



CITY OF CHANDLER, ARIZONA

MANGANARO LIFT STATION ELECTRICAL IMPROVEMENTS

CITY PROJECT NO. WW2106.402

CONSTRUCTION SERVICES AGREEMENT (CONSTRUCTION MANAGER AT RISK)

J. Warren White

**Warren White, P.E.
Acting CIP City Engineer**

CITY OF CHANDLER, ARIZONA

**MANGANARO LIFT STATION ELECTRICAL IMPROVEMENTS
CITY PROJECT NO.: WW2106.402**

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**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES AGREEMENT
PROJECT NO.: WW2106.402**

This Agreement (the "AGREEMENT") is made and entered into on the ____ day of _____, 2023, ("Effective Date") by and between City of Chandler, an Arizona municipal corporation, hereinafter called "City" and **MGC Contractors, Inc.** the "Construction Manager at Risk" or "CM@Risk" designated below (City and CM@Risk may individually be referred to as "Party" and collectively referred to as "Parties").

City and CM@Risk agree as follows:

ARTICLE 1 - PARTICIPANTS AND PROJECT

CITY: **Acting CIP City Engineer: Warren White, P.E.**
 Public Works & Utilities Department
 P.O. Box 4008, Mail Stop 407 Chandler, AZ 85244-4008
 Phone: 480-782-3337 Email: warren.white@chandleraz.gov

CITY: **Construction Project Manager: Russ Slotnick**
 Public Works & Utilities Department
 P.O. Box 4008, Mail Stop 407 Chandler, AZ 85244-4008
 Phone: 480-782-3411 Email: russ.slotnick@chandleraz.gov

CM@RISK: **Legal Company Name:** **MGC Contractors, Inc.**

Mailing Address: **PO Box 61748, Phoenix, AZ 85082**

Physical Address: **4110 E. Elwood St., Phoenix AZ 85040**

Arizona Roc No.: **069949 & 071441**

Federal Tax Id No.: **86-0443028**

State Where Organized: **Arizona**

Business Organization: **Corporation**

Statutory Agent Name: **Randy L. Gates**

Statutory Agent Mailing Address: **PO Box 61748, Phoenix, AZ 85082**

Statutory Agent Physical Address: **4110 E. Elwood St., Phoenix AZ 85040**

CM@Risk's Authorized Project Representative:

Name: **Josh Hoffert**

Title: **Project Manager**

Phone: **602-309-2402**

Email: **jhoffert@mgccontractors.com**

PROJECT DESCRIPTION:

The project includes electrical improvements and wet well rehabilitation at Manganaro Lift Station.

PROJECT LOCATION:

2991 West Ray Road

ARTICLE 2 - AGREEMENT DOCUMENTS

2.1 AGREEMENT DOCUMENTS

The Agreement between City and CM@Risk will consist of the following Agreement Documents:

1. This Construction Services Agreement and all of its Exhibits, including Project Plans and Technical Specifications.
2. General Conditions and General Conditions Appendices, incorporated by reference.
3. Project Specific Special Provisions as set forth in **Exhibit A**, incorporated by reference.
4. Accepted GMP/Price Proposal as set forth in **Exhibit D**, incorporated by reference.

2.2 In the event of any inconsistency, conflict, or ambiguity between or among the Agreement Documents, the Agreement Documents will take precedence as described in Section 14.1.4 of the General Conditions.

2.3 DEFINITIONS

The definitions in Sections 2 and 15 of the General Conditions apply to all the Agreement Documents, including this Agreement.

ARTICLE 3 - PRE-CONSTRUCTION SERVICES

Although CM@Risk has performed Pre-Construction Services pursuant to a separate Agreement between City and CM@Risk, the completion, quality and accuracy of those services and the deliverables provided by City thereunder directly impact CM@Risk's performance of its obligations under this Agreement. Therefore, all of CM@Risk's obligations, duties, and warranties in relation to Pre-Construction Services and deliverables survive completion of the Pre-Construction Services Agreement and are incorporated herein. Any breach of any of CM@Risk's duties, obligations, or warranties under the Pre-Construction Services Agreement will likewise be considered a breach of this Agreement.

ARTICLE 4 - CONSTRUCTION SERVICES

4.1 GENERAL

4.1.1 CM@Risk agrees at its own cost and expense, to do all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Agreement Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, and within the schedule, stated in attached **Exhibit A**.

