



City of San Luis

Department of Public Works

• Administration • Streets • Water • Wastewater • Solid Waste • Fleet Services •

AGREEMENT

for the Construction of

CITY OF SAN LUIS WELL SITE 5 NEW MANGANESE TREATMENT UNIT

This agreement ("Contract") is made and entered into this ____ day of June 2024, by and between:

MGC Contractors, Inc. 4110 East Elwood Street Phoenix, Arizona 85040 An Arizona for-profit corporation ("Contractor") and	City of San Luis 1090 East Union Street (Physical Address) P.O. Box 3750 (Mailing Address) San Luis, Arizona 85349 An Arizona municipal corporation ("City")
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The Contractor and City may be referred to individually as the "Party" and collectively as the "Parties."

WHEREAS, the scope of work requires the Contractor to furnish any and all labor, materials, equipment, transportation, utilities, services, and facilities required to perform all work for the City of San Luis – Well Site 5, New Manganese Treatment Unit ("Project"), per the Contractor's bid of May 30, 2024, ("Proposal"). and to completely and totally remove and install the materials therein for the City, in a good and workmanlike and substantial manner and to the satisfaction of the City through its engineers ("ENGINEERS"), or his properly authorized agents and strictly pursuant to and in conformity with the plans and specification prepared by the ENGINEERS, and with such modifications of the same and other documents that the OWNER may make through the ENGINEERS or his properly authorized agents, as provided herein; and

WHEREAS, San Luis City Council, at a properly noticed open meeting, awarded the Bid to the Contractor on June 12, 2024; and

WHEREAS, at the same meeting, San Luis City Council directed staff to finalize an agreement with MGC Contractors, Inc.;

NOW, THEREFORE, the above recitals are incorporated into this Contract. In consideration of the City paying the sum of \$3,966,900.00 to the Contractor and the Contractor constructing a new Manganese Treatment Unit with appurtenances and piping at the City's Well Site 5 and other work incidental in the manner and at the time provided in this Contract, and in consideration of the other mutual benefits and obligations contained in this Contract the Parties agree as follows:

ARTICLE 1 - PARTICIPANTS AND PROJECT

City:	Jenny Torres, City Manager City of San Luis, Arizona Telephone: (928) 341-8520 E-mail: jtorres@sanluisaz.gov
City PROJECT MANAGER:	Jorge Perez, Assistant Director of Public Works City of San Luis Telephone: (928) 341-8577 E-mail: jperez@sanluisaz.gov
Contractor:	Greg Beetem, Vice-President MGC Contractors, Inc. Telephone: (602) 437-5000 E-mail: gbeetem@mgccontractors.com
Contractor MANAGER:	_____ MGC Contractors, Inc. Telephone: _____ E-mail: _____
PROJECT ENGINEER / DESIGNER:	James V. Davey, PE, RLS James Davey and Associates, Inc. Telephone: (928) 782-7926 E-mail: jdavey@jdacivil.com
PROJECT DESCRIPTION:	City of San Luis, Well Site 5, Construction of New Manganese Treatment Unit,
PROJECT LOCATION:	Well Site 5 is near the McCain Blvd north of Union Street in San Luis, Arizona

ARTICLE 2 - CONTRACT DOCUMENTS

The Contract between the City and the Contractor shall consist of the following items, collectively the "Contract Documents:"

1. this Contract;
2. Change Orders (if any);
3. Performance bond and payment bond (required by A.R.S. § 41-2574, also known as contract bond and labor & materials bond), bid bond, and other bonds;
4. Project specifications;
5. construction plans;
6. General Conditions;
7. bid documents {including but not limited to the advertisement for bids, bid schedule, addenda (if any), additive bid items (if any)}, and the Proposal;
8. Special Conditions (Pages SP-1 through 8 of the Bid Package)/special provisions (which amend Part 100 of the 2016 City of San Luis Supplemental to the 2015 MAG Uniform Standard Specifications);

9. 2016 City of San Luis Supplemental to the 2015 MAG Uniform Standard Specifications and Details for Public Works Construction and City of Yuma Construction Standard Detail Drawings, MAG Uniform Standard Specifications and Details for Public Works Construction, City of Yuma Construction Standard Detail Drawings – Edition 2019; and
10. Certificates of Insurance.

