

**INDEPENDENT CONTRACTOR AGREEMENT
FOR THE AGRONOMIC MAINTENANCE OF THE MANGUM GOLF COURSE**

This Independent Contractor Agreement for the agronomic maintenance of the Mangum Municipal Golf Course (“Agreement”) is entered into this 1st day of February 2020, by and between the City of Mangum, a municipal corporation (“City”), located at 201 N. Oklahoma, Mangum, OK 73554, and West Texas Turf, LLC, (“Contractor”), a limited liability company whose principal place of business is located at 3108 County Road 7530, Lubbock, TX 79423.

Recitals

WHEREAS, the City is responsible for maintaining the Mangum Municipal Golf Course;

WHEREAS, the City currently lacks the expertise to properly maintain the Golf Course;

WHEREAS, the City wishes to contract with an Independent Contractor to maintain the Golf Course;

WHEREAS, the Contractor has the requisite experience, knowledge and equipment to carry out the abatement process;

WHEREAS, the City now wishes to engage the Contractor to carry out agronomic maintenance of the Golf Course;

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

Section 1. Definitions

As used in this Agreement, the following terms will have the indicated meanings unless the context clearly requires otherwise:

- 1.1 “*Agronomic Maintenance*” means the reestablishment and maintenance of putting surfaces to an acceptable level on all greens; the audit, repair and maintenance of all irrigation systems to make all greens and tees operational; cooperation with City personnel to establish maintenance standards for the entire property; daily mowing of all course areas; application of all chemical and fertilizer treatments; cleaning and maintenance of the course restrooms; hiring and training course maintenance staff; providing for and assumption of all non-capital expenses associated with the agronomic maintenance of the golf course.
- 1.2 “*Effective Date*” means the date of last signature on this agreement.
- 1.3 “*Law*” or “*state law*” means the laws of the State of Oklahoma.
- 1.4 “*Ordinance*” or “*ordinances*” means the duly passed ordinances for the City of Mangum.

Section 2. Scope of Work

- 2.1 The Contractor agrees and acknowledges that it is responsible for the agronomic maintenance of the golf course; providing greens mowers, top dresser and sprayer; providing pre-trained staff and agronomic expertise; and providing all necessary repairs and maintenance to equipment owned by the Contractor.

- 2.2 The City, through its authorized agent, will provide the Contractor with water and all utilities necessary to operate and maintain the golf course and repair services to equipment owned and provided by the City.

Section 3. Price and Payment

- 3.1 The City agrees to pay the Contractor a monthly fee of \$7,916.00 for the service.
- 3.2 The amount contemplated by this section will be paid on or before the 5th of each month, beginning February 5, 2020.
- 3.3 The Contractor agrees to accept such amount as full payment for its work and to sign all such waivers of lien, affidavits, and receipts that the City may request in order to acknowledge payment.
- 3.4 The fee contemplated under this section is the entirety of all fees the City authorizes to be paid for the agronomic maintenance of the golf course. No additional fee will be paid to the Contractor. The Contractor is solely responsible to satisfy all his costs and expenses, including the hiring of any employee and acquiring and repairing the Contractor's equipment.
- 3.5 The Contractor agrees and acknowledges that the City appropriates funds base on the current fiscal year. Any invoices reflecting work completed during a fiscal year must be submitted to the City by June 30th of each year.

Section 4. Independent Contractor Relationship

- 4.1 The Contractor agrees and acknowledges that he is an independent contractor and is not an employee, servant, agent, partner, or joint venture partner of the City. The City will determine the work to be done by the Contractor. But the Contractor will determine the legal means by which to accomplish the work specified by the City. The City is not responsible for withholding, and will not withhold, FICA or taxes of any kind from any payments which it owes the Contractor. Neither the Contractor nor its employees are entitled to receive and will not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pensions, profit-sharing, or Social Security on account for his work for the City.
- 4.2 The Contractor is solely responsible for paying its employees. The Contractor is solely responsible for paying any and all taxes, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit-sharing and other benefits for the Contractor, its employees, servants, and agents.
- 4.3 The Contractor, at his sole expense, is responsible for supplying all the necessary equipment, licenses, employees, and materials necessary to carry out the purpose of this Agreement.
- 4.4 The Contractor is responsible for the method and mode of completing its duties under this Agreement. The Contractor will follow all applicable laws, including labor and environmental regulations, while carrying out the provisions of this Agreement.

