

## INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement to provide technical guidance, expertise, and advice on the Mangum Water and Wastewater System (“Agreement”) is entered into this 6th day of July, 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 Fred Willis (“Contractor”), an individual person, whose address is

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### Recitals

WHEREAS, the City of Mangum and Mangum Utility Authority are responsible for maintaining, operating, repairing, and otherwise managing a water and wastewater system;

WHEREAS, Fred Willis, a former employee of the City, has technical insight, knowledge, and experience the City can utilize to carry out its responsibilities with regard to the water and wastewater system;

WHEREAS, the Mangum Utility Authority wishes to hire Fred Willis as an independent contractor;

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement, City and 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. “*City*” means both the City of Mangum and the Mangum Utility Authority;
- 1.2. “*Contractor*” means the Independent Contractor as further identified in the introductory paragraph of 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;
- 1.5. “*Regulation*” means any federal or state regulation as it relates to water or wastewater systems, including, without limitation, environmental regulations.

### Section 2. Scope of Work

- 2.1. The Contractor agrees and acknowledges that he will be responsible for providing technical insight and guidance as it relates to the City's water and wastewater system. The Contractor agrees that he may be contacted to provide his insight at any time, day or night, and during any emergency to aid in repairs.
- 2.2. The Contractor *will not* perform any supervisory function over any City employee. Further, the Contractor *will not* perform any physical work or labor on any water or wastewater system owned by the City.

### **Section 3. Price and Payment**

- 3.1. The City agrees to pay the Contractor a monthly fee of \$1,220.00. Contractor understands that he will be paid on a monthly basis with payments made on the First day of each month.
- 3.2. Contractor agrees to accept such amount as full payment for its work and to sign all such waivers of lien, affidavits, and receipts the City may request in order to acknowledge payment.
- 3.3. The fee contemplated under section 3.1 is the entirety of all fees the City authorizes to be paid to the Contractor. No additional fee will be paid to Contractor. Contractor is solely responsible to satisfy all his costs and expenses, including the hiring of any employee, acquiring and repairing equipment, obtaining necessary equipment, including a vehicle, and maintaining a reliable phone in order to be reached.
- 3.4. Contractor agrees and acknowledges that the City appropriates funds based 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 venturer of 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 any benefits which employees of the City 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 of his work for the City.
- 4.2. Contractor is solely responsible for paying its employees. The Contractor is solely responsible for paying any and all taxes, FICA, worker's 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. Contractor, at his sole expense, is responsible for supplying all the necessary equipment, licenses, employees, and materials necessary to carry out the purposes of this Agreement.
- 4.4. Contractor is responsible for the method and mode of completing his duties under this Agreement.

## **Section 5. Term, Termination, and Rights upon Termination**

- 5.1. The term of this Agreement commences on the Effective Date and continues through the next 30th day of June (June 30, 2022). Thereafter, this Agreement will expire unless renewed for a subsequent term by both parties.
- 5.2. 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. Contractor fails to meet or perform its obligations specified in this agreement;
  - b. Contractor fails to be timely available for consultation services when called. For purposes of this paragraph “timely available” is defined as (i) returning any missed call within 60 minutes from receipt; (ii) being available and present at a job site for any *emergency* or after hour repair or consultation within 60 minutes from the initial call or text requesting the Contractor’s on-site service; (iii) being available and present at a job site within five (5) minutes from any *scheduled* meeting or consultation that Contractor had at least 24 hours’ notice and confirmed his ability to be available at such specified time and location; (iv) fails to be available for a *scheduled* meeting or consultation within five (5) days of such request from the City; or (v) Contractor fails to stay on site until his services are no longer needed;
  - c. Contractor fails to maintain all required licensing and equipment necessary to perform the duties specified in this agreement;
  - d. City fails to make any payment duly owed to Contractor as specified in this agreement; or
  - e. City fails to appropriate any money in any fiscal year.
- 5.3. 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 *immediately* put in place to correct the conditions that lead to the breach.

- 5.4.** Upon termination, all outstanding invoices must be paid within 60 days of the termination date.

## **Section 6. No Guarantee of Work**

Contractor agrees and acknowledge that acceptance of this Agreement does not guarantee any work or minimum fee to be paid to Contractor unless otherwise stated in this agreement. Contractor understands that his services will be on an as needed basis.

## **Section 7. Representation and Covenants**

**7.1.** The City represents and covenants to the Contractor 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 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 the City Superintendent to act in his stead during his absence.

**7.2.** The Contractor represents and covenants as follows:

- a.** The Contractor has the requisite experience and knowledge to perform the duties assigned to him under this Agreement, including, without limitation, knowledge of the City’s water and wastewater system, environmental regulations, DEQ regulations, safety regulations, and other relevant laws or regulations.
- b.** The Contractor has the authority to enter into any Agreement.

## **Section 8. No Discrimination**

Contractor expressly agrees that he 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 9. 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 10. Assignment**

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

### **Section 11. 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 12. Insurance and Licensing**

The Contractor will furnish the City current certificates of coverage of the Contractor and proof of payment by the Contractor 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.

### **Section 13. Risk**

The Contractor will perform all work assigned under this Agreement at his own risk. The Contractor will indemnify and hold harmless the City from any claim, demand, loss, liability, damage, or expense arising in any way from Contractor's work.

### **Section 14. 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 15. 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 16. Waiver and Remedies**

- 16.1.** 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.
- 16.2.** 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.
- 16.3.** 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 17. 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. 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 19. 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 20. Entire Agreement**

This Agreement, including any schedules or addendums attached hereto, constitutes the entire agreement between the City and 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 21. 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.

[SIGNATURES ON FOLLOWING PAGE]

Executed this 6th day of July 2021, by:

CITY OF MANGUM  
MANGUM UTILITY AUTHORITY

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Mayor/Board Chair

Executed and accepted this 6th day of July, 2021, by:

CONTRACTOR

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Fred Willis