

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: June 19, 2023
RE: **Construction Agreement with Felix Associates of Florida, Inc. for Northside Pump Station Replacement**

Attached hereto for your consideration is a proposed Contract with Felix Associates of Florida, Inc. (Felix) for the Northside Pump Station Replacement.

The City owns and operates many wastewater pumping stations, and the Northside Pump Station is one of the City's largest. This pump station is responsible for conveying on average approximately 2.6 million gallons per day (MGD) of wastewater to the City's Northside Wastewater Treatment Plant. The existing pump station was built in the late 1980's, is nearing end of life and needs replacement.

The City's Purchasing Department issued Invitation to Bid (ITB) No. 3079 to procure services for the replacement of the Northside Pump Station. Three contractors responded to ITB and the following are the results of their responses:

Company	Location	Evaluated Cost
Felix Associates of Florida, Inc.	Stuart, FL	\$7,231,750
C&T Contracting Services LLC	Tampa, FL	\$7,444,600
Vogel Brothers Building Co.	Lakeland, FL	\$8,536,779

The difference between Felix and Vogel (local contractor) is \$1,305,029 and is greater than the criteria permitted by City of Lakeland Ordinance No. 5850 to award the proposed contract to the local contractor. All services pursuant to this Contract will be performed in accordance with the terms and conditions set forth in the proposed Contract between the City and Felix. The total not-to-exceed cost associated with this Contract is \$7,231,750. This project has been approved and budgeted in the Water Utilities FY2023 budget. All Work associated with this Contract will be completed on or before January 31, 2025.

It is recommended that the City Commission approve and authorize the appropriate City officials to execute the attached Contract with Felix for the Northside Pump Station Replacement.

Attachment

**SECTION 00 52 43
CONSTRUCTION AGREEMENT**

**CITY OF LAKELAND, FLORIDA
NORTHSIDE PUMP STATION REPLACEMENT**

THIS AGREEMENT made and entered into this ____ day of _____ 2023, by and between the City of Lakeland, Florida, a municipal corporation (hereinafter called the OWNER) and Felix Associates of Florida, Inc., a For Profit Florida Corporation (hereinafter called CONTRACTOR);

WITNESSETH:

WHEREAS, the OWNER has caused to be prepared specifications, plans and other contract documents as further defined in City of Lakeland Invitation to Bid No. 3079; and,

WHEREAS, the CONTRACTOR has submitted to the OWNER a Bid in accordance with the terms of said Invitation to Bid; and,

WHEREAS, the OWNER, in the manner prescribed by law, has determined and declared the aforesaid CONTRACTOR to be the best evaluated bidder for the said work and has duly awarded to the CONTRACTOR a contract therefor, for the sum or sums named herein;

NOW THEREFORE, in consideration of the compensation to be paid to the CONTRACTOR, and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, as follows:

ARTICLE 1 - INCORPORATION OF RECITALS

The foregoing recitals are true and correct and are incorporated herein by reference.

ARTICLE 2 - SCOPE OF WORK

- 2.1. CONTRACTOR shall complete all work as specified or indicated in the contract documents. The work generally involves the following:

Construction of a new wastewater lift station that includes a new wet well, three new submersible pumps, a new emergency diesel generator with automatic transfer switch, and a new electrical equipment building with a restroom. Work includes all structural construction, above and below grade pipe and equipment installation, dewatering, site work, grading, and restoration, demolition of existing wastewater pump station and sewer connections, modifications to existing sanitary sewer for new pump station, and other work necessary to provide a complete, operable, and tested pump station as shown on the Contract Drawings and as described in the Project Manual.

- 2.2 That the CONTRACTOR shall perform all of the work orders associated with the work set forth in the Project Manual and Contract Documents for the City of Lakeland, Florida Northside Pump Station Replacement prepared by Chastain-Skillman Inc. for the City of Lakeland Water Utilities Department, dated February 6, 2023, and shall execute and complete all orders included in and covered by the OWNER's official award of this AGREEMENT to the said CONTRACTOR.