By this reference, the above Contract Documents are made a part of this Contract to the same extent as if set forth in full here.

In the event of a conflict of language between the items, the documents shall govern in the order listed above. The Contract Documents shall govern in all other matters not otherwise specified by the Contract between the Parties. All previous contracts (if any) between the Contractor and City are not applicable to this Contract or other resultant contracts.

ARTICLE 3 - DESIGN PHASE SERVICES

The Contractor is not required to provide design phase services to the City in relation to this Project.

ARTICLE 4 - CONSTRUCTION SERVICES

4-1 General.

- 4-1.01 The Contractor 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 Contract 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, within the Project Schedule.
- 4-1.02 The Contractor shall provide all the labor and materials and perform the Work in accordance with Section 4 of the General Conditions. Below are some but not all of the major components of the construction services and the corresponding subsections of Section 4 of the General Conditions.
- 4-1.03 At all times relevant to this Contract and performance of the Work, the Contractor shall fully comply with all laws, regulations, or legal requirements applicable to the City, the Project, and the Contract, including, without limitation, those set forth in the General Conditions.
- 4-1.04 The Contractor shall perform the Work under this Contract using only those firms, team members, and individuals designated by Contractor consistent with the Contractor's accepted Bid, or otherwise, approved by the City pursuant to the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager.
- 4-1.05 The Contractor shall comply with all terms and conditions of the General Conditions.
- 4-1.06 The terms of this Contract shall control in the event of a conflict between it and the General Conditions or any exhibit to the Contract or appendix to the General Conditions.

4-1.07 For purposes of this provision, "Work Product" shall 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 in the future created. All Work Product shall 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, the Contractor, by entering into this Contract, transfers and assigns ownership of the copyright in such Work to the City. Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of the City. The rights in this Section are exclusive to the City in perpetuity.

4-2 The Contractor's Pre-Contract and Pre-Work Deliverables. The Contractor shall provide the deliverables in accordance with Section 4.2 of the General Conditions.

4-3 Pre-Construction Conference. The Contractor shall attend the pre-construction conference in accordance with Section 4.3 of the General Conditions.

4-4 Performance of the Work (Including Field Measurements, Subcontractors, and Suppliers). The Contractor shall control and maintain the Project site in accordance with Section 4.4 of the General Conditions.

4-5 Control of the Project Site. The Contractor shall control and maintain the Project site in accordance with Section 4.5 of the General Conditions.

4-6 Project Safety. The Contractor shall implement and enforce Project safety in accordance with Section 4.6 of the General Conditions.

4-7 Materials Quality, Substitutions, and Shop Drawings. The Contractor shall provide materials testing and submit substitute materials and shop drawings in accordance with Section 4.7 of the General Conditions.

4-8 Project Record Documents. The Contractor shall maintain and make available the Project Record Document in accordance with Section 4.8 of the General Conditions.

4-9 Warranty and Correction of Defect Work. The Contractor shall provide warranties and correct defective Work in accordance with section 4.9 of the General Conditions.

ARTICLE 5 - CITY'S RESPONSIBILITIES

The City shall 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 - CONTRACT TIME

6-1 Contract Time.

The Contract Time shall start with the Notice to Proceed (NTP) and end with Final Acceptance, as set forth in Section 6-4 below. The Notice to Proceed cannot be issued prior to the City's approval and acceptance of the Bid.

6-1.01 The Contract Time shall be as set forth in the Project Schedule. The Contractor agrees that it will commence the performance of the Work and complete the Project within the Contract Time.

6-1.02 Time is of the essence of this Contract, for the Project, and for each phase and designated milestone of the Contract.

6-1.03 Failure on the part of the Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for the City to terminate this Contract.

6-2 Project Schedule. The Project Schedule, as required by Section 6.2 of the General Conditions, shall be updated and maintained throughout the Contractor's performance under this Contract in accordance with Section 6.2 of the General Conditions.

6-3 Final Completion and Final Acceptance.

6-3.01 **Substantial** Completion will be obtained within the time period set forth in the Project Schedule as defined in the General Conditions, Section 2.

6-3.02 Final Completion will be determined, and Final Acceptance will be issued pursuant to Sections 6.3 and 6.4 of the General Conditions. **For this project Final Completion and Final Acceptance shall be set at the end of the 2-year warranty period following Substantial Completion.**

6-4 Liquidated Damages.

