

INTERLOCAL AGREEMENT FOR THE OPERATION OF THE MANGUM CITY GOLF COURSE

This Interlocal Agreement for the Operation of the Mangum City Golf Course ("Agreement") is entered into this ____ day of May, 2021, by and between the City of Mangum, a municipal corporation, the Mangum Utility Authority, an Oklahoma Public Trust, (collectively referred to as "City"), both located at 201 N. Oklahoma, Mangum, OK 73554, and the Mangum Public School ("School"), a public school district, located at 400 N. Pennsylvania, Mangum, OK 73554.

Recitals

WHEREAS, the City owns and operates the Mangum City Golf Course consisting of a nine-hole course, club house, banquet/event hall, and other miscellaneous buildings used in the operation and maintenance of the course.

WHEREAS, the City, on its own, does not have the financial resources, independent of a partner, to continue to be solely responsible for the upkeep of the property as a Golf Course.

WHEREAS, the School has historically offered its students the ability to play on a state-sponsored golf team.

WHEREAS, the City and the School have a mutual interest in ensuring the continued operation of the property as a Golf Course.

WHEREAS, the City is a political subdivision and authorized to enter into this interlocal agreement in accordance with the Interlocal Cooperation Act, 74 O.S. § 1001 et seq.

WHEREAS, the School is a "public agency" as that term is used in the Interlocal Cooperation Act, 74 O.S. § 1001 et seq., and is authorized to enter into this interlocal agreement.

WHEREAS, the City acknowledges and values the significant services a golf course provides to its citizens and believes such service is necessary for the public welfare and cannot provide such services on its own accord.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement, City and School agree as follows:

Section 1. Responsibilities of Each Party

1.1. The City will provide the following, unless otherwise stated in this agreement:

- a. The land and premises, inclusive of all structures and buildings, now known as the Mangum City Golf Course
 - b. Water in adequate quantities to properly maintain the Golf Course in a playable condition, subject to the terms and conditions of this agreement.
 - c. Maintenance of the water lines.
- 1.2. The School will provide the following, unless otherwise stated in this agreement:
 - a. All upkeep and labor necessary to operate the Golf Course at a playable level.
 - b. All equipment, personnel, and supplies necessary to properly upkeep or operate the Golf Course at a playable level.
 - c. Any personnel necessary to manage the facilities located at the golf course, including the club house.

Section 2. Use of Premises

- 2.1. The parties agree that the premises will be operated and maintained for use as a golf course.
- 2.2. The School will continue to allow people of the general public to access and use the golf course at reasonable times. The School may, from time to time, limit access to the golf course for maintenance or exclusive events, e.g., tournaments.
- 2.3. The School, in its sole discretion, may set the hours of operation, rates of play, discounts, and rental rates of equipment or facilities.
- 2.4. The School will be responsible for managing and renting out the event center located at the golf course.

Section 3. Funds collected through Operations

Any money collected through the operation of the Golf Course will be the exclusive property of the School.

Section 4. Improvements, Alterations, and Repairs

- 4.1. The School may not make any material alterations to the buildings located at the golf course during the any term without the prior written consent of City, which consent will not be unreasonably withheld.

4.2. The School will provide routine maintenance and repair to the golf course and keep the golf course in good repair and playable condition.

Section 5. Water Restrictions

5.1. The City may, from time to time, limit or restrict water usage at the golf course on a temporary basis in the event of an “emergency” condition. If an “emergency condition” occurs, this will not constitute a breach of this agreement as long as the “emergency condition” does not last longer than 14 days.

5.2. For purposes of this agreement, an “emergency condition” means —

- a.** A fire or other event in town that limits the water pressure to such a level that prevents that adequate and proper use of the sprinklers located at the golf course.
- b.** A Consent Order or other directive from any state, local, or federal agency, including the Department of Environmental Quality, which prevents the City from utilizing water at the Golf Course.
- c.** A catastrophic failure in the water delivery system that otherwise prevents customers from having potable water.
- d.** Emergency failures that result in the failure to maintain required pressure or a substantial decrease in the quantity of water due to electrical power failure, main distribution line breaks, natural disaster, or use of water to fight a fire, and such emergency failure prevents the City from providing potable water to the City’s customers.
- e.** The imposition of any water rationing program implemented due to drought conditions that requires the conservation of water.