ARTICLE 3 - ENGINEER

The Project has been designed by Chastain Skillman Inc., whose address is 205 East Orange Street, Suite #110, Lakeland, FL 33801, who is hereinafter called ENGINEER, and who will assume all duties and responsibilities and will have the rights and authority assigned to the ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIME

- 4.1 The Contract Times will commence to run on the anticipated Notice to Proceed date of June 19, 2023. The Work, as defined in Article 2, will be substantially complete by January 21, 2025. The work will be completed and the CONTRACTOR ready for final payment by January 31, 2025. If the actual Notice to Proceed date occurs before or after June 19, 2023, the substantial and final completion dates will be adjusted on a day for day basis.
- 4.2 Damages. OWNER and CONTRACTOR recognize that **TIME IS OF THE ESSENCE** of this AGREEMENT and that OWNER will suffer financial loss if the Work is not completed within the time specified in paragraph 4.1 above, plus any extensions thereof allowed in accordance the General Conditions. They also recognize the delays, expense and difficulties in proving the actual loss suffered by OWNER if the Work is not completed on time. If the CONTRACTOR fails to complete the Work, or any part thereof, in the time agreed upon in the multiple project schedules set forth by the OWNER, or within such extra time as may have been agreed to, the CONTRACTOR shall reimburse the OWNER for any additional expense and damage caused by such delay. In the event that the Work is not completed by the scheduled date, the OWNER shall be entitled to withhold final payment plus any unpaid adjustments until such time as the total amount of delay damages is determined and amount caused by such damages shall be withheld from the final payments and any unpaid adjustments then due. The withholding of said amounts from the final payment and any unpaid adjustments shall not impair the OWNER'S right to seek additional remedy or compensation for damages. Unknown or unforeseen conditions will be granted schedule relief upon notice from CONTRACTOR and agreement of the delay between OWNER and CONTRACTOR. The OWNER shall have the right to deduct the value of damages from any money in its hands, otherwise due, or to become due, to the CONTRACTOR, or to initiate the appropriate dispute resolution procedures and

to recover damages for nonperformance of this AGREEMENT within the time specified.

ARTICLE 5- CONTRACT PRICE

- 5.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents, Seven Million Two Hundred Thirty-One Thousand Seven Hundred Fifty (\$7,231,750.00) in current funds at the lump sum or unit prices as presented in the Bid Form which is incorporated herein and made a part hereof by this reference.
- 5.2 The parties expressly agree that the Contract Price is a stipulated sum, except with regard to those items in the Bid which are subject to unit prices.

ARTICLE 6- PAYMENT PROCEDURES

- 6.1 Contract Price shall be as stated in Article 5. The CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for payment will be processed by the ENGINEER in accordance with the General Conditions and this Article.
- 6.2 CONTRACTOR and ENGINEER will agree on the portion of work that is complete in accordance with the Contract Documents. Applications for Payment will be stamped as received and reviewed by ENGINEER and sent to the OWNER when payment is recommended.
- 6.3 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's monthly Applications for Payment, as recommended by the ENGINEER within twenty-five (25) days after the ENGINEER receives the application for payment. If there is a dispute in any portion of the application for payment, the OWNER shall pay and the CONTRACTOR agrees to accept the amount that is not in dispute.
- 6.4 Payments made by CONTRACTOR: CONTRACTOR shall pay any portions due but not in dispute to all subcontractors and material suppliers in the lesser of thirty (30) days after CONTRACTOR is invoiced or within ten (10) days from when CONTRACTOR is paid by the OWNER.
- 6.5 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold for defective or unaccepted work or for liens and claims against OWNER or CONTRACTOR, or any other good cause.
 - 6.5.1 Ninety-five percent (95%) of the value of Work completed, with the balance being retainage.

- 6.5.2 Ninety-five percent (95%), with the balance being retainage, of the value of materials and equipment not incorporated in the Work, but delivered, suitably stored and accompanied by documentation satisfactory to OWNER that CONTRACTOR has paid for said materials and equipment.
- 6.5.3 Upon the completion of 50% of the work as specified by the Contract Documents or 50% of the Contract price completed if not specified, the OWNER may, unless good cause exist, increase total payments to CONTRACTOR to ninety five percent (95%) of the Contract Price, with the balance being retainage, less such amounts as Engineer shall determine, or OWNER may withhold, for defective or unaccepted work or for liens and claims against OWNER or CONTRACTOR.
- 6.6 Final Payment. CONTRACTOR will be ready for final payment upon final completion of the Work described in Article 2 herein and in accordance with the Contract Documents, and submittal of all Record Drawings, specifications, addenda, modifications and shop drawings, written and/or extended warranties, and all manufacturers instructional and parts manuals are delivered to and accepted by the ENGINEER and OWNER.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this AGREEMENT, CONTRACTOR makes the following representations:

- 7.1 The CONTRACTOR has familiarized himself with the nature and extent of the contract documents, the work, the locality, and all local conditions and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect the cost, progress, or performance of the work.
- 7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that was provided with the bid. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume

responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities or subsurface conditions at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

- 7.5 CONTRACTOR has given OWNER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 7.6 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- 7.7 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 7.8 CONTRACTOR'S entry into this AGREEMENT constitutes an incontrovertible representation by CONTRACTOR that without exception all prices in the AGREEMENT are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between the OWNER and CONTRACTOR are attached to this AGREEMENT, are made a part hereof and consist of the following:

- 8.1 This AGREEMENT (pages 1 to 12, inclusive).
- 8.2 Exhibits to this AGREEMENT.

- 8.3 Performance Bond and Certificate of Insurance
- 8.4 Notice of Award and Notice to Proceed
- 8.5 General Conditions as amended by the Supplementary Conditions.
- 8.6 Supplementary Conditions
- 8.7 Project Manual bearing the general title: *City of Lakeland, Florida: Northside Pump Station Replacement* and consisting of Volumes I, Divisions 0 through 43, inclusive.
- 8.8 Drawings (not attached but incorporated by reference) consisting of 41 sheets, with each sheet bearing the following general Title: *Northside Pump Station Replacement*.
- 8.9 Addenda numbers 1 through 5, inclusive.
- 8.10 The following which may be delivered or issued after the Effective Date of the AGREEMENT and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to the General Conditions.
- 8.11 Invitation to Bid / Bid Sheet (Pages 1 to 6, inclusive) and all documents attached to and made a condition of the Bid.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended, or repealed in accordance with the General Conditions and the Supplementary Conditions.

ARTICLE 9 DISPUTE RESOLUTION

- 9.1. In the event of any dispute under this AGREEMENT which cannot be readily resolved, it shall be referred to the appropriate executives of the OWNER and CONTRACTOR for negotiation and resolution as described below:
- 9.2. Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties who have not previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved by these persons within thirty (30) days of the disputing Party's notice, or if the Parties fail to meet within ten (10) days, the dispute shall be referred to senior executives of both Parties who have authority to settle the dispute and who shall likewise meet to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives or if no meeting of senior

executives has taken place within fifteen (15) days after such referral, either Party may initiate mediation as provided herein.

- 9.3. All negotiations pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and State Rules of Evidence.
- 9.4. If the dispute has not been resolved by negotiation as provided herein, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate mediation proceedings by a request in writing to the other Party. Thereupon, both Parties will be obligated to engage in mediation. The proceeding will be conducted in accordance with the then current Center for Public Resources (“CPR”) Model Procedure for Mediation of Business Disputes, with the following exceptions:
 - 9.5. If the Parties have not agreed within thirty (30) days of the request for mediation on the selection of a mediator willing to serve, the CPR, upon the request of either Party, shall appoint a member of the CPR Panels on Neutrals as the mediator; and
 - 9.6. Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: (a) a written settlement is reached, or (b) the mediator concludes and informs the Parties in writing that further efforts would not be useful, or (c) the Parties agree in writing that an impasse has been reached. Neither Party may withdraw before the conclusion of the proceeding.
 - 9.7. The Parties regard the aforesaid obligation to mediate an essential provision of this AGREEMENT and one that is legally binding on them. In case of a violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof.
 - 9.8. If the dispute has not been resolved by negotiation or mediation as provided herein within one hundred twenty (120) days of the initiation of such mediation procedure, either party may initiate litigation upon ten (10) days’ written notice to the other Party; provided, however, that if one Party has requested the other to participate in a non-binding procedure, as provided for under this Article, and the other has failed to participate, the requesting Party may initiate litigation before expiration of the above period.
 - 9.9. The procedures specified in this Article shall be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this AGREEMENT; provided, however, that a Party may seek a preliminary injunction or other provisional judicial relief if in its reasonable judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Article.

