

**AGREEMENT BETWEEN APACHE JUNCTION WATER UTILITIES COMMUNITY
FACILITIES DISTRICT AND SOUTHWEST WATERWORKS CONTRACTORS PM
LLC FOR THE PUMP REPLACEMENT AT WELL #5**

PROJECT NO. WD 2019-02

THIS AGREEMENT made and entered into by and between the APACHE JUNCTION WATER UTILITIES COMMUNITY FACILITIES DISTRICT ("District"), an Arizona municipal corporation, and SOUTHWEST WATERWORKS CONTRACTORS PM LLC, an Arizona limited liability company ("Contractor"), both reference here in after collectively as the "Parties" and individually as a "Party".

RECITALS

- A. Well #5 located at 2401 West 16th Avenue in Apache Junction, has lost production and is required to be pulled and replaced.
- B. To avert catastrophic failure the District contacted a service provider for a quotation to diagnose the failure.
- C. In accordance with Apache Junction City Code, Volume 1, Chapter 3: Administration, Article 3-7: Procurement Procedure, Section 3-7-7, Exemptions, Subsection G, the District desires to retain Contractor to perform emergency repairs to Public Infrastructure - Well #5.
- D. District and Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall render the Work.

AGREEMENT

NOW, THEREFORE, District retains Contractor to perform, and Contractor agrees to render the services 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 the scope of work as fully described in Exhibit A which includes all required specifications.

2. **CONTRACT PRICE:** The contract sum shall be the total amount payable by District to Contractor for the amount not to exceed \$160,644.00 (One Hundred Sixty Thousand Six Hundred and Forty Four Dollars and No Cents) for the performance of the Work under the contract.

3. **CONTRACT TERM:** The Term of this Contract shall be performed from September 16, 2019 through November 30, 2019. Extensions shall only be allowed as mutually agreed upon in writing by the Parties.

4. **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, 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.

5. **INSPECTIONS AND QUALITY OF WORK:** Contractor understands and specifically agrees that all work is to be performed pursuant to: current American Water Works Association Standards, AJWD Project Number WD 2019-01 Project Specifications, Drawings and Addenda, and 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 District. Contractor agrees that District will have the exclusive right to determine, in its sole 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 District to conform to all applicable policies and regulations, including MAG specifications and details, without requirement of change order or any additional charge or cost to District 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.

6. **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 and unusual abuse or neglect excepted. Any omission on the part of District 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 District within fourteen calendar days of receipt of written notice from District. Such work shall include the repair or

replacement of other work or materials damaged or affected by making the above repairs or corrective work all at no additional cost to District. In the case of work materials or equipment for which warranties are required by the contract, Contractor shall provide or secure from the appropriate sub-contractor or supplier such warranties addressed to and in favor of District and deliver same to District 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 be in addition to and not in limitation of any other warranties, guarantees or remedies required by law, and shall survive the expiration of this Agreement for the time period mentioned above.

7. **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 District.

8. **PERMITS & FEES:** Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits, government fees, licenses and inspections necessary for the proper execution and completion of Work which are customarily secured after execution of the contract and which are legally required. Contractor shall give all notices and comply with all 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 Article 8-2 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 6. 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 licensing regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any and all applicable 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.

9. **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 District, and District 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 delivery of the materials using its best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all means, methods, techniques, sequences and procedures, and for coordinating all portions of the work required by the contract documents. Contractor shall be responsible to District for the acts and omissions of its employees.

10. INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless District, 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 attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, 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. Contractor's duty to defend, hold harmless and indemnify District, its special districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any tortious 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.

11. ENFORCED DELAYS (FORCE MAJEURE): Neither District 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 Project. 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 consultants, subcontractors, vendors or investors desired by Contractor in connection with the Project. Contractor agrees that Contractor alone will bear all risks of delay which are not Enforced

Delay. 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.

12. **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 term 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: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

13. **INSURANCE:** Contractor, at its own expense, shall purchase and maintain the minimum insurance and other additional requirements set forth herein.

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 the District constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respect to District, and any insurance or self-insurance maintained by District 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 District.

The insurance policies, except Workers Compensation, shall contain waiver of transfer rights of recovery (subrogation) against District, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, work or services.

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 District under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and District, 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.

District reserves the right to request and to receive within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. District 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 District's right to insist on strict fulfillment of Contractor's obligations under this Agreement. The insurance policies, except Workers Compensation, required by this Agreement, shall name District, its agent, officers, officials and employees as additional insured parties.