- 4.1.2 CM@Risk must provide all of the labor and materials, and perform the Work in accordance with Section 4 of the General Conditions. Some, but not all, of the major components of the Construction Services and the corresponding subsections of Section 4 of the General Conditions are set forth below.
- 4.1.3 This is an Agreement for complete construction services in accordance with the Construction Manager at Risk method of delivery of construction services. CM@RISK has participated in the design process and been an active member of the Project Design Team and is fully aware of any issues and constraints involved in this Construction Project.
- 4.1.4 CM@RISK is the CITY's fiduciary responsible for undertaking all necessary action contemplated under the Agreement documents to construct the Project and ensure timely and quality completion of the Project at a cost within the Guaranteed Maximum Price (GMP).
- 4.1.5 At all times relevant to this Agreement and performance of the Work, the CM@Risk must fully comply with all Laws, Regulations, or Legal Requirements applicable to City, the Project and the Agreement, including, without limitation, those set forth on attached **Exhibit A**.
- 4.1.6 CM@Risk must perform the Work under this Agreement using only those firms, team members and individuals designated by CM@Risk consistent with the Statement of Qualifications dated March 29, 2022, the GMP Proposal, or otherwise approved by City pursuant to the General Conditions. No other entities or individuals may be used without prior approval of the Project Manager
- 4.1.7 CM@Risk will comply with all terms and conditions of the General Conditions.
- 4.1.8 In the event of a conflict between this Agreement and the General Conditions or an exhibit hereto or appendix thereto, the terms of this Agreement will control.
- 4.1.9 Ownership of Work Product. Notwithstanding anything to the contrary in this Agreement, all Work Product prepared or otherwise created in connection with the performance of this Agreement, including the Work, are to be and remain the property of City. For purposes of this provision, "Work Product" will include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product will be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. § 101 (Copyright Act). If for any reason, any such Work is found not to be a Work Made for Hire, CM@Risk hereby transfers and assigns ownership of the copyright in such Work to City. The rights in this Section are exclusive to City in perpetuity.

4.2 **CM@RISK'S PRE-AGREEMENT AND PRE-WORK DELIVERABLES**

4.2.1 The CM@Risk must provide the Deliverables in accordance with Section 4.2 of the General Conditions.

4.3 **PRE-CONSTRUCTION CONFERENCE**

Refer to Section 4.3 of the General Conditions.

4.4 **PERFORMANCE OF THE WORK (INCLUDING FIELD MEASUREMENTS, SUBCONTRACTORS, AND SUPPLIERS)**

Refer to Section 4.4 of the General Conditions.

4.5 **CONTROL OF THE PROJECT SITE**

Refer to Section 4.5 of the General Conditions.

4.6 **PROJECT SAFETY**

Refer to Section 4.6 of the General Conditions.

4.7 **MATERIALS QUALITY, SUBSTITUTIONS AND SHOP DRAWINGS**

Refer to Section 4.7 of the General Conditions.

4.8 **PROJECT RECORD DOCUMENTS**

Refer to Section 4.8 of the General Conditions.

4.9 **WARRANTY AND CORRECTION OF DEFECTIVE WORK**

Refer to Section 4.9 of the General Conditions.

ARTICLE 5 - CITY RESPONSIBILITIES

5.1 City will have the responsibilities, and provide the information specified in, and subject to the conditions set forth in, Section 5 of the General Conditions.

ARTICLE 6 - AGREEMENT TIME

6.1 **GENERAL**

6.1.1 The Agreement Duration is **720** Calendar Days.

6.1.2 The Agreement Time will start with the Notice to Proceed (NTP) and end with Final Acceptance, as set forth in Article 6.4 below. The Notice to Proceed cannot be issued until approval and acceptance by City of the GMP or Fixed Price.

6.1.3 The Agreement Time will be as set forth in the Project Schedule. CM@Risk agrees that it will commence performance of the Work and complete the Project through Final Acceptance within the Agreement Time.

6.1.4 Time is of the essence of this Agreement for the Project, and for each phase and designated Milestone thereof.

6.2 PROJECT SCHEDULE

6.2.1 The Project Schedule approved as part of the GMP Proposal and incorporated herein as part of the attached **Exhibit D** must be updated and maintained throughout CM@Risk's performance under this Agreement in accordance with Section 6.2 of the General Conditions.

