

## RESOLUTION R-24-29

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MAGUIRE IRON, INCORPORATED, IN THE TOTAL AMOUNT NOT TO EXCEED \$15,700.00 FOR THE DESIGN OF WATER TANK RENOVATIONS, PROJECT WP2492C.**

**WHEREAS**, design services are required for water tank renovations; and

**WHEREAS**, staff issued a Request of Proposals (RFP) seeking assistance with this project; and

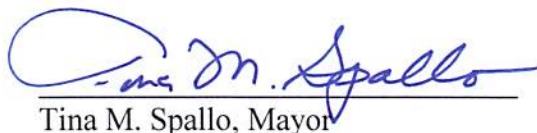
**WHEREAS**, a total of four (4) proposals were received and staff selected Maguire Iron, Incorporated, to begin contract negotiations.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:**

**THAT**, the City Manager of the City of Gladstone, Missouri, is hereby authorized to enter into an agreement with Maguire Iron, Incorporated, in the total amount not to exceed \$15,700.00 to complete the work.

**FURTHER, THAT**, funds for such purpose are available from the 2024 COP and budgeted in the CWSS Fund.

**INTRODUCED, READ, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 10TH DAY OF JUNE 2024.**

  
Tina M. Spallo, Mayor

ATTEST:

  
Kris Keller, City Clerk



## ***Request for Council Action***

**RES** ☒ # R-24-29

**BILL** ☐ # City Clerk Only

**ORD** # City Clerk Only

Date: 5/28/2024

Department: Public Works

Meeting Date Requested: 6/10/2024

Public Hearing: Yes ☐ Date: Click here to enter a date.

Subject: Contract Award, Water Tank Renovations Design, Project WP2492C

Background: Gladstone issued a request for proposals (RFP) for the design of water tank renovations. A total of four (4) firms responded to this request and staff selected Maguire Iron, Incorporated, to begin contract negotiations.

Budget Discussion: Funds are available from the 2024 COP and budgeted in the CWSS Fund.

Public/Board/Staff Input: Staff recommends the City execute an agreement with Maguire Iron, Incorporated, in an amount not to exceed \$15,700.00 for the completion of the project. The contract includes a physical inspection of all facilities per Missouri Department of Natural Resources guidelines, the preparation of plans and specifications for bidding purposes, and the development of up to three (3) digital renderings of the exterior of each elevated water tower.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor.

Timothy A. Nebergall  
Department Director/Administrator

JM  
City Attorney

BB  
City Manager

**GLADSTONE WATER TANK RENOVATIONS DESIGN  
AGREEMENT WITH MAGUIRE IRON, INC**

**THIS AGREEMENT**, made and entered into this 26 day of June, 2024, (the "Effective Date") by Maguire Iron, Inc (hereinafter "Contractor") and the City of Gladstone, Missouri (hereinafter "City").

**WHEREAS**, the City desires to engage the Contractor to provide the services under the terms and conditions of the contract attached hereto and incorporated herein.

**NOW, THEREFORE**, in consideration of the compensation to be paid to the Contractor and of the mutual agreement herein contained, the parties to these presents have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, or themselves, or its, his or their successors and assigns, or its, his or their executors and administrators, as follows:

**SECTION 1. Term of Agreement.** The work contained within this Agreement shall be completed by August 1, 2024.

**SECTION 2. Scope of Services.** The Contractor shall provide the Project Services described in Exhibit A. The Contractor will hire, train, supervise, direct the work of, and discharge all personnel engaged by them to perform the Project Services. The Contractor is solely responsible for payment of wages, salaries, fringe benefits and other compensation of, or claimed by, the Contractor's personnel in the performance of the Project Services, including, without limitation, contributions to any employee benefit plans and all payroll taxes.

**SECTION 3. Payment.** As compensation for Basic Services as described in Exhibit A of this Agreement, the Contractor shall be paid a lump sum fee not to exceed \$15,000. The compensation shall be paid in monthly installments. The Contractor shall provide City with a monthly invoice that summarizes the estimated amount of work completed over the billing period. The City shall pay invoices within thirty (30) days of receipt of such invoice.

**SECTION 4. Prevailing Wages.** The Contractor shall comply with all laws regarding the payment of prevailing wages to employees of the Contractor or subcontractor, if applicable. Contractor shall indemnify the City for any damage resulting to the City from failure of either the Contractor or any subcontractor to pay prevailing wages pursuant to applicable laws.

**SECTION 5. Construction Safety Training.**

- A. The Contractor shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program as required by Section 292.675, RSMo.
- B. If any on-site employees have not previously completed a construction safety program, Contractor shall require those on-site employees to complete a construction safety program within sixty (60) days after the date work on the project commences.
- C. The Contractor acknowledges and agrees that any of Contractor's employees found on the project site without documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days or will be subject to removal from the project.
- D. The Contractor shall require all of its subcontractors to comply with the requirements of this Section and Section 292.675, RSMo.

**SECTION 6. Notice of Penalty Provisions**

- A. Pursuant to Section 292.675, RSMo, Contractor shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500), plus one hundred dollars (\$100) for each on-site employee employed by Contractor or its subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Section 5 above.
- B. The penalty described in Subsection A of this Section shall not begin to accrue until the time periods described in Sections 5B and 5C above have elapsed.
- C. Violations of Section 5 above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

**SECTION 7. Unauthorized Aliens.** Pursuant to 285.530(1), RSMo., by its sworn affidavit in substantially the form attached hereto as Exhibit B and incorporated herein, Contractor hereby affirms its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Furthermore, Contractor affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

**SECTION 8. Insurance Requirements.**

- A. **General Provisions.** Contractor shall file (by the Effective Date) with the City evidence of liability insurance that is consistent with the amounts set forth below, and shall maintain such insurance until this contract is terminated.
- B. **Limits and Coverage.**
  - 1. **Professional Liability Insurance:** Professional Liability insurance in an amount not less than \$2,000,000 Combined Single Limit.
  - 2. **Commercial General Liability Insurance:** \$3,370,137 CSL for bodily injury and property damage per occurrence or sovereign immunity limits.
    - a. The following endorsements shall attach to the policy:
      - (i) The policy shall cover personal injury as well as bodily injury.
      - (ii) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
      - (iii) Broad form property damage liability shall be afforded.
      - (iv) The City shall be listed as an additional insured.
- C. **Workers' Compensation Insurance:** The Contractor shall obtain and maintain Workers' Compensation Insurance for a limit of \$500,000 for all of their respective employees, and in case any work is sublet, the Contractor shall require any subcontractors to provide Workers' Compensation insurance for all subcontractors' employees, in compliance with Missouri law. The Contractor hereby indemnifies the City for any damage resulting to it from failure of either the Contractor or any contractor or subcontractor to obtain and maintain such insurance.
- D. **Commercial Automobile Liability Insurance:** Contractor shall obtain and keep in force commercial automobile liability insurance with a \$3,370,137 CSL covering scheduled automobiles. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with this Agreement, by the Contractor or subcontractor. The minimum limits for commercial automobile liability insurance may be satisfied



by maintaining excess/umbrella liability coverage in an amount sufficient to meet the minimum limits.

## **SECTION 9. Labor and Materials Payment Bond**

A. Labor and Materials Payment Bond. N.A.

## **SECTION 10. General Conditions**

A. Compliance with Laws and Safety Regulations. Contractor shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the Project Services. Contractor shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement. In the performance of the Project Services, Contractor shall comply with the applicable provisions of the Federal Occupational Safety and Health Act, as well as any other pertinent federal, state and/or local safety or environmental laws or regulations.

Contractor shall obtain and maintain an occupational or business license with the City, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor.

B. Contractor's responsibility for subcontractors. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City or between any subcontractors.

C. General Independent Contractor Clause. This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri Revenue and Taxation laws, Missouri Workers' Compensation and Unemployment Insurance laws.

D. Liquidated Damages. N.A.

E. Termination. The City shall have the right at anytime by written notice to Contractor to terminate and cancel this contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

The City reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract.

F. City's Right to Proceed. In the event this contract is terminated pursuant to Paragraph E above, then the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

G. Liability.

1. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the Contractor under this contract.
2. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.
3. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.
4. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.
5. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.
6. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this agreement.

H. Conflict of Interest. In accepting this contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Gladstone, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of Section 105.450 et seq., RSMo., shall not be violated.

I. Assignment. The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no

such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement.

- J. **Nondiscrimination.** The Contractor agrees in the performance of this contract not to discriminate on the grounds or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. Furthermore, by its sworn affidavit in substantially the form attached hereto as Exhibit C and incorporated herein, Contractor hereby affirms for the duration of this agreement to not engage in the boycott or discrimination of Israel as defined in Section 34.600, RSMo.

- K. **Nonresident/Foreign Contractors.** The Contractor shall procure and maintain during the life of this contract:

1. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570, RSMo.
2. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230, RSMo.

- L. **Notices.** Any notice, approval or other communication between the City and the Contractor pursuant to this Agreement shall be made in writing and shall be deemed to be effective upon receipt or refusal of service and may be given by personal delivery, courier, reliable overnight delivery or deposit in the United States mail, postage prepaid, registered or certified, return receipt requested, to the address specified below or to such other address as may later be designated by written notice of the other party:

The City:                      City of Gladstone, Missouri  
Attn: Tim Nebergall – Public Works Director  
4000 NE 76<sup>th</sup> Street  
Gladstone, MO 64119

Contractor:                      Maguire Iron, Inc.  
Attn: Pete Muntzel  
1610 N. Minnesota Avenue  
Sioux Falls, SD 57104

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and the Contractor.

- M. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

- N. **Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Clay County, Missouri.

IN WITNESS WHEREOF, the Contractor and the City have executed this Agreement as of the Effective Date.

**MAGUIRE IRON, INC:**

By: 

Name: PETE D. MINTZEL

Title: MO REPRESENTATIVE

**CITY OF GLADSTONE, MISSOURI:**

By: 

Name: Robert M. Baer

Title: City Manager



## **EXHIBIT A**

The Owner intends to rehabilitate, One (1) 1,000,000 Gallon Elevated Tower, One (1) 300,000 Gallon Elevated Tower and the Interior Cleaning of One (1) 5,000,000 Gallon Concrete Ground Storage Tank and One (1) 1,000,000 Gallon Underground Water Tank. The Contractor agrees to perform the following work:

### **Task 1**

- Perform a physical inspection of all tanks/towers and prepare a detailed report with recommended improvements. All work shall be performed in accordance with industry accepted practices and Missouri Department of Natural Resources guidelines.
- Perform lead and chromium testing as necessary with the assistance of a 3<sup>rd</sup> party laboratory for inclusion in the bid documents. **\$10,000**

### **Task 2**

- Perform a total of 3 digital renderings for each tower for consideration by the City prior to bidding. **\$700**  
((\$250/for 2 different designs and then \$100/each thereafter.)

### **Task 3**

- Preparation of plans, specifications, and estimates for bidding purposes **\$5,000**

<b>Total</b>	<b>\$15,700</b>
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The City and Engineer shall negotiate a written supplemental agreement with the Engineer for additional services should the need arise for work beyond the agreed upon scope of services.

EXHIBIT B

CITY OF GLADSTONE, MISSOURI  
WORK AUTHORIZATION AFFIDAVIT  
PURSUANT TO 285.530, RSMo  
(FOR ALL CONTRACTS IN EXCESS OF \$5,000.00)

STATE OF MISSOURI )  
COUNTY OF St. Charles ) ss.

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind or character for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge, (a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or (b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared PETE MUNTZEL, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is PETE MUNTZEL and I am currently the MO REP of MAGUIRE (hereinafter "Contractor"), whose business address is 1610 N. MIAMI AVE., and I am authorized to make this Affidavit. SIoux FALLS, SD 57104

2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the (describe project) Gladstone Water contracted between Contractor and the City of Gladstone, Missouri. Tank Renovations Design Agreement

4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.

Pete Muntzel  
Affiant

PETE D. MUNTZEL  
Printed Name

Subscribed and sworn to before me this 17th day of June, 2024

Makena Medlin  
Notary Public

SEAL

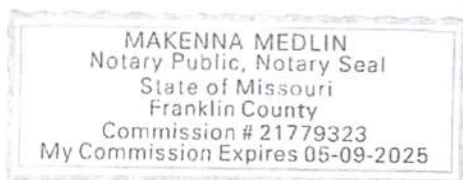


EXHIBIT C

CITY OF GLADSTONE, MISSOURI  
ANTI-DISCRIMINATION AGAINST ISRAEL AFFIDAVIT  
PURSUANT TO 34.600, RSMo  
(FOR ALL CONTRACTS IN EXCESS OF \$100,000.00)

STATE OF MISSOURI )  
COUNTY OF St. Charles ) ss.

Pursuant to RSMo 34.600, Company is not currently engaged in, and shall not, for the duration of this contract with the City of Gladstone, Missouri, engage in a "Boycott of the State of Israel" as defined in RSMo 34.600 in regards to:

- Goods or services from the State of Israel;
- Companies doing business in, or with, the State of Israel;
- Companies authorized by, licensed by, or organized under the laws of the State of Israel; or,
- Persons or entities doing business in the State of Israel.

BEFORE ME, the undersigned authority, personally appeared PETE MUNTZEL, who, being duly sworn, states on his oath or affirmation as follows:

1. My name is PETE MUNTZEL and I am currently the MO REP of MAHURE (hereinafter "Contractor"), whose business address is 1610 N. MINN. AVE. and I am authorized to make this Affidavit. SIoux FALLS, SD 57104

2. I am of sound mind and capable of making this Affidavit and am personally acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the (describe project) Gladstone Water contracted between Contractor and the City of Gladstone, Missouri. TANK RENOVATIONS DESIGN AGREEMENT

[Signature]  
Affiant

PETE D. MUNTZEL  
Printed Name

Subscribed and sworn to before me this 12th day of June, 2024

[Signature]  
Notary Public

SEAL