REQUIRED COVERAGE

Commercial 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/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, but not limited to, the liability assumed under the indemnification provisions of this Agreement which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011-93 or any replacement thereof. In addition, automobile liability coverage of at least \$1 million per occurrence or a combined single limit of at least \$1,000,000 is required. The auto liability policy should contain endorsements for hired autos, non-owned autos and scheduled vehicles, as applicable to the Contractor's business.

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 CG 20101185, and 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, District and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Contractor's work, service or 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 Contractor's General Liability insurance.

Workers Compensation (Not Applicable to Sole Proprietorships)

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

CERTIFICATE OF INSURANCE

Prior to commencing work or services under this Agreement, Contractor shall furnish the District with Certificates of Insurance, or formal endorsements as required by Agreement, issued by 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 the Contractor's work or services and as evidenced by annual Certificates of Insurance, to be filed with the District Clerk of District.

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

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

14. **SUCCESSORS & ASSIGNS:** District 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 without the written consent of

the other, nor shall the Contractor assign any monies due or to become due to or to become due to it without the previous written consent of District.

15. **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.

16. **SAFETY:** Contractor and/or its subcontractors shall be solely responsible for job safety at all times.

17. **RIGHTS & REMEDIES:** The duties and obligations imposed by the contract documents and the rights and remedies available hereunder 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 District 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 hereunder except as may be specifically agreed to in writing.

18. **TERMINATION OF CONTRACT:** If, for any reason, the Contractor shall fail to fulfill in a timely and proper manner his/her obligations under the contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the contract, the District shall thereupon have the right to terminate the contract by giving written notice to the Contractor of such termination and specifying the effective date thereof.

Notwithstanding the above, the Contractor shall not be relieved of liability to the District for damages sustained by the District by virtue of any breach of the contract by the Contractor.

The District may terminate the contract at any time by giving at least twenty-four (24) hour notice in writing to the Contractor. If the contract is terminated by the District as provided herein, the Contractor will be paid for the time expended and expenses incurred up to the termination date.

19. **APPEALS:** All contractual grievances shall be submitted in writing to the District Manager within five (5) calendar days after the difference of opinion or grievance occurs relating to any of the provisions of the terms of this Agreement. Within five (5) calendar days of receiving a written grievance, the District Manager shall respond in writing to the company. The District Manager's decision shall be final and binding, subject only to a further appeal in the Pinal County Superior Court pursuant to A.R.S. § 12-901, *et seq.*

20. **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 District for inspection on request. Contractor shall maintain records for a period of at least three (3) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by District personnel during regular business hours.

21. **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.

22. **SEVERABILITY:** District 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 District 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.

23. **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. Additionally, liquidated damages may be imposed if contractor fails to meet the construction deadlines as set forth in § 17 of the General Conditions.

24. **CONFLICT OF INTEREST:** This Agreement is subject to, and may be terminated by District in accordance with, the provisions of A.R.S. § 38-511.

25. **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 is automatically terminated. Any such boycott is a material breach of contract and will subject Contractor to monetary damages, including but not limited to, consequential and liquidated damages.

26. COMPLIANCE WITH FEDERAL AND STATE LAWS: Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor will verify the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. District at its option may terminate this Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). District retains the legal right to inspect the papers of any Contractor or subcontractor employee who works under this Agreement to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

27. COOPERATIVE USE OF CONTRACT: The District has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures “SAVE” cooperative. This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency. Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The District shall not be responsible for any disputes arising out of transactions made by others.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed by their duly authorized representative as of this ____ day of _____, 20__.

CONTRACTOR:
SOUTHWEST WATERWORKS
CONTRACTORS PM LLC
an Arizona limited liability company:

By: Tim Miller
Title: Project and Admin Manager

DISTRICT:
APACHE JUNCTION WATER DISTRICT
an Arizona municipal corporation:

By: Michael Loggins
Title: Water District Director

STATE OF _____)

County of _____) ss.

The foregoing was subscribed and sworn to before me this ____ day of _____, 20__, by Tim Miller as Project and Admin Manager of Southwest Waterworks Contractors PM LLC, an Arizona limited liability company.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was subscribed and sworn before me this ____ day
of _____, 20__, by Michael Loggins, as Water District Director of the
Apache Junction Water District, Arizona, an Arizona municipal corporation.

Notary Public

My Commission Expires:
