

SUBGRANT AGREEMENT
between
ARKANSAS STATE GAME AND FISH COMMISSION
and
CITY OF JONESBORO, ARKANSAS

Effective as of the last date shown on the signature page hereto, **the City of Jonesboro, Arkansas**, hereinafter referred to as the “**Recipient**,” accepts a subgrant from the **Arkansas State Game and Fish Commission**, hereinafter referred to as the “**Commission**” or “**AGFC**,” and agrees to the following terms and conditions:

1. **Authority:** Pursuant to Amendment 35 to the Constitution of Arkansas, the Commission is vested with the control, management, restoration, conservation, and regulation of the birds, fish, game, and wildlife resources of the State and the administration of the laws pertaining thereto. The Commission is authorized to enter into this subgrant agreement pursuant to U. S. Department of the Interior, Fish and Wildlife Service (“USFWS”), Grant Award AR W-F14AF01316, through federal funding from the Pittman–Robertson Federal Aid in Wildlife Restoration Act’s Basic Hunter Education and Safety Program (CFDA #15.611). The current Grant Award is for general “Shooting Range Planning and Development;” therefore, **this Subgrant Agreement, and the Commission’s authority to enter it, is specifically contingent upon the USFWS approving a request by the Commission to amend the Grant Award to specifically authorize use of the federal grant funds to construct the Jonesboro Shooting Sports Complex as detailed herein.** The current Grant Award and all supporting documents are attached hereto as Exhibit “A” and incorporated herein by reference as if set out word for word. The parties hereby agree that from time to time Exhibit “A” shall be supplemented with any Grant Award amendments issued or approved by USFWS.
2. **Project Name:** Jonesboro Shooting Sports Complex, hereinafter referred to as the “Project” or “Range.”
3. **Objectives:** The objectives of this subgrant are to provide Recipient with funding for Recipient to construct a combination skeet/trap, rifle, pistol, and archery range that will provide convenient public access to combination skeet/trap, rifle, pistol, and archery shooting and enhance the Commission’s efforts to increase public participation in outdoor- and conservation-related sports through the Arkansas Youth Shooting Sports Program. The Recipient shall construct the range on a 208.72-acre site it has acquired in fee title (hereinafter referred to as the “proposed site”) consisting of two tracts located within city limits and described and shown on the Boundary Survey attached hereto as Exhibit “B.”

The Recipient is a municipal corporation duly organized in Craighead County, Arkansas. The mission of the Commission is to conserve and enhance Arkansas’s fish and wildlife and their habitats while promoting sustainable use, public understanding and support. The Recipient will apply the requested funds to construct the Range and perform all required activities and fulfill all requirements set forth in the Commission’s federal grant

award from the U.S. Fish and Wildlife Service including its accompanying grant proposal, all of which is attached hereto as Exhibit “A” and incorporated herein by reference as if set out word for word.

4. **Program:** The Recipient will complete the Project as an independent contractor. The principal officer assigned to administer the subgrant on behalf of Recipient shall be Harold Perrin, Mayor. The principal officer will direct the Project on behalf of the Recipient and may be assisted by certain staff members and/or agents employed by the Recipient. Commitments as to the extent of the obligations of these staff members and agents shall be the responsibility of the Recipient’s principal officer within the scope of the grant award (Exhibit “A”). The principal contact and representative on behalf of the Commission shall be Grant Tomlin, Assistant Chief, Education Division.

5. **Scope of Work:**
 - a) **The AGFC agrees to:**
 - i. Assist the Recipient in hosting a public forum to receive comment on the Project.
 - ii. Provide consultation during Range construction as needed by one or more AGFC Regional Construction and Engineering Coordinators, Construction Specialists, or Range Development Coordinators.
 - iii. Reimburse the City for eligible Project costs in the manner detailed in Paragraph 6 (“Payment”).

 - b) **The Recipient agrees to:**
 - i. Perform all required activities and fulfill the objectives as set forth in this Agreement, the attached grant award (Exhibit “A”), and the Range Plans and Specifications (Exhibit “B”).
 - ii. Host a public forum to receive comment on the Project.
 - iii. Grant USFWS, AGFC, and their respective agents, employees, assigns, guests, and invitees, permission to enter on, over and across the proposed site for the purposes set forth herein.
 - iv. Be solely responsible for ensuring that all required local, state and federal permits, easements, and rights of way are obtained, and that all proper licensing and approval requirements are met for the construction of the Range and other work-in-kind associated with this Agreement.
 - v. Retain fee title to the proposed site and all other land required for the Range including, but not limited to, at least the minimum safe area for the shot fall zone consistent with standards set forth in the National Rifle Association (“NRA”) Range Source Book and guaranteed public access to the proposed site from a directly-abutting public road. The Recipient shall not dispose of or otherwise encumber its title or interest in the Range site and facilities for the 25-year useful life of the Range as outlined in the Memorandum of Agreement. The required instruments of conveyance have been duly recorded in the official deed records of Craighead County, Arkansas; are attached to the accompanying Memorandum of Agreement as outlined therein; and are incorporated herein by reference as if set out word for word.

- vi. Provide to AGFC with this Agreement a boundary – topographic survey of the proposed site and provide by **August 31, 2018**, plans and specifications for the design and construction of the Range at the proposed site (collectively, the “Range Plans and Specifications”). The Range Plans and Specifications shall be prepared by a qualified, accredited firm; and the parties agree to attach the final version of the same to this Agreement as Exhibit “B” and incorporate the same herein by reference as if set out word for word. **The Range and all improvements shall be designed and constructed in a manner that reasonably prevents shooting and depositing lead into or over water, wetlands, or property outside the shot-fall zone will not occur.**
- vii. Provide to AGFC with this Agreement, a NEPA-compliant environmental assessment of the proposed site and its suitability for a public shooting range (the “Environmental Assessment for the Construction of a Public Shooting Range”). The Environmental Assessment for the Construction of a Public Shooting Range shall be prepared by a qualified, accredited firm; and the parties agree to attach the final, approved version of the same to this Agreement as Exhibit “G” and incorporate the same herein by reference as if set out word for word.
- viii. Coordinate with the Commission Principal Contact to obtain and provide with this Agreement a USFWS Section 7 Biological Evaluation / Assessment addressing the effect of the Project on species listed as endangered or threatened under the Endangered Species Act (“ESA”) and on their designated critical habitat. The parties agree to attach the final version of the same to this Agreement as Exhibit “H” and incorporate the same herein by reference as if set out word for word.
- ix. Provide with this Agreement a Lead Management Plan for the proposed site that sets forth the Recipient’s plan for proper removal and recycling or disposal of recovered lead on a regular basis as per the National Rifle Association (“NRA”) Range Source Book and the EPA guidance document “Best Management Practices for Lead at Outdoor Shooting Ranges” (EPA 902-B-01-001). The Lead Management Plan shall be prepared by a qualified, accredited firm; and the parties agree to attach the final version of the same to this Agreement as Exhibit “I” and incorporate the same herein by reference as if set out word for word.
- x. Be responsible for reviewing the Range Plans and Specifications and ensuring their compliance with this Agreement; any conditions or restrictions associated with the proposed site; NRA standards including the recommended design, construction, and safety guidelines of the NRA; and all applicable federal, state, and local laws. By **March 31, 2018**, the Recipient shall certify in writing to AGFC that it has reviewed the Range Plans and Specifications and state whether it is satisfied that the same conform to this Agreement and applicable NRA standards and whether it approves the same with the understanding that it must construct the Range and all improvements in a timely and proper manner so as to meet the same.
- xi. Be responsible for reviewing the Environmental Assessment for the Construction of a Public Shooting Range and ensuring that the proposed site for the Range is suitable for the Recipient’s intended use as a shooting sports facility, taking into account environmental considerations, topography, required size (including for the safety/shot fall zone), shooting direction, land features, proximity to

residences or businesses that may be negatively affected by the operation of the Range, and other NRA recommended site criteria. By **March 31, 2018**, the Recipient shall certify in writing to AGFC that it has reviewed the Environmental Assessment for the Construction of a Public Shooting Range and state whether it is satisfied that the proposed site is suitable.

- xii. Be responsible for reviewing the USFWS Section 7 Biological Evaluation / Assessment and ensuring that the proposed site for the Range is suitable for the Recipient's intended use as a shooting sports facility, taking into account its conclusion(s) concerning the Range's effect on ESA-listed species and their critical habitat. By **March 31, 2018**, the Recipient shall certify in writing to AGFC that it has reviewed the USFWS Section 7 Biological Evaluation / Assessment and state whether it is satisfied that the proposed site is suitable.
- xiii. Implement all mitigation measures described in the Range Plans and Specifications, Environmental Assessment for the Construction of a Public Shooting Range (including all measures described in the August 16, 2017 "Revised Scope Proposal" found at Appendix M), USFWS Section 7 Biological Evaluation / Assessment, and Lead Management Plan. Specifically, but without limitation, the Recipient shall (1) install a 3-sided shot curtain (minimum 40 feet high and overlapped at the seams) across the skeet and trap range to limit the spread of lead shot throughout the shotfall area; (2) install a catch system at the base of the shot curtain to contain lead shot, manage acidity in the surrounding soils, not retain water, and be feasible for reclamation; (3) reduce the area of wetlands to be impacted by the Project from 8.3 acres to approximately 1.3 acres (but not to exceed 1.8 acres); (4) provided wetlands mitigation on 22.7 acres of replacement wetlands; and (5) place deed restrictions on approximately 38 acres of bottomland hardwood wetlands located in the northwest portion of the proposed site to ensure that acreage remains undeveloped in perpetuity. Additionally, consistent with Recipient's "goal to maintain soil pH between 6.5 and 8.5 within the shotfall zone," as stated in Section 3.1.3 of its Lead Management Plan, the Recipient shall "manage the potential acidity" in the soils within the shotfall zone, including any soil used for construction of artificial features such as earthen backstops, to maintain such soils within that acceptable pH range and thereby limit the fate and transport of lead in the hydric system on the proposed site.
- xiv. Be responsible for all aspects of constructing, owning, operating, and maintaining the Range on the proposed site using the Recipient's own funding sources to do so.
- xv. Furnish and pay for all labor, contractors, materials, tools, equipment, and supplies necessary to construct the Range in exact accordance with the Range Plans and Specifications and in full compliance with all applicable laws, rules, and regulations (including procurement and bidding requirements). The Commission shall have no supervision over the Recipient's construction work. The Recipient shall pursue the completion of the construction of the Range using its own methods and is solely responsible for the results of the work.
- xvi. Provide and maintain competent and adequate architectural/engineering supervision and inspection at the Range to ensure that completed work conforms to the Range Plans and Specifications and is safe for public use.

- xvii. Use its own procurement procedure, which it assures complies with applicable state and local laws and regulations, provided that the procurement conforms to applicable Federal law and standards identified in 2 C.F.R. § 200.317 – 200.326 (“Procurement Standards”). Procurement by noncompetitive methods may only be used by the Recipient after consulting AGFC and receiving prior approval in writing.
- xviii. Ensure no contract or subcontract is awarded to any party debarred, suspended, or otherwise excluded from participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension,” and include in its contracts (and require that subcontracts contain the same) for construction of \$25,000 or more, the following provision:
 - “The prospective lower tier participant certifies that neither it nor its principals is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.”
- xix. Comply with all Arkansas Department of Labor regulations that are applicable to this Project and require all contractors and subcontractors to do the same.
- xx. Include provisions from 2 C.F.R. § 200.326 in all contracts and require the same provisions in all subcontracts.
- xxi. In the event the Recipient elects to use its own personnel to accomplish eligible Project work, the Recipient acknowledges that it has the legal authority to perform the work and adequate and technically qualified staff to perform the work. The Recipient must maintain records, to include standard payroll records (approved timesheets, hours worked on Project and wages paid, tax and fringe benefit computations, evidence of payment, etc.) of the work in accordance with Paragraph 20 (“Retention of and Access to Records”). Such work will not be eligible for reimbursement under this Agreement.
- xxii. Complete construction of the Range by the end date of this Agreement in exact accordance with the Range Plans and Specifications and in full compliance with all applicable laws, rules, and regulations. The completed Range shall include all amenities described herein and in the Range Plans and Specifications, and it must have at least three (3) combination skeet/trap fields meeting NRA standards.
- xxiii. Provide for construction and installation of city utility service to the completed Range (i.e. water and sewer) and be responsible for the ongoing expense and maintenance of the same.
- xxiv. Provide for installation of all necessary electrical service to the completed Range and be responsible for the ongoing expense and maintenance of the same.
- xxv. Ensure that the completed Range is in compliance with noise control ordinances of units of local government that applied to the Range and its operation at the time the Range is constructed and begins operation. Specifically, the Recipient shall, **before executing this Agreement**, amend its Ordinance 46-70 (regarding loud noises in the City of Jonesboro) to add and keep in place for the useful life of the Range the following or substantially similar section: “(d) That none of the terms or prohibitions of this ordinance shall apply to or be enforced against any noises resulting from the normal operation of a public or privately owned shooting range which has been approved by the City of Jonesboro. A range is in compliance with

this ordinance when operated in accordance with the terms of the City's approval and any required permits. The intent of this provision is that normal operations of approved ranges will qualify for the immunity from nuisance and noise pollution suits provided by Ark. Code Ann. § 16-105-502."

- xxvi. Ensure that the completed Range meets all accessibility requirements under the Americans with Disabilities Act of 1990 (as amended from time to time) and the Architectural Barriers Act of 1968.

6. Payment:

- a) As consideration for the services rendered by the Recipient under the terms of this Agreement, the Commission shall pay the Recipient on an actual cost reimbursement basis an amount not to exceed \$2,000,000.00 (the "Budgeted Amount") toward the total Project cost described in Exhibit "A" to assist the Recipient in completing construction of the Range. Such Budgeted Amount consists of the following: not to exceed \$2,000,000.00 from Section 4 Basic Hunter Education federal funding allocations. The Commission will retain control over said funds and expend them to reimburse the Recipient for those allowable and approved Project costs described in Exhibit "A," up to the Budgeted Amount as detailed herein. The Recipient shall provide at least the 25% non-federal match required to be eligible to receive said federal funds.
- b) Upon completion of approved work described in Exhibit "A" in accordance with the Range Plans and Specifications, the Recipient will submit to the Commission a written request for reimbursement of 75% of the allowable and approved Project costs the Recipient has incurred and already paid. The remaining 25% shall not be reimbursed but shall fulfill the City's required 25% non-federal match. Each request for reimbursement must only include costs not included in a previous request and must be supported by detailed documentation (receipts for payments made or invoices marked paid). The Recipient shall submit a request for reimbursement at least quarterly, and no more than monthly, unless otherwise approved by the Commission. The Recipient shall submit a final request for reimbursement of any remaining unreimbursed costs no more than 30 days after the end of the Agreement. The Recipient's requests for reimbursement shall not individually or collectively exceed the Budgeted Amount.
- c) Payment is conditioned upon the timely receipt and acceptance of applicable, accurate, and complete documentation submitted by the Recipient. Payment shall be made only for allowable and approved Project costs described in Exhibit "A" in completing services approved and rendered pursuant to this Agreement. Final payment is contingent upon receipt of all required fiscal and programmatic reports, as well as the completion of all work described herein in Paragraph 5 ("*Scope of Work*"). Upon receipt of a request with complete documentation, the Commission will process it for payment under normal Commission accounting practices and consistent with the terms of this Agreement, until the Budgeted Amount is exhausted. **Costs exceeding the Budgeted Amount, costs that are not allowable and approved Project costs described in Exhibit "A," and any costs otherwise**

inconsistent with this Agreement are not eligible for payment by the Commission; and the Recipient shall use other funds to pay them as necessary to complete the Project.

- d) Expenditures shall be made at the discretion of the principal officer in conformity with the Recipient's approved budget and work plans as described in Exhibit "A," and in relation to the fiscal policies of the Recipient. No portion of the grant funds may be used to purchase equipment or used for any purpose other than those described herein in Paragraph 3 ("*Objectives*"). For the purposes of this paragraph, the term "equipment" means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Recipient for financial statement purposes, or \$5,000 (see 2 C.F.R. § 200.33).
 - e) Funds provided through this Agreement are Federal financial assistance and shall not be used to match other Federal financial assistance programs.
7. **Program Income:** No revenue may be generated from the Range during the term of this Agreement.
8. **Pre-construction Conference and the Notice to Proceed:** Upon the execution of this Agreement by both parties, a pre-construction conference will be held between the Commission's representatives and the Recipient's authorized personnel to thoroughly discuss key construction and Project administration related issues. The notice to proceed will not be issued by the Commission until the Recipient has satisfactorily complied with all requirements of this Agreement and provided documentation as requested by the Commission. Any work performed prior to the issuance of the notice to proceed shall not be eligible for funds provided through this Agreement and must be funded by the Recipient. The Recipient must complete the Project funded by this Agreement by the end date of this Agreement. Subsequent work shall not be eligible for funds provided through this Agreement and must be funded by the Recipient.
9. **Performance Bond:** In accordance with state law, the Recipient shall ensure that any contractor providing services for this Project shall furnish a "Performance and Payment Bond" in the amount equal to 100 percent of the contract amount as security for the faithful performance of this Project and for payment of all indebtedness for labor and materials furnished or performed in connection with the Project. The bond shall be written by a surety company qualified and authorized to do business in the State of Arkansas and shall be executed by a resident local agent who shall be entitled to full commission paid local agents and who is licensed by the Insurance Commissioner to represent the surety company executing said bond and filing with said bond, his power of attorney as his authority. The mere countersigning of a Bond will not be sufficient. The bond shall be written in favor of the Recipient and executed pursuant to the terms of Arkansas Act 351 of 1953, as amended (Ark. Code Ann. §§ 18-44-501 et seq.). The contractor shall file (not record) the original with the clerk of the circuit court of the

county in which the work is to be performed is located. The contractor is to pay all expenses incident to the filing of the bond.

10. **Other Responsibilities:** The Recipient shall obtain and maintain at its expense all required licenses, permits, agreements, leases, insurance, and government approvals, and provide access necessary to the performance of its obligations under this Agreement. The Recipient shall ensure that any contractor providing services for this Project be properly licensed in accordance with state law.
11. **Employment Eligibility Verification:** The Recipient will ensure a valid and complete Form I-9, Employee Eligibility Form, is on file for all persons furnishing labor for this Project.
12. **Liability:** The Recipient shall accept sole responsibility for all manner of claims, causes of action, or liability arising out of the use, construction, maintenance, and operation of the Range including, but not limited to, any accident, injury, or damage to the Recipient, its equipment or property, its employees or agents, or to any third party's person or property while conducting any activity related to this Agreement. AGFC shall not be liable for injuries or damages because of any action or inaction of any individual or organization in connection with this Agreement.

To the extent permitted by Arkansas law, the Recipient shall hold harmless, defend and indemnify AGFC, its Commissioners, Directors, and employees from or against any and all claims, judgments, causes of action, liability, damages, and expenses of whatsoever nature incident to, or resulting from the Recipient's activities or performance under this Agreement or the use, construction, maintenance, and operation of the Range. Furthermore, notwithstanding the foregoing, the Recipient agrees that: (a) it will cooperate with AGFC in the defense of any action or claim brought against AGFC seeking the foregoing damages or relief; (b) it will in good faith cooperate with AGFC should any third party present any claims of the foregoing nature against AGFC to the Claims Commission of the State of Arkansas; (c) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature. This Agreement shall be deemed and construed as binding solely between the two parties and shall not be deemed or construed as conferring any benefit or indemnification on behalf of any third party. Nothing in this Agreement shall be deemed or construed as an admission of liability or as a waiver of any sovereign immunity of either party. The obligations of this paragraph shall survive the expiration or termination of this Agreement.

13. **Reports:**
 - a) The Recipient shall submit semi-annual Project performance and financial reports to the Commission Principal Contact.
 - b) The Recipient shall submit a comprehensive final closeout report, in a format approved by the Commission, covering all aspects of the Project within 30 days after Project completion. Payment is contingent upon the timely receipt of the comprehensive final closeout report.

- c) The Recipient shall provide to the Commission digital photographs of the Project site: (1) prior to commencement of work, (2) during construction, and (3) upon completion of the Project. |

14. Project Inspection:

- a) The Recipient shall be responsible for all day-to-day construction inspection and will be responsible for certifying to the Commission that all construction was accomplished as set forth in this Agreement.
- b) The Commission may inspect the Project at any reasonable time and may bring representatives of the U.S. Fish and Wildlife Service, its engineers or any other persons it deems advisable as part of the inspection team, and the Recipient shall consent to their entry on Recipient owned or controlled property. If the Project fails to conform to the requirements of this Agreement, the Commission may require the Recipient to promptly bring the Project into conformity with this Agreement at the Recipient's sole expense.
- c) The Commission may also suspend the Recipient's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the Commission. The Recipient shall promptly cease performance and incurring costs in accordance with the Commission's directive, and the Commission shall not be liable for costs incurred by the Recipient after the suspension of performance under this provision.
- d) **Failure of Recipient to take all necessary corrective action shall be grounds for immediate termination of this Agreement.**
- e) All inspections performed by the Commission, whether interim or final, are for the limited purpose of determining whether the Recipient's performance is within the scope of the grant award and generally conforms to the Range Plans and Specifications. The Commission is not responsible or liable for any non-discovery of any patent or latent defects in materials, workmanship, or other conditions of the Project, or any other problems which may occur or may become evident after the inspection. The Commission is neither an insurer nor guarantor against defects in the Project, including, without limitation, any improvements, systems, or components inspected. **THE COMMISSION MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE FITNESS FOR USE OR CONDITION OF THE PROJECT, IMPROVEMENTS, SYSTEMS, OR COMPONENTS INSPECTED.** The Commission assumes no responsibility or liability for any cost of repairing or replacing any defects or conditions, whether reported or unreported, and is not responsible or liable for any future failures or repairs.

- 15. Notice of Completion