Section 5. Term, Termination and Rights upon Termination

- 5.1** The term of this Agreement commences on the Effective Date and continues until June 30, 2023. Thereafter, this Agreement must be renewed annually by both parties, provided funding is available.
- 5.2** Even though this Agreement is for a term of three (3) years, the Contractor understands that the City is prohibited from obligating funds and revenue beyond the current fiscal year (June 30th). Therefore, this Contract may be terminated at the conclusion of any fiscal year if funding is not available. In no way does this agreement obligate or require the City from appropriating any funds beyond the current fiscal year to satisfy any future obligation under this Contract.
- 5.3** 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 occur:
- a.** The Contractor fails to meet or perform its obligations specified in this Agreement.
 - b.** The Contractor fails to maintain the requisite insurance as specified in this Agreement.
 - c.** The Contractor fails to maintain all required licensing and equipment necessary to perform the duties specified in this Agreement.
 - d.** The City fails to make any payment duly owed to the Contractor as specified in this Agreement.
 - e.** The City fails to appropriate any money.
- 5.4** In the event that either party believes a breach has occurred, the other party will notify the breaching party of the alleged breach and allow the breaching party at least 30 days to cure the breach. If the breaching party fails to take substantial steps to cure the breach within the 30-day period, this Agreement will terminate 90 days from the date the breach was first disclosed. For purposes of this subsection, “substantial steps” are defined as remedial steps the breaching party must *immediately* put in place to correct the conditions that lead to the breach.
- 5.5** Upon termination, all outstanding invoices must be paid within 60 days of the termination date.

Section 6. Representation and Covenants

- 6.1** The City represents and covenants to the Contractor as follows:
- a.** The City is a municipal corporation, 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 Contractor and the City Manager is expressly granted the authority to execute all documents and authorize all payments, consistent with relevant ordinances, in connection with this Agreement.
 - d.** The City Manager may designate an individual to act in his stead during his absence.

6.2 The Contractor represents and covenants to the City as follows:

- a.** The Contractor has the requisite experience, equipment, and knowledge to perform the duties assigned to him under this Agreement, including, without limitation, knowledge of relevant labor and environmental laws.
- b.** The Contractor has the authority to enter into any Agreement.

Section 7. No Discrimination

The Contractor expressly agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, age, or any other federal or state protected class that may be determined in the future, and will take no affirmative steps to ensure applicants are employed and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, age, or any other federal or state protected class that may be determined in the future.

Section 8. 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 9. 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 10. 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 11. Insurance and Licensing

- 11.1** The Contractor will furnish the City current certificates of coverage of the Contractor and proof of payment by the Contractor for workers' 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.
- 11.2** Any insurance policy required by this section must list the City as an additional insured party and be of sufficient policy limits to fully indemnify the City from any liability that may arise from the Contractor's performance under this Agreement.

Section 12. Risk

The Contractor will perform all work assigned under this Agreement at his own risk. The Contractor assumes all responsibility for the condition of tools, equipment, material, and job site. The Contractor will indemnify and hold harmless the City from any claim, demand, loss, liability, damage, or expense arising in any way from the Contractor's work.

Section 13. 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 14. 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 15. Waiver and Remedies

- 15.1** 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.
- 15.2** 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.
- 15.3** 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 16. 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 18. 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 understand the purpose and effect of this Agreement.

Section 19. Entire Agreement

This Agreement, including any schedules or addendums attached hereto, constitutes the entire agreement between the City and the Contractor 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 20. Notice

All notices or other communications required or permitted to be given in accordance with 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.

Executed this ____ day of _____ 2020, by:

CITY OF MANGUM
MANGUM UTILITY AUTHORITY

Mayor

Executed this ____ day of _____ 2020, by:

WEST TEXAS TURF, LLC
CONTRACTOR

By: _____