6-4.01 The Contractor acknowledges and agrees that if the Contractor fails to obtain the Final Completion of the Work within the Contract Time, the City will sustain extensive damages and serious loss as a result of such failure. The Contractor agrees to commence Work within ten (10) Days of the date of the Notice to Proceed from the City and to achieve Substantial Completion within **two hundred and seventy (270) calendar Days after the Notice to Proceed**. The Contractor also agrees to pay liquidated damages, the sum of \$1,190.00, for each consecutive calendar Day thereafter.

6-4.02 The City may deduct liquidated damages described in Subsection 6-4.01 above from any unpaid amounts then or thereafter due to the Contractor under this Contract. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the City at the demand of the City, together with interest from the date of the demand at the highest lawful rate of interest payable by the Contractor.

6-4.03 Nothing in this Contract shall be deemed to constitute a waiver of any other remedy available to the City in the event of the Contractor's default under this Contract prior to full performance of the Work, including, as applicable, specific performance or completion of the Work on behalf of the Contractor, the cost and expense of which shall be offset against any monies then or

thereafter due to Contractor (if any) and otherwise immediately reimbursed to City by the Contractor.

ARTICLE 7 - CONTRACT PRICE

7-1 Contract Price.

7-1.01 In exchange for the Contractor's full, timely, and acceptable performance and construction of the Work under this Contract, and subject to all of the terms of this Contract, the City will pay the Contractor the Contract Price, which is \$3,966,900.00.

7-1.02 The Contract Price is all-inclusive and specifically includes all fees, costs, insurance and bond premiums, and taxes of any type necessary to fully, properly, and timely perform and construct the Work.

ARTICLE 8 - PAYMENT

Payments shall be made to the Contractor in accordance with Section 8 of the General Conditions.

ARTICLE 9 - CHANGES TO THE CONTRACT

Changes to the Contract may be made in strict accordance with Section 9 of the General Conditions.

ARTICLE 10 - TERMINATION

The Contract may be terminated in accordance with Section 10 of the General Conditions.

ARTICLE 11 - INSURANCE AND BONDS

11-1 The Contractor shall provide Insurance as provided in the Insurance Requirements and in accordance with Section 11.1 of the General Conditions. The Contractor shall provide proof of such insurance and all required endorsements in forms acceptable to the City prior to commencing any Work under this Contract.

11-2 The Contractor shall provide performance, payment and warranty bonds to the City in accordance with Section 11.2 of the General Conditions and A.R.S. § 34-222.

11-3 The Contractor's failure to provide proof of insurance and the required endorsements, or the required bonds, in forms acceptable to the City will be a material breach and grounds for termination for cause under this Contract.

ARTICLE 12 - INDEMNIFICATION

The Contractor shall have and assume the indemnity obligations set forth in Section 12 of the General Conditions.

ARTICLE 13 - DISPUTE RESOLUTION

Any claims or disputes relating to this Contract shall be resolved according to the dispute resolution process set forth in section 13 of the General Conditions.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

The miscellaneous provisions set forth in section 14 of the General Conditions shall apply to this Contract.

ARTICLE 15 - COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts. Such signature pages may all be attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

ARTICLE 16 - AUTHORITY

Each Party represents and warrants to the other Party: (i) that such Party is duly organized and validly existing under the laws of the State of Arizona and has full corporate power and authority to enter into this AGREEMENT and to carry out the provisions of this AGREEMENT; (ii) such Party is duly authorized to execute and deliver this AGREEMENT and to perform its obligations under this AGREEMENT; (iii) the person executing this AGREEMENT on such Party's behalf has been duly authorized to do so by all requisite corporate action, and (iv) this AGREEMENT is a legal and valid obligation binding upon the Parties and enforceable in accordance with its terms.

The Parties have executed this Contract in Yuma County, Arizona, on the day and year set forth above, which is the day the last Party signed this Contract. The original Contract will be filed with the City of San Luis Clerk.

[Intentionally left blank. Signature page follows.]

City of San Luis

Nieves Riedel, Mayor

Date: _____

Attest:

Sonia Cornelio, City Clerk

Approved As to Form

Kay Marion Macuil, City Attorney

MGC Contractors, Inc.

Greg Beetem, Vice-President

Date: _____