applicable conditions of the contract documents. City Manager shall have authority to order minor changes in the Work not involving an adjustment in the contract sum or extension of contract time and not inconsistent with the intent of the Contract Documents. All such changes shall be affected by written order and shall be binding upon City and Contractor.

17. **SUCCESSORS, ASSIGNMENT & DELEGATION:** City and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the contract documents. Neither Party to the contract shall assign the contract or sublet it as a whole or delegate the duties hereunder, without the written consent of the other, nor shall Contractor assign any monies due or to become due to it without the previous written consent of City.

18. **WRITTEN NOTICE:** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity, or to an office of the corporation for whom it was intended or if delivered at or sent registered or certified mail, return receipt requested, and first-class postage prepaid to the last business address known to them who gives the notice.

19. **CLAIMS FOR DAMAGES:** Should either Party to the contract suffer injury or damage to personal property because of any act or omission of the other Party or of their employees or agents for whose acts they are legally liable, claims shall be made in writing to such other parties within a reasonable time after the first observance of such injury or damages.



20. **PAYMENT & PERFORMANCE BONDS:** City shall have the right to require Contractor to furnish bonds covering the faithful performance of the contract and the payment of all obligations arising hereunder.

21. **SAFETY:** Contractor and/or its subcontractors shall be solely responsible for Contractor's job safety at all times in addition to any obligation City may have for inspection of trench excavation as created under Occupational Safety and Health Administration or other similar laws or regulations.

22. **RIGHTS & REMEDIES:** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any action or failure to act constitute an approval of or an acquiescence to any breaches thereunder except as may be specifically agreed to in writing.

23. **FORCE MAJEURE:** Except for the duty to make payments when due, neither City nor Contractor, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular Contractors, subcontractors, vendors or investors desired by Contractor in connection with the obligations under this Agreement. Contractor agrees that Contractor alone will bear all risks of delay which are caused by Contractor. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

24. **TERMINATION BY CITY:** City shall be permitted to terminate this Agreement if in the discretion of City manager or his or her designee, believes

Contractor has failed to meet the terms of this Agreement. City shall provide Notice of Termination to Contractor by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

25. **TERMINATION BY CONTRACTOR:** Contractor may terminate this Agreement if City fails to make payment as agreed upon in this document. Any other termination will be deemed a breach of contract by Contractor. Contractor shall provide Notice of Termination to City by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

26. **LIMITATION OF LIABILITY:** Notwithstanding anything to the contrary in this agreement, neither party shall be liable under this agreement or under any cause of action related to the subject matter of this agreement, whether in contract, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action for punitive, exemplary, special, indirect, incidental or consequential losses or damages, including loss of profits, use, opportunity, revenues, financing, or business interruptions, regardless of whether any such loss or damage was foreseeable; provided that the limitation of liability set forth in this section shall not apply to either party's willful misconduct and/or breach of confidentiality provisions.

27. **HAZARDOUS MATERIAL LIABILITY:** Notwithstanding anything to the contrary in this or any other document, contractor shall have no liability for any hazardous materials or damage caused therefrom not introduced to the work location by it or caused by City or a third party's handling of hazardous materials, and Contractor shall at no time be deemed to be the owner or be deemed to have title to such pre-existing hazardous materials.

28. **RECORDS:** Records of Contractor's labor, payroll and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Contractor shall maintain records for a period of at least two (2) years after termination of this Agreement and shall make such records available during that retention period for examination or audit by City personnel during regular business hours. Notwithstanding anything to the contrary in this Agreement, City shall not have the right to inspect or audit the markup of any lump sum, percentage markup or multiplier.

29. **DISPUTE RESOLUTION:**

A. **Performance of Parties to Continue.** Unless otherwise agreed in writing by the Parties, during the period in which any dispute is outstanding each of Contractor and City shall continue to perform its services and carry out its other responsibilities in accordance with this Agreement.

B. **Meet and Confer.** City and Contractor shall endeavor to resolve all disputes between them, prior to commencement of any legal proceedings, by meeting and conferring on the issues in dispute. The first "meet and confer" shall take place no

later than fifteen (15) calendar days after written request by one of the Parties identifying with reasonable particularity the matters in dispute. Each meet and confer shall be attended by representatives of each Party who are familiar with the facts of the issues in dispute and with full authority to settle and resolve the dispute. If any dispute has not been resolved within thirty (30) calendar days after the first meet and confer, either Party may initiate nonbinding mediation.

30. **AMENDMENT:** It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that oral understandings or agreements not incorporated herein shall not be binding on the Parties.

31. **ENTIRE AGREEMENT:** This Agreement and any attachments represent the entire agreement between City and Contractor and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

32. **SEVERABILITY:** City and Contractor each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

33. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

34. **PROHIBITION TO CONTRACT WITH CONTRACTORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL:** The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from

contracting with Contractors who engage in boycotts of the State of Israel. Should Contractor under this Agreement engage in any such boycott against the State of Israel, this Agreement shall be deemed automatically terminated by operation of law. Any such boycott is a material breach of contract.

35. **CONFLICT OF INTEREST:** The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed by their duly authorized representative as of this 2<sup>nd</sup> day of May, 2023.

**CONTRACTOR:**

**MEARS GROUP, INC., a Delaware corporation**

DocuSigned by:

*Nic Linder*

A4F32284CA684AD...

