



## **Amended General Services Contract**

### **Water Meter Replacement Program and Implementation of an Advanced Metering Infrastructure (AMI) System**

**Contract Number: 2024-03**

THIS AGREEMENT was made and entered into this 8<sup>th</sup> day of May 2024 by and between Dana Kepner Company, Inc. of the City of Tucson, County of Pima, State of Arizona, hereinafter designated "Vendor," and the City of San Luis, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated "City."

WITNESSETH: That the said Vendor, for and in consideration of the sum to be paid by the said City, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees, for himself, his heir, executors, administrators, successors, and assigns as follows:

**ARTICLE I – SCOPE OF WORK:** The Vendor shall furnish any and all labor, materials, equipment, transportation, utilities, services, and facilities required to perform all work for the construction of the project described as City of San Luis: Water Meter Replacement program and implementation of an Advanced Metering Infrastructure (AMI) System in a good and workmanlike and substantial manner and to the satisfaction of the City through its Contractors and under the direction and supervision of the Billing and Collections Manager, or his properly authorized agents and strictly pursuant to and in conformity with the Plans and Specifications prepared by the Vendors for the City, and with such written modifications of the same and other documents that may be made by the City through the Billing and Collections Manager or his properly authorized agents, as provided herein.

**ARTICLE II – CONTRACT DOCUMENTS:** The Notice Inviting Bids, Plans, Standards Specifications and Details, Special Conditions, Addenda, if any, and Proposal as accepted by the Mayor and Council per Council Minutes of May 8, 2024, Certificate of Insurance and Contract Amendments, if any, are by this reference made a part of this Contract to the same extent as if set forth herein in.

**ARTICLE III – TIME OF COMPLETION:** The Contract resulting from this request shall commence once fully executed until September 30, 2025. The Contract may be extended with the mutual consent of the City of San Luis and the Vendor. Notice of intent to renew shall be made at least one (1) month prior to normal contract expiration. If renewal results in changes to the terms or conditions, such changes shall be made in writing as an amendment to the contract, and such amendment shall not become effective until fully executed by both parties.

**ARTICLE IV – COMPENSATION:** Vendor shall be paid, pursuant to the provisions as set forth in the Contract Documents, the total sum of \$2,761,474.63 plus any approved contract amendments, for the full and satisfactory completion of all work as set forth in the Project Specifications and Contract Documents. Retention shall be in accordance with Arizona Revised Statutes Section 34-221.

**ARTICLE V – CONFLICT OF INTEREST:** Pursuant to ARS Section 38-511, the City of San Luis may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of San Luis is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, the City of San Luis further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting, or creating this contract on behalf of the City of San Luis from any other party to the contract, arising as a result of this contract.

**ARTICLE VI – AMBIGUITY:** This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the San Luis City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

**ARTICLE VII – NONDISCRIMINATION:** The Vendor, after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability, or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Vendor will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Americans With Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

**ARTICLE VIII – INDEPENDENT VENDOR STATUS:** It is expressly agreed and understood by and between the parties that the Vendor is being retained by the City as an independent vendor, and as such, the Vendor shall not become a City employee and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled other than that compensation as set forth in Article IV - Compensation above. As an independent vendor, the Vendor further acknowledges that he is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent vendor, the Vendor further agrees that he will conduct himself in a manner consistent with such status, that he will neither hold himself out nor claim to be an officer or employee of the City by reason thereof, and that he will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to Workers's Compensation coverage, Unemployment Insurance benefits, Social Security coverage, or retirement membership or credit.

**ARTICLE IX – CITY FEES:** Prior to final payment to the Vendor, the City shall deduct from there any and all unpaid privilege, license, and other taxes, fees, and any and all other unpaid moneys due the City from the Vendor and shall apply those moneys to the appropriate account. Vendor shall provide to the City any information necessary to determine the total amount(s) due.

**ARTICLE X – OTHER WORK IN PROJECT AREA:** The City of San Luis and any other vendors, whether under contract with the City, a third party, and/or utilities, may be working within the project area while this Contract is in progress. The Vendor herein acknowledges that delays and disruptions may, and in all likelihood, occur due to other work. The Vendor's bid shall be deemed to have recognized and included costs arising from and associated with other work in the project area disclosed by the Contract Documents or which would be apparent to an experienced vendor exercising due diligence during inspection of the project documents, the question-and-answer session in the pre-bid process or during a site inspection. No payment will be made for any delays or disruptions in the work schedule that are wholly the fault of the vendor, its agents, employees, or any of the vendor's subcontractors. In the event that the vendor encounters delay or disruption in the project schedule due to factors not wholly the fault of the vendor or within the vendor's control, then the Contract may be adjusted pursuant to the Delay's and Extension of Time provisions of this Contract and a timely request submitted for Contract Amendment. Failure to submit a timely request for Contract Amendment shall be deemed a waiver of any entitlement to additional compensation.

**ARTICLE XI – COOPERATIVE USE OF CONTRACT:** This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona and as part of the Strategic Alliance for Volume Expenditures (S.A.V.E.) with the approval of the contracted vendor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charters and/or procurement rules and regulations of the respective government agency.

**ARTICLE XII – RIGHT TO ASSURANCE:** If the City, in good faith, has reason to believe that the Vendor does not intend to or is unable to perform or continue performing under this Contract, the Billing and Collections Manager may demand in writing that the Vendor give a written assurance of intent to perform. Failure by the Vendor to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract.

**ARTICLE XIII – TERMINATION FOR CONVENIENCE:** The City reserves the right to terminate the Contract, in whole or in part, at any time, when in the best interests of the City, without penalty or recourse. Upon receipt of the written notice, the Vendor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to the City. In the event of termination under this paragraph, all documents, data, and reports prepared by the Vendor under the Contract shall become the property of and be delivered to the City upon demand. The Vendor shall be entitled to receive just and equitable compensation for work completed and materials accepted before the effective date of the termination.

**ARTICLE XIV – MISCELLANEOUS**

- A. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Vendor further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.
- B. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01 (A) and (B) or pursuant to any other state or federal statute, court rule, case law or common law. The Vendor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.
- C. In the event of default, neither party shall be liable for incidental, special, or consequential damages.

- D. Any notices to be given by either party to the other must be in writing and personally delivered or mailed by prepaid postage at the following addresses:

Billing and Collections  
City of San Luis  
P.O. Box 3750  
1090 E Union Street  
San Luis, AZ 85349

- E. This Agreement is non-assignable by the Vendor unless by subcontract, as approved in advance by the City.
- F. All invoices shall be emailed to [eesparza@sanluisaz.gov](mailto:eesparza@sanluisaz.gov)
- G. This Agreement shall be construed under the laws of the State of Arizona.
- H. This Agreement represents the entire and integrated Agreement between the City and the Vendor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Vendor. Written and signed amendments shall automatically become part of the Agreement 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.
- I. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- J. INDEMNIFICATION: To the fullest extent permitted by law, the Vendor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Vendor, its employees, agents, or any tier of subcontractors in the performance of this Contract, Vendor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees that 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 any acts, errors, mistakes, omissions, work or services in the performance

of this Agreement including any employee of the Vendor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Vendor may be legally liable.

K. No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement. None of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modification shall be introduced in any proceeding.

L. **INSURANCE:** Vendor and/or subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Vendor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the performance of the work under this Contract by the Vendor, his agents, representatives, employees, or subcontractors. Vendor is free to purchase such additional insurance as may be determined necessary.

**Additional Insurance Requirements:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of San Luis is named as an additional insured, the City of San Luis shall be an additional insured to the total limits of liability purchased by the Vendor, even if those limits of liability are in excess of those required by this Contract.

**Additional Insured:  
City of San Luis  
1090 E Union Street  
San Luis, AZ 85349**

2. The Vendor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

All certificates required by this Contract shall be emailed directly to [msabori@sanluisaz.gov](mailto:msabori@sanluisaz.gov) and [eesparza@sanluisaz.gov](mailto:eesparza@sanluisaz.gov). The City contract number and project description shall be noted on the certificate of insurance. The City reserves

the right to require complete, certified copies of all insurance policies required by this Contract at any time. Any Renewal of Insurance certificates with endorsements will need to be emailed to the above emails at least two weeks prior to expiration.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for nonpayment of premium, any changes to material to compliance with this contract in the insurance policies above shall require thirty (30) day written notice.

Worker's Compensation and Employer's Liability:

Workers' Compensation Employer's Liability	Statutory
• Each Accident -	\$ 1,000,000

Acceptability of Insurers: Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of San Luis Risk Management Division.

Verification of Coverage: Vendor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the commencement of work under this Contract and remain in effect for the duration of the Contract. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

Insurance Limit Requirements - Vendor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form:

Policy shall include bodily injury, property damage, personal injury, broad form contractual liability coverage.

- General Aggregate \$ 2,000,000
- Products – Completed Operations Aggregate \$ 1,000,000 (if applicable)
- Personal and Advertising Injury \$ 1,000,000 (if applicable)
- Each Occurrence \$ 1,000,000
- Fire Legal Liability (Damage to Rented Premises) \$ 100,000 (if applicable)

The policy shall be endorsed to include the following additional insured language: "The City of San Luis shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of, the Vendor. "

Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$ 1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of San Luis shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Vendor. "

- Disease – each employee - \$ 1,000,000
- Disease – policy limit - \$ 1,000,000

Policy shall contain a waiver of subrogation against the City of San Luis for losses arising from work performed by or on behalf of the Vendor.

All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS Section 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

Prior to commencing work under this Agreement, the Vendor shall provide City with evidence that it is either a "self-insured employer" or a "carrier-insured employer" for Workers' Compensation as required by ARS 23-901 et seq. or that it employs no persons subject to the requirement for such coverage.

#### M. Contractor Immigration Warranty

Contractor / Vendor understands and acknowledges its applicability to the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug-Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor / Vendor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. § 34-302, as amended, "Residence Requirements for Employees."

Under the provisions of A.R.S. § 41-4401, Contractor / Vendor hereby warrants to the City that the Contractor / Vendor and each of its

subcontractors ("Subcontractors") will comply with and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor / Vendor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor / Vendor or Subcontractors' employee who works on this Contract to ensure that the Contractor / Vendor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor / Vendor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor / Vendor and any of the Subcontractors to ensure compliance with Contractor / Vendor's Immigration Warranty. Contractor / Vendor agrees to assist the City in regard to any random verification performed.

Neither the Contractor/Vendor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor/Vendor or Subcontractor establishes that it has complied with employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

N. Israel: Vendor certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in Ariz. Rev. Stat. § 35-393, of Israel.

O. Force Labor of Ethnic Uyghurs Certification: Pursuant to A.R.S. § 35- 394, Vendor certifies that the vendor does not currently, and agrees for the duration of the contract that it will not, use:

1. The forced labor of ethnic Uyghurs in the People's Republic of China
2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and

3. Any Vendor, 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.

If the Vendor becomes aware during the term of the Contract that the Company is not in compliance with the written certification, the Vendor shall notify the City of San Luis within five business days after becoming aware of the noncompliance. If the Vendor does not provide the City of San Luis with a written certification that the Company has remedied the noncompliance within 180 days after notifying the City of San Luis of the noncompliance, this Contract terminates, except that if the Contract termination date occurs before the end of the remedy period, the Contract terminates on the Contract termination date.

P. Contracting with small and minority vendors, women's business enterprises, and labor surplus area vendors:

1. The Company will take all necessary affirmative steps to ensure that minority vendors, women's business enterprises, and labor surplus area vendors are used when possible.
2. Affirmative steps shall include:
  - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
  - b. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises.
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
  - e. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Q. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement, this Agreement shall control over such other incorporated documents.

R. Non-Availability of Funds: Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be

terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

**ARTICLE XV – ARPA TERMS AND CONDITIONS:** U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions in the Water Meter Replacement Program and Implementation of an Advanced Metering Infrastructure (AMI) System RFP starting on page 23 and ending on page 26 are by this reference made a part of this Contract to the same extent as if set forth herein in.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

**City of San Luis, Arizona**

\_\_\_\_\_  
Nieves Riedel, Mayor

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

**Approved As to Form**

\_\_\_\_\_  
Kay Marion Macuil, City Attorney

**Dana Kepner Company, Inc.**

\_\_\_\_\_  
Matthew Roeder  
Authorized Representative

Witness:

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_