6.2.2 Failure on the part of CM@Risk to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of this Agreement by City.

6.2.3 Work must be completed to meet the following milestones after the Notice to Proceed:

<u>Milestone</u>	<u>Time</u>	<u>Liquidated damages for delay</u>
1. [REDACTED]	within [REDACTED] days	\$ [REDACTED] per calendar day

6.3 SUBSTANTIAL COMPLETION

Substantial Completion must be achieved no later than the Substantial Completion Date set forth in the Project Schedule. Substantial Completion will be determined in accordance with Section 6.3 of the General Conditions.

6.4 FINAL ACCEPTANCE

6.4.1 Final Acceptance will be obtained within the time period set forth in the Project Schedule.

6.4.2 Final Acceptance will be issued pursuant to Section 6.5 of the General Conditions.

6.5 LIQUIDATED DAMAGES

6.5.1 Substantial Completion Liquidated Damages. CM@Risk acknowledges and agrees that if CM@Risk fails to obtain Substantial Completion of the Work within the Agreement Time, City will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, City and CM@Risk agree that if CM@Risk fails to achieve Substantial Completion of the Work within the Agreement Time, City will be entitled to retain or recover from CM@Risk, as

liquidated damages and not as a penalty, the sum per calendar day as indicated in MAG § 108.9.

6.5.2 Final Acceptance Liquidated Damages. For the same reasons set forth in Article 6.5.1 above, City and CM@Risk further agree that if CM@Risk fails to achieve Final Acceptance of the Work within the Agreement Time, City will be entitled to retain or recover from CM@Risk, as liquidated damages and not as a penalty, the sum per calendar day as indicated in MAG § 108.9 commencing from the actual date of Substantial Completion or Final Acceptance as required under the Agreement.

6.5.3 MAG Liquidated Damages. If no liquidated damages are specified in Articles 6.5.1 or 6.5.2 above, then the liquidated damages provisions in MAG § 108.9 will apply.

6.5.4 City may deduct liquidated damages described in this Article 6.5 from any unpaid amounts then or thereafter due CM@Risk under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due CM@Risk will be payable to City at the demand of City, together with interest from the date of the demand at the highest lawful rate of interest payable by CM@Risk.

6.6 **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES ONLY**

6.6.1 CM@Risk and City waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

6.6.1.1 Damages incurred by City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

6.6.1.2 Damages incurred by CM@Risk for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

6.6.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination of this Agreement. Nothing contained in this Article 6.6 will be deemed to preclude an award of liquidated damages, when applicable, in accordance with Article 6.5 above.

6.6.3 Nothing herein will be deemed to constitute a waiver of any other remedy available to City in the event of CM@Risk's default under this Agreement prior to full performance of the Work including, as applicable, specific performance or completion of the Work on behalf of CM@Risk, the cost and expense of which will be offset against any monies then or thereafter due to CM@Risk (if any) and otherwise immediately reimbursed to City by CM@Risk.

ARTICLE 7 - AGREEMENT PRICE

7.1 AGREEMENT PRICE

- 7.1.1 In exchange for CM@Risk's full, timely, and acceptable performances and construction of the Work under this Agreement, and subject to all of the terms of this Agreement, City will pay CM@Risk the "Agreement Price," which:

The sum of the CM@Risk's Fee and reimbursable Cost of the Work, as defined in Section 15 of the General Conditions, which the CM@Risk guarantees will not exceed the GMP set forth in **Exhibit D** in the amount of **\$2,707,998.57**. Costs which would cause the GMP to be exceeded must be paid by CM@Risk without reimbursement from City.

- 7.1.2 The Agreement Price is all-inclusive and specifically includes all fees, cost, insurance and bond premiums, allowances, construction contingency, owner's contingency, and taxes of any type necessary to fully, properly and timely perform and construct Work.

7.2 CHANGES TO AGREEMENT PRICE

Shall be determined under Section 9 of the General Conditions.

ARTICLE 8 - FORCED LABOR OF ETHNIC UYGHURS PROHIBITED

- 8.1 **FORCED LABOR OF ETHNIC UYGHURS PROHIBITED.** By entering into this Agreement, Contractor certifies and agrees Contractor does not currently use and will not use for the term of this Agreement: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; or (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement through their duly authorized representatives and bind their respective entitles as of the effective date.

"CITY" CITY OF CHANDLER

"CM@Risk"

MGC Contractors, Inc.

MAYOR

Signature

11/15/23

Date

RECOMMENDED BY:

Bryan Forster

Print Name

J. Warren White

Warren White, P.E.
Acting CIP City Engineer

Projects Director

Title

APPROVED AS TO FORM:

bforster@mgccontractors.com

Signer Email Address

City Attorney

JWB

ATTEST:

City Clerk

Seal