**By: Nic Linder**  
**Its: VP of Operations**

**CITY:**

**CITY OF APACHE JUNCTION, an Arizona municipal corporation**

DocuSigned by:

*Matt Busby*

23F46F4A197B4AD...

**By: Matt Busby**  
**Its: Assistant City Manager**

**ATTEST:**

\_\_\_\_\_  
**Jennifer Pena**  
**City Clerk**

**APPROVED AS TO FORM:**

DocuSigned by:

*Joel Stern*

BC0DDCDBD60A4BB...

**R. Joel Stern**  
**City Attorney**

## ATTACHMENT A



6909 E. Greenway Pkwy #175  
Scottsdale, AZ 85254  
WE @ mears.net

April 24, 2023

Mr. Doug Wirthgen  
IT Director  
City of Apache Junction  
[dwirthgen@apachejunctionaz.gov](mailto:dwirthgen@apachejunctionaz.gov)  
480-474-5147

**Subject: Duct & Handhole Install – Baseline Rd from Ironwood to AJ Facilities**

Dear Mr. Wirthgen:

Mears Group, Inc. (Mears Broadband), a Quanta Services company, is pleased to present our proposal for the above-referenced project.

Mears has a long history of excellent performance in the Utility Construction arena. Our reputation within the industry for on schedule, on budget, safe, quality performance is well known across the country. Has the strength of project and office locations across the Nation and can provide the attention required for your broadband project.

Per our discussions and ongoing discussions with your team, it has been determined that the SOW for Mears primarily consists of the civil or underground work associated with the referenced project.

**Primary Installation SOW:**

- Installation of 3 ea. 1.25" HDPE duct along with a 12ga tracer wire approximately 7,700 lf starting at the existing hand hole at the S/W corner of Baseline and Ironwood going East on the South side of Baseline ending in front of the Animal Shelter.
- Verify the location of any marked utilities prior to any excavation beginning.
- Mandrel test the 1.25" duct prior to installation of the 144ct fiber cable. Mule tape will be installed in the two empty duct and secured and capped at each end.
- Install 7 ea. #7 hand holes and 2 ea. #9 hand holes.
- 50' slack loop of the 144ct fiber will be placed in each hand hole
- Fiber will be reel tested prior to installation in the conduit to ensure no damage during delivery.

**Engineering Building SOW:**

- Furnish and install 30"x48"x24" handhole in ROW in front of Engineering building.
- Furnish and install splice case 144ct/48ct.
- Furnish and install approximately 150lf of (2) 2" HDPE conduit from handhole in front of building to new handhole (17"x30"x24") placed on N/E corner of Engineering building.
- Install (2) 2" PVC conduit on outside of building on N/E corner and penetrate building on 2<sup>nd</sup> floor.

- Hang 1.25" fire-rated corrugated conduit on ceiling rafters above drop-ceiling tiles to IT room in back of building on 2<sup>nd</sup> floor.
- Furnish and place 48ct loose tube single mode fiber optic cable from handhole at ROW to patch panel in IT room.
- Provide splice panel and splice 12ct of the 48ct fiber.
- Final testing per specifications of fiber placed. Reports provided.

**Water Treatment Plant SOW:**

- Furnish and install approximately 125lf of 2" HDPE conduit in shallow trench (12" to 16") for temporary connection.
- Furnish and install splice case (144ct/48ct) in existing handhole on N/E corner of property.
- 200lf slack loop of 144ct fiber for future permanent install at new IT building
- Furnish and install approximately 300lf of 48ct loose tube single mode fiber optic cable in temporary duct and existing 2" conduit at pole (50' slack at handhole, 200' install, 50' slack in IT closet).
- Provide splice panel and splice 12ct of the 48ct fiber.
- Final testing per specifications of fiber placed. Reports provided.

Lump Sum Price to provide materials and services described above:

**\$327,572.00** (Three Hundred Twenty-Seven Thousand, Five Hundred Seventy Two Dollars)

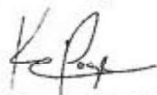
**Additional clarifications:**

- Proposal is contingent upon reaching a mutual agreement on the contract terms and conditions
- All real material i.e. duct, caps, vaults, mule tape, fiber is provided by Mears
- All permits required will be provided by the City
- Traffic control will consist of signs and barricades. No provisions have been made for flaggers and/or police detail
- Cleanup will consist of backfill and rough grading of area back to existing levels. No vegetation included
- Any disturbed hard surface will be restored to MAG Spec
- Based on provided information, Mears has utilized standard wage rates, not prevailing wages. If it is determined that prevailing wages are required it will be a change to our unit rates.
- All permitting cost has been excluded.
- Mears will utilize space inside the Water Facility for any misc. equipment and materials if overnight storage is required
- All storm water protection (BMPs), environmental studies, cost, etc. has been excluded

Mears appreciates the opportunity to partner with The City of Apache Junction and looks forward to the opportunity to further discuss our proposal and capabilities. Feel free to contact myself at 309-253-6511 or [kevin.pogue@mears.net](mailto:kevin.pogue@mears.net) for any further questions or clarifications.

Best regards,

**Kevin Pogue**




Director, Pre-Construction  
Mears Broadband

**ACCEPTED:**

The above prices, specifications and conditions are satisfactory and hereby accepted.

Buyer: 

Signature: 

Date of Acceptance: 