ARTICLE 10 - MISCELLANEOUS

- 10.1 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns or legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.2 Terms used in this AGREEMENT, which are defined the General Conditions, shall have the meanings indicated in the General Conditions, and in the Supplementary Conditions.
- 10.3 Nothing herein shall be construed to prohibit disclosure required pursuant to Florida Statute Chapter 119, the Florida Public Records Act or any other applicable law.
- 10.4 IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

In accordance with Florida Statute §119.0701, CONTRACTOR shall keep and maintain public records required by OWNER in performance of services pursuant to this AGREEMENT. Upon request from OWNER's custodian of public records, CONTRACTOR shall provide OWNER with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract term and following completion of this Contract if CONTRACTOR does not transfer the records to OWNER. CONTRACTOR shall, upon completion of this Contract, transfer, at no cost, to OWNER all public records in possession of CONTRACTOR or keep and maintain public records required by OWNER to perform services pursuant to this Contract. If CONTRACTOR transfers all public records to OWNER upon completion of this Contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to OWNER, upon request from OWNER's custodian of public records, in a format that is compatible with the information

technology systems of OWNER.

- 10.5 No assignment by a party hereto of any rights under, or interests in, the contract documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due, and moneys that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the contract documents.
- 10.6 Notwithstanding any other provision of this AGREEMENT, City may, upon written notice to the CONTRACTOR, terminate this AGREEMENT if (a) CONTRACTOR is adjudged to be bankrupt; (b) CONTRACTOR makes a general assignment for the benefit of its creditors; (c) CONTRACTOR fails to comply with any of the conditions or provisions of this AGREEMENT, including failure to complete work within the specified time frames; or (d) CONTRACTOR is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this AGREEMENT, without prejudice to any other right or remedy OWNER may have under this AGREEMENT. In the event of termination, OWNER shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this AGREEMENT, for work properly performed prior to the effective date of termination.
- 10.7 Should any local, state or federal government or agency make a significant and material change in permit conditions or requirements, fail to issue any necessary permits, or grant required approvals to enable the parties to carry out the intent and purpose of this AGREEMENT, then to the extent that such requirements would affect any Party's performance hereunder, the affected Party shall be excused from performance to the extent affected. Provided, however, the parties shall undertake to re-negotiate that portion of the AGREEMENT to bring it into conformity with the approvals or requirements.
- 10.8 It is understood and agreed that the written terms and provisions of this AGREEMENT shall supersede all past or contemporaneous oral and written negotiations and such past or contemporaneous negotiations shall not be construed as being part of this AGREEMENT.
- 10.9 CONTRACTOR shall comply with the Insurance Requirements and Indemnify and Hold Harmless the OWNER in accordance with the provisions set forth in Section 00 73 00 Supplementary Conditions.

ARTICLE 11 - GOVERNING LAW

The parties agree that this Contract is governed by and construed in accordance with the

laws of the state of Florida. Venue for any action brought pursuant to this AGREEMENT shall be in the state courts of Polk County, Florida, or the U.S. District Court, Middle District of Florida, Tampa Division.

IN WITNESS WHEREOF, the parties hereto have signed this AGREEMENT in quadruplet. Three counterpart each has been delivered to OWNER, and one to CONTRACTOR, with copy to ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This AGREEMENT will be effective on _____, 20__.

OWNER: CITY OF LAKELAND

CONTRACTOR: _____

BY: _____
H. William Mutz, Mayor

BY: _____

ATTEST: _____
Kelly S. Koos, City Clerk

ATTEST: _____

NAME: _____
(type)

Address for giving notices:
Mr. Mark Raiford, Purchasing Manager
City of Lakeland Purchasing Department
1140 E. Parker St.
Lakeland, FL 33801

Address for giving notices:

Approved as to form and correctness:
_____, 20__.

Palmer C. Davis, City Attorney

Florida State Contractor's
License No. _____

END OF SECTION

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