

**Agreement with Maguire Services for Maintenance of the
100MG Ground Storage Tank Located on Utility Road**

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 20____ by and between **Maguire Iron, Inc of Sioux Falls South Dakota ("MAGUIRE")** and the **City of Sanger**, a municipal corporation of the State of Texas ("SANGER"). For convenience, Maguire and Sanger may sometimes be referred to herein collectively as "parties" and individually as a "party."

WITNESSETH

WHEREAS, SANGER is in need of goods and services for the care and maintenance of its **100MG Ground Storage Tank Located on Utility Road**; and

WHEREAS, SANGER desires to engage MAGUIRE to provide goods and services as more fully described in the Full Service Maintenance Plan and Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, MAGUIRE agrees to provide such goods and services for SANGER in accordance with the terms of this Agreement;

NOW, THEREFORE, for the mutual promises set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. Employment of MAGUIRE.

- a. SANGER agrees to engage MAGUIRE and MAGUIRE hereby agrees to provide the goods and perform the services described in the Full Service Maintenance Plan and Exhibit "A" attached hereto and incorporated herein by reference.
- b. Notwithstanding anything to the contrary contained in this Agreement, SANGER and MAGUIRE agree and acknowledge that SANGER is entering into this Agreement in reliance on MAGUIRE's special and unique abilities. MAGUIRE accepts the relationship of trust and confidence established between it and SANGER by this Agreement.
- c. MAGUIRE acknowledges that MAGUIRE shall be solely responsible for determining the methods for performing the services described in Exhibit "A" attached hereto. MAGUIRE covenants with SANGER to use its best efforts, skill, judgment, and abilities to perform the work required by this Agreement and to further the interests of SANGER in accordance with SANGER's requirements, in compliance with applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction.
- d. MAGUIRE warrants, represents, covenants, and agrees that all of the work to be performed by MAGUIRE under or pursuant to this Agreement shall be done (i) with the

Maguire skill and care ordinarily provided by professionals in this field, as the case may be, practicing under the same or similar circumstances and applicable licenses; and (ii) as expeditiously as is prudent considering the ordinary Maguire skill and care of a professional in this field, as the case may be. MAGUIRE will be responsible for supplying all tools and equipment necessary for MAGUIRE to provide the goods and services as set forth in Exhibit "A" attached hereto.

2. **Compensation.** The cost of the program is detailed in the attached Schedule A. Each year thereafter, the annual fee will be adjusted to reflect the current cost of service. The adjustments will be limited to a five percent annual increase. Annual payments are due by Sanger the first business day of selected payment period. Net 30 days from acceptance and invoicing, plus applicable sales, use, excise, transfer or similar taxes required by law. A service charge of 1.5% per month (18% per annum) will be charged on past due accounts.
3. **Changes/Tank Modifications.** SANGER may, from time to time require changes in the scope of services of MAGUIRE to be performed hereunder. Such changes, which are mutually agreed upon by and between SANGER and MAGUIRE, shall be incorporated in written amendment to this Agreement. In regards to any Tank Modifications the MAGUIRE's fees are based upon the existing structure and components of the tanks. *Any modifications to the tanks, including but not limited to antenna installations, shall be approved by the City, prior to installation or modification and may result in an increase to the annual fee.*
4. **Services and Materials to be Furnished by SANGER.** SANGER shall furnish MAGUIRE with all available information and data MAGUIRE requests pertinent to the execution of this Agreement. SANGER shall cooperate with MAGUIRE in carrying out the work herein and shall provide adequate staff for liaison with MAGUIRE.
5. **Visual Inspection Disclaimer.** This Contract is based upon a visual inspection of the Tank. The Owner and the Company hereby acknowledge and agree that a visual inspection is intended to assess the condition of the Tank for all patent defects. If latent defects are identified once the tank has been drained for repairs, the Owner agrees and acknowledges that the Company shall not be responsible to repair the latent defects unless the Owner and the Company renegotiate the annual fees. The definition of a "latent defect" shall be any defect of the Tank which is not easily discovered (e.g., corrosion of the floor plates, damage to the roof of the tank which is not clearly visible during the visual inspection, etc.).

City of Sanger

By: Jim Bolz 10-31-2022
Jim Bolz - Director of Public Works

By: _____
John Noblett - City Manager

Maguire Iron, Inc.

By: Jamie Mays 10/28/2022
Jamie Mays

Please sign and date

6. **Ownership of Documents.** All reports, plans, specifications, computer files and other documents prepared by MAGUIRE for which MAGUIRE has been compensated pursuant to this Agreement shall be the property of SANGER. MAGUIRE will deliver to SANGER copies of the prepared documents and materials. MAGUIRE shall make all documents and related data and material utilized in developing the documents available to SANGER for inspection whenever requested. MAGUIRE may make copies of any and all such documents and items and retain same for its files. MAGUIRE shall have no liability for changes made to or use of the drawings, specifications, and other documents by anyone other than MAGUIRE subsequent to delivery of the prepared documents and materials. However, any such change or other use shall be sealed by the individual making the change or use and shall be appropriately marked to reflect what was changed or modified.
7. **Term and Termination of Agreement.** This agreement shall be for one year and shall automatically renew annually on the contract execution date or the Owner's budget year defined as: October 1 through: September 30. The Owner shall have the right to continue this contract for an additional nine (9) one (1) year options providing the annual fee is paid in accordance with the terms of payment. This agreement is subject to termination by the Owner upon written notice of intent to terminate which must be received by the Company ninety (90) days prior to the effective date of termination. Notice of Termination is to be delivered by certified mail to **Maguire Iron Inc.** and signed by the Mayor, City Manager or authorized agent. The owner will be responsible to the Company for the cost (at current market rates) of any work that has been performed prior to termination. Any disputes arising out of such termination are subject to the remedies section hereinafter set out.
8. **Notice.** All Notices shall be sent to the following addresses:

Maguire Iron, Inc. P.O. Box 1446 Sioux Falls, SD 57101	City of Sanger – City Manager 502 Elm St. P.O. Box 1729 Sanger, TX 76266
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9. **Completeness of Contract.** This Agreement and the documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. If there is any conflict between the terms of this Agreement and the documents attached hereto, the terms of this Agreement shall control. This Agreement may not be subsequently modified except by a writing signed by both parties.
10. **SANGER Not Obligated to Third Parties.** SANGER shall not be obligated or liable hereunder to any party other than MAGUIRE.
11. **Indemnification.** MAGUIRE DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS SANGER, ITS SANGER COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES,

PENALTIES OR SUITS, WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR PROPERTY, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBMAGUIRE OR SUPPLIER COMMITTED BY MAGUIRE, ITS AGENTS, OR CONSULTANTS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH MAGUIRE EXERCISES CONTROL, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (b) AND MAGUIRE WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT SANGER AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

THE INDEMNIFICATION UNDER THIS SECTION SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO MAGUIRE'S LIABILITY.

MAGUIRE'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY MAGUIRE UNDER THIS AGREEMENT. THIS SECTION (INDEMNIFICATION) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12. **Insurance.** MAGUIRE shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement and for a period of four (4) years thereafter the following minimum insurance:

- A. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability in an amount of not less than \$1,000,000.
- B. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
- C. Statutory workers' compensation and employers' liability insurance as required by state law. Maguire agrees to waive all subrogation claims.
- D. Liability insurance (Errors and Omissions) with a limit of \$1,000,000 per claim/annual aggregate.

MAGUIRE shall provide SANGER with proof of insurance required hereunder prior to commencing work for SANGER and SANGER shall be named as an additional insured on the policy. MAGUIRE shall provide SANGER with written notice of any coverage limit change on the insurance. Such policies shall name SANGER, its officers, and employees as an additional insured and shall provide for a waiver of subrogation against SANGER. MAGUIRE shall insure that all subcontractors comply with the same insurance requirements.

13. **Client Objection to Personnel.** If at any time after entering into this Agreement, SANGER has any reasonable objection to any of MAGUIRE's personnel, or any personnel, Maguires and/or consultants retained by MAGUIRE, MAGUIRE shall promptly propose substitutes to whom SANGER has no reasonable objection, and MAGUIRE's compensation shall be equitably adjusted to reflect any difference in MAGUIRE's costs occasioned by such

substitution.

14. **Timeliness of Performance.** MAGUIRE shall perform its Maguire services with due and reasonable diligence consistent with sound practices.
15. **Personnel.** All of the services required hereunder will be performed by MAGUIRE or under MAGUIRE's supervision, and all personnel engaged in the work shall be qualified to perform such services.
16. **Independent Contractor.** In performing the services under this Agreement, MAGUIRE is acting as an independent contractor. No term or provision hereof be construed as making MAGUIRE the agent, servant, or employee of SANGER or as creating a partnership or joint venture relationship between MAGUIRE and SANGER.
17. **Assignability.** The parties hereby agree that MAGUIRE may not assign, convey or transfer its interest, rights and duties in this Agreement without the prior written consent of SANGER.
18. **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.
19. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought to interpret or enforce the terms of this Agreement shall lie in Denton County, Texas.
20. **No Third-Party Beneficiary.** For purposes of this Agreement, including its intended operation and effect, the parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with SANGER and MAGUIRE, or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations they owe to either SANGER or MAGUIRE.
21. **Exhibits.** The Full Service Maintenance Plan and Exhibit A attached hereto as exhibit are incorporated herein and made a part hereof for all purposes.
22. **HB 89 and SB 252 Certifications.** If this Agreement provides for payment to Maguire of over \$100,000, MAGUIRE hereby certifies that Maguire does not and will not boycott Israel during the term of this Agreement in accordance with Chapter 2270, Texas Government Code. Additionally, MAGUIRE hereby certifies that the MAGUIRE is not included on the website of the Texas Comptroller for entities doing business with foreign terrorist organizations pursuant to Chapter 2252, Texas Government Code.
23. **Conflicts of Interest.** By signature of this Agreement, MAGUIRE warrants to SANGER that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts

of interest, including business or personal financial interests, direct or indirect, in property abutting the proposed project and business relations with abutting property owners, or with elected officials or employees of SANGER. MAGUIRE further warrants that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this Agreement and prior to final payment under the Agreement. MAGUIRE warrants that it has submitted to SANGER a completed Conflicts of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.

24. **Government Code Chapter 2274 Certification** If this Agreement provides for payment to Maguire of over \$100,000 and if Maguire employs ten or more people full-time, then Maguire, by signing below, certifies that:

1. Maguire does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and
2. Maguire will not discriminate during the term of this Agreement against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Chapter 2274.

25. **Authority to Sign.** The parties hereby warrant and represent that the undersigned persons have full authority and are duly authorized to sign on behalf of their respective principals and that such principals have duly authorized the transaction contemplated by this Agreement.

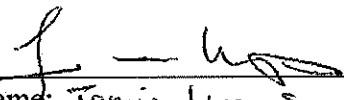
26. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

IN WITNESS WHEREOF, SANGER and the MAGUIRE have executed this Agreement as of the date first written above.

SANGER OF SANGER, TEXAS

By: _____
Print Name: _____
Title: _____

MAGUIRE IRON, INC.

By:  _____
Print Name: Janice Wang 10/28/2022
Title: Director of Sales

Approved as to Form

Hugh Coleman
City Attorney
City of Sanger

Attest:

By: City Secretary