



## SERVICES AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “City,” and FieldTurf USA, Inc., of Calhoun Georgia hereinafter referred to as “Contractor.”

Included in this agreement is the State of Montana Term Contract, the Participating Addendum and the Master Agreement attached hereto as Exhibit A and by this reference made a part thereof.

Also included in this agreement is the Participating Addendum Amendment #1 to the Master Agreement of the State of Montana Term Contract attached hereto as Exhibit B and by this reference made a part thereof.

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to hire Contractor as an independent contractor to perform the services of constructing a synthetic soccer and lacrosse field described in the Scope of Work attached hereto as Exhibit “C” and by this reference made a part hereof.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on March 31, 2020. The parties may extend this agreement, by mutual concurrence, for up to 90 days in writing prior to its termination.

3. **Scope of Work:** The Contractor shall perform the services outlined in Exhibit “C”. In performing these services, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

4. **Payment:** City agrees to pay Contractor **One Million Five Hundred Fourteen Thousand Five Hundred Eighty Two Dollars and Seventy One Cents (\$1,514,582.71)** for the work described in the Scope of Work in Exhibit “C”. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing. Except as otherwise specified herein, the Contractor shall invoice the City monthly (or on such other basis as the Parties may mutually determine) for all services rendered



pursuant to this Agreement. Such invoices shall specify the services provided to the City during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the City shall pay, net of applicable withholding tax, if any, the Contractor for said invoice within thirty (30) days after receipt.

If partial payment is requested by Contractor, it shall be made upon invoice and said estimate being proportioned to the work completed by the Contractor. City shall deduct five percent (5%) from each pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final invoice by the City, and determination has been made by the City that the scope of work has been satisfactorily completed.

**5. Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

**6. Indemnity and Insurance:** Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees. **For this purpose, Contractor shall provide City with proof of both Commercial General liability and automobile insurance each issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$1.5 million per occurrence.**



**The City shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. The insurance must be in a form suitable to City.**

Contractor shall furnish an approved Performance Bond and a Labor and Materials Payment Bond, each in the amount of one hundred percent (100%) of the contract amount

**7. Warranty:** Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty from the time services are completed as described in the Scope of Work in Exhibit "C".

**8. Compliance with Laws:** Contractor agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. Contractor agrees to purchase a City business license.

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or non-construction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Furthermore, Section 18-2-417, requires allowance for a 3% annual increase in wages for a multiyear contract. (1) Any public works contract that by the terms of the original contract calls for



more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract. (2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. (3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, and falls under the category of Heavy Construction services. The booklet containing Montana's 2019 Rates for Heavy Construction is attached (see Exhibit D) and may also be found at <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>.

**9. Contractors' Gross Receipts Tax:** Contractor understands that all contractors or subcontractors working on a publicly funded construction project, including any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever, are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

**10. Nondiscrimination:** Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

The Contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

**11. Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this



Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

**12. Liaison:** City's designated liaison with Contractor is Mark Jarvis and Contractor's designated liaison with City is Jed Easterbrook.

**13. Governing Law and Venue:** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

**14. Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**15. Successors and Assigns:** Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

**16. Ownership of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.



**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**CITY OF BILLINGS, MONTANA**

\_\_\_\_\_  
**BUSINESS NAME (CONTRACTOR)**

By \_\_\_\_\_  
**CHRIS A. KUKULSKI,**  
**CITY ADMINISTRATOR**

\_\_\_\_\_  
**Signature**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Print Name**

By \_\_\_\_\_  
**BRENT BROOKS, CITY Attorney**

\_\_\_\_\_  
**Print Title**

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**BRENT BROOKS, City Attorney**



**Exhibit A**

**State of Montana Term Contract, the Participating Addendum and  
the Master Agreement**



**Exhibit B**

**Participating Addendum Amendment #1 to the Master Agreement  
of the State of Montana Term Contract**



## Exhibit C

# Scope of Work

### A. General

This work consists of designing and constructing a synthetic turf soccer and Lacrosse field, FieldTurf Vertex 2” (FTVTP-2) on approximately 87,400 square foot (380’ x 230’) area at Amend Park, Billings Montana, as outlined below. Contractor shall furnish all documents, labor, materials, equipment, supplies, permits, approvals and incidentals necessary to conduct and complete the Contractor’s portion of the project as defined herein and deliver to Billings all plans, specifications and other materials as designated herein.

Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.

Name a Task Director who shall be the liaison between Billings and the Contractor. For this project, the Project Leader designated for the Contractor is \_\_\_\_\_.

### B. Installation Timeframe

Time is of the essence; all construction work must be completed by March 31, 2020.

### C. Civil Engineering and Design Services

1. Provide design and construction documentation services for this project including but not necessarily limited to the following:
  - i. Review and follow requirements in existing Geotechnical Report (see Exhibit E) including all required testing.
  - ii. Meet and coordinate with City of Billings Public Works Department to design necessary stormwater management facilities and structures to meet all City stormwater requirements. Obtain Public Works approval of design, calculations and permits prior to construction.
  - iii. Develop a Public Works approved erosion control plan and obtain all necessary permits. Including inlet protection, rock entrance, sweeping, BMPs, etc.
  - iv. Develop construction documents approved by City (Parks and Recreation Department) to include the following:
    1. Layout plan.
    2. Grading plan.
    3. Stormwater plan.
    4. Utility plan.



5. Electrical and lighting plan
  6. Field marking plan
  7. Detail plans including but not limited to curbs, sidewalks, fencing, piping/drainage system, base section, stormwater, electrical, site restoration and other details as required for installation of the field and related improvements.
- v. Construction documents shall be sealed by an Engineer registered in the State of Montana.
  - vi. Provide “As Built” drawings, one copy of O and M manuals, warranties, testing results and certificates. Also, provide training for operation and maintenance of all equipment and facilities 30 days after substantial completion and prior to final payment.
  - vii. Provide construction survey and layout.
  - viii. Provide onsite construction supervisor to manage and supervise all work.
  - ix. Demolish and remove existing irrigation system as applicable. Coordinate with City (Parks and Recreation Department).
  - x. Mass excavation to subgrade.
    1. Strip topsoil in field and haul off.
    2. Cut field to proposed subgrade and haul off site.
  - xi. Structural fill soil to conform to Geotechnical Report.
    1. Cut and haul off material as necessary.
    2. Grade and compact subgrade.
    3. Furnish and install Mirafi 180N fabric on subgrade.
    4. Import and place structural fill material as necessary.
  - xii. Laser grade and compact subgrade.
  - xiii. Furnish and install concrete curb (6”x 12”) and field nailer board around field including all necessary site preparation work.
  - xiv. Furnish and install one 40’ x 100’ x 6” thick concrete bleacher pad including all necessary site preparation work with a minimum 4” crushed rock base.
  - xv. Furnish and install 10’ wide by 4” thick concrete perimeter walk around field including all necessary site preparation work with a minimum 4” crushed rock base. Sidewalk must connect to existing plaza sidewalk.
  - xvi. Sidewalk and bleacher pad shall conform to all ADA requirements and provide a continuous accessible route from the existing plaza sidewalk.
  - xvii. Furnish and install perforated drainage system in field in accordance to approved drainage system plan. Connect to existing stormwater structures as required.
  - xviii. Furnish and install 4 oz. geotextile fabric on subgrade underneath field.
  - xix. Furnish and install minimum 4” permeable base stone on field.
  - xx. Furnish and install 2” permeable top stone under field.



- xxi. Laser grade field to manufacturer tolerances for turf installation.
- xxii. Furnish and install 4' vinyl coated chain link fence around perimeter of field including two pedestrian gates (ADA accessible) and one maintenance gate minimum 12' wide.
- xxiii. Furnish and install one set of soccer goals.
- xxiv. Furnish and install 500-seat bleacher system.
- xxv. Furnish and install Musco Light-Structure System – TLC for LED technology in accordance with manufacturer's requirements complete including:
  - 1. Four pre-cast concrete bases; Four galvanized steel poles; Remote electrical component enclosures; Pole length wire harnesses; Factory-aimed and assembled luminaries.
  - 2. Verify power supply is adequate to meet lighting needs and connect to existing power supply system.
  - 3. Provide minimum 50 footcandles.
- xxvi. Grade and seed all disturbed areas with City (Parks and Recreation Department) approved seed mix.
- xxvii. Contractor is responsible to secure the construction site, to keep the site safe at all times and to prevent access by unauthorized persons.
- xxviii. Maintain site in neat and safe condition. Police site daily and remove all trash and debris immediately.
- xxix. Damage to existing site elements caused by Contractor shall be repaired to City satisfaction at Contractor's expense.

#### **D. FieldTurf System Installation**

- 1. Installation of artificial in-fill grass surface in accordance with manufacturer's requirements.
- 2. Inlay soccer markings
- 3. Inlay lacrosse markings
- 4. Provide Groomright and Sweepright maintenance equipment.
- 5. Conduct GMAX testing and provide a written report verifying that the field is in compliance with manufacturer's requirements, industry standards and applicable governmental regulations.

#### **E. Warranty**

- 1. Provide an eight year 3<sup>rd</sup> party pre-paid insured warranty for the FieldTurf synthetic grass surface system.



**Exhibit D**

**Prevailing Wage Rates for Heavy Construction Services 2019**



**Exhibit E**

**Geotechnical Report**