

## **AGREEMENT FOR THE AQUATIC HABITAT AND ANGLER ACCESS REHABILITATION AT KIRKPATRICK MEMORIAL LAKE**

This AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Nebraska Game and Parks Commission ("NGPC") and the City of Lexington ("City") for aquatic habitat and angler access rehabilitation at Kirkpatrick Memorial Lake ("Project") as indicated in attached plan designs and specifications.

### **RECITALS**

WHEREAS, the NGPC desires to improve aquatic habitat and angler access at the Project;

WHEREAS, the City desires to improve aquatic habitat and angler access and is willing to assume responsibility as the lead agent sponsoring the Project;

WHEREAS, the City is contributing a minimum of \$100,000 for the construction of the Project;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties agree as follows:

### **Section A. City's Responsibilities**

The City shall:

1. Provide a minimum of \$100,000 towards the construction of the project as indicated in the attached plan designs and specifications;
2. Provide input, ideas, and feedback on the Project as requested by the NGPC, contingent upon the NGPC determining that such requests do not exceed available resources and are related to the Project;
3. Allow NGPC to inspect the construction of the Project at any time, without prior notice, to confirm that all asserted eligible contributions have been provided according to the requirements of this AGREEMENT, and that such eligible contributions are in accordance with the attached plan designs and specifications;

4. Furnish NGPC with a copy of the construction services contract;
5. Procure and select a contractor to construct the Project;
6. Notify NGPC within 120 days after completion of the Project; and
7. Be responsible for compliance with all laws, ordinances, orders, and rules and regulations, including permits, licenses, or inspections, regarding the design and construction of the Project.
8. Comply with any Commission and State processes to obtain reimbursement for any claimed reimbursable expenses as described below;
9. Submit all claims for reimbursement on an itemized invoice indicating the date, type of work, total amount of work, cost per unit of labor or equipment with an accompanying statement that the reimbursable expense was incurred for the completion of the aquatic habitat and angler access rehabilitation at Kirkpatrick Memorial Lake, and affix a signature of a representative of the City; and
10. Ensure that all employees, contractors, subcontractors, or other individuals designated by the City to provide labor for the Project meet all and the same requirements imposed upon other employees, contractors, subcontractors, or other individuals designated to provide labor for the Project as required by contractual obligations or law.

## **Section B. NGPC's Responsibilities**

The NGPC shall:

1. Reimburse the City to construct the Project as indicated in the attached plan designs and specifications, excepting the \$255,000 provided by the Nebraska Department of Environmental Quality (NET grant). The total funding expenditures from the Commission for the Project, including all payments for reimbursable expenses, shall not exceed \$150,000;

## **Section C. General Terms**

1. The term of this AGREEMENT shall be from the date of execution until

December 31, 2019. By written consent and mutual agreement the parties may renew the AGREEMENT for a subsequent year.

2. This AGREEMENT shall automatically terminate upon completion of the Project. This AGREEMENT may be terminated by either party upon written notice to the other party at least thirty (30) days in advance of the effective date of the termination. The thirty (30) days shall commence running three days after the notice is deposited with the U.S. Postal Service or at the time it is hand delivered to the other party.

3. All modifications to this AGREEMENT must be in writing, signed by both parties.

4. Any notice relating to the modification, termination, renewal, or alleged breach of this AGREEMENT must be provided to the Commission in writing at:

Nebraska Game & Parks Commission and  
Jim Douglas, Director  
2200 North 33rd Street  
Lincoln, NE 68503

City of Lexington  
Joe Peplitsch, City Manager  
P O Box 70  
Lexington, NE 68850

5. Neither party shall assign this AGREEMENT or its rights and duties hereunder, or any interest herein, without the prior written consent of the other party.

6. Nothing in this AGREEMENT shall be construed as a delegation of authority of the NGPC to the City or its agent(s) nor shall the City or its agent(s) in any manner consider or represent themselves to be an agent or employee of the NGPC. It is expressly understood by the City that it is, in all instances, an independent entity who shall provide, manage and assume all obligations whatsoever which may occur or be required by the Worker's Compensation laws of any state, Old Age and Survivors Insurance, Internal Revenue Acts, Income Tax of any state, and laws and regulations relating thereto, and the City shall save, defend, and hold harmless the NGPC against any obligation relating to any such liability.

7. It is the expressed intent of the parties that this AGREEMENT shall not create an employer-employee relationship.

8. It is expressly understood by both parties that budgetary restrictions, lack of appropriations, other fund limitations or Nebraska statutory changes may alter or limit the ability of either party to comply with all or part of this AGREEMENT.

The NGPC cannot guarantee payment in the absence of an appropriation by the legislature. The Commission may terminate the AGREEMENT due to a lack of appropriation upon written notice to the City.

9. Each party agrees to comply with all applicable federal, state and local laws, codes, regulations, rules, and orders.

10. The present AGREEMENT shall be considered to have been executed at Lincoln, Lancaster County, Nebraska, and shall be subject to the laws of the State of Nebraska.

11. If any term or provision of this AGREEMENT or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this AGREEMENT or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Nebraska Game and Parks Commission and the City of Lexington do hereby execute this AGREEMENT as of the date indicated below.

NEBRASKA GAME AND PARKS  
COMMISSION

CITY OF LEXINGTON

\_\_\_\_\_  
Timothy D McCoy, Deputy Director

\_\_\_\_\_  
Joe Pepplichtsch, City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date