Section 6. Relationship of the Parties

6.1. The City and the School, by virtue of entering into this agreement, seek to enter into a limited partnership for the sole purpose of ensuring that the golf course remains a viable attraction to the citizens of and visitors to Mangum, OK, and to students attending Mangum Public Schools, as well as area schools that sponsor a golf team.

6.2. Both parties agree and acknowledge that, but for the limited partnership stated in this section, the parties, by virtue of this agreement, are not partners or joint ventures and will, for all other purposes be considered independent contractors in the fulfillment of their contractual responsibilities stated in this

agreement. In this respect, neither party may bind the other or otherwise incur an obligation on behalf of the other.

Section 7. Term

- 7.1.** The term of this Agreement commences on the Effective Date and continues through June 30, 2022.
- 7.2.** This agreement will automatically renew for an additional one-year term beginning July 1, 2022, upon the same terms and conditions, if neither party seeks to terminate this agreement in accordance with this section. Thereafter, this Agreement will continue year-to-year, beginning July 1st of each year, unless either party seeks to terminate this agreement.

Section 8. Termination

- 8.1.** Either party may terminate this agreement, without cause, by providing the other party 180–days' notice prior to the expiration of either the primary term or any renewal term.
- 8.2.** Either party may terminate this agreement if the other party fails to perform its duties under this agreement. However, prior to terminating this agreement, notice of default must be provided to the other party in writing and the party declaring a default must provide the other party a reasonable time to correct such default.
 - a.** For purposes of this paragraph, "reasonable time" is defined by a period of time of at least 15 days, but not more than 90 days if such default cannot be reasonably cured in 15 days and the defaulting party is working diligently to cure the default.
 - b.** If, after receiving notice of the default, the defaulting party fails to cure such default, the other party may immediately terminate the agreement on a date certain.
- 8.3.** In addition to any other termination rights set forth in this Agreement, this Agreement may be terminated by either party if any of the following circumstances occurs:
 - a.** Either party fails to meet or perform its obligations under this agreement;
 - b.** Either party fails to maintain the requisite insurance as specified in this agreement;
 - c.** Either party fails to maintain all required equipment necessary to perform the duties specified in this agreement;

- d. Either party, due to budgetary reasons or constraints, cannot or does not appropriate necessary funds or expenditures for the operation of the Golf Course.

Section 9. Representation and Covenants

9.1. The City represents and covenants to the School as follows:

- a. The City is a municipal corporation and a public trust, respectively, organized under the laws of the State of Oklahoma;
- b. To its knowledge, the execution of this Agreement will not constitute a violation of any law;
- c. The City Manager will act as the City's agent for all dealings with the School in relation to this agreement and the City Manager is expressly granted the authority to execute all documents in connection with this Agreement;
- d. The City Manager may designate an individual to act in his stead during his absence.

9.2. The School represents and covenants as follows:

- a. The School has the requisite experience, equipment, and knowledge to perform the duties assigned to it under this Agreement;
- b. The School has the authority to enter into any Agreement;
- c. The Superintendent, or his designee, will act as the School's agent for all dealings with the City in relation to this agreement and is expressly granted the authority to execute all documents in connection with this agreement.

Section 10. Non-Discrimination

- 10.1.** The School agrees that no person, on the grounds of race, color, national origin, gender, sex, age, handicap, other federally- or state-established protective class, either now determined or may be determined in the future, or other immutable trait will be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of or services provided on the golf course.
- 10.2.** At all times, the School agrees to adhere to all federal and state regulations related to non-discrimination, including all amendments made to such laws in the future.

10.3. The City has the right to terminate this agreement immediately in the event of any findings that the anti-discrimination laws as espoused by Federal, State, or City Law.

Section 11. Force Majeure

Neither Party shall be liable or responsible to the other Party for any delay, loss, damage, failure, or inability to perform under this Agreement due to an Event of Force Majeure, provided that the Party claiming failure or inability to perform provides written notice to the other Party within thirty (30) days of the date on which such Party gains actual knowledge of such Event of Force Majeure. Notwithstanding the foregoing, in no event shall a Party's failure to make payments due hereunder be excusable due to an Event of Force Majeure.

Section 12. Assignment

Neither party may assign this Agreement without prior written consent of the other party. Any purposed assignment in contravention of this Section is void.

Section 13. Choice of Law

The parties agree that this Agreement will be construed and enforced in accordance with Oklahoma Law and that Greer County, Oklahoma, is the proper venue to bring any action to enforce this agreement.

Section 14. Insurance

14.1. The School will furnish the City current certificates of coverage of the School and proof of payment by the School for worker's compensation (if applicable), general liability insurance, motor vehicle insurance, current licenses and certifications for operation of necessary equipment (if applicable), and such other insurance as the City may require from time to time.

14.2. The School will be responsible for any contents insurance that will cover the loss of any supplies, equipment, or personal property owned by the School and utilized at the golf course.

14.3. The City will maintain a comprehensive general liability insurance policy at all times. In addition, the City will be responsible for maintaining insurance for all structures located at the golf course.

Section 15. Indemnification

During the initial term and any renewal term of this Agreement, School will be solely liable to third persons for any and all liability arising from any accident, incident, damage, or loss suffered to or by any person, firm, or corporation on or upon the golf course or from any lawful activities originating on or adjacent to the golf course, or

by reason of the loss of any personal property brought to or damaged on the golf course, and the School covenants and agrees to save and hold the City safe and harmless.

Section 16. Severability

If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement, and the application of this Agreement to other circumstances, shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 17. Amendments

Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated, unless as otherwise provided for herein, except by an instrument in writing signed by an authorized representative of the Party against whom the enforcement of the change, waiver, or termination is sought.

Section 18. Waiver and Remedies

- 18.1.** No Failure or delay by any party to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach, will constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach will affect or alter the remaining terms of this Agreement, but each and every term of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.
- 18.2.** The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity. Every remedy given by this Agreement may be exercised from time to time and as often as may be deemed expedient by the Party exercising such remedy.
- 18.3.** No clause or statement waives, either expressly or implicitly, any rights or immunities provided by law, including such rights and remedies afforded under the Governmental Tort Claims Act.

Section 19. No Third Party Beneficiaries

There are no intended third party beneficiaries under this Agreement, and no third party shall have any rights or make any claim thereunder, it being intended that solely the Parties hereto shall have rights and may make claims hereunder.

Section 20. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This

Agreement may be executed by the Parties and transmitted by facsimile or electronic transmission and if so executed and transmitted, shall be effective as if the Parties had delivered and executed original of this Agreement.

Section 21. Acknowledgment

The Parties acknowledge that they have been provided with a copy of this Agreement for review prior to signing it, that they have been given the opportunity to review it prior to signing it, that they have been given the opportunity to have this Agreement reviewed by their respective attorneys prior to signing it, and that they understanding the purpose and effect of this Agreement.

Section 22. Entire Agreement

This Agreement, including any schedules or addendums attached hereto, constitutes the entire agreement between the City and School with respect to the subject matter and supersedes all prior agreements and understandings, oral and written, between them with respect to the subject matter of this Agreement. Any representations, promises, guarantees, or statements made by either party in the negotiating or drafting of this agreement that is not included in this Agreement are unenforceable.

Section 23. Notice

All notices or other communications required or permitted to be given in accordance to this Agreement must be in writing and will be deemed to be duly given when delivered in person or two (2) business days after they are mailed prepaid certified mail, return receipt requested, to the address listed in the introductory paragraph, unless either party has notified the other in writing of a different address.

Section 24. Effective Date

The parties agree and acknowledge that his Agreement will become effective upon the signature of both parties. The Effective Date will be deemed to be the latter date of the two signatures.

[SIGNATURES ON FOLLOWING PAGE]

Executed and accepted this ____ day of May, 2021, by:

CITY OF MANGUM
MANGUM UTILITY AUTHORITY

Mayor/Board Chair

ATTEST:

City Clerk

Executed and accepted this ____ day of May, 2021, by:

MANGUM PUBLIC SCHOOLS

Authorized Agent

ATTEST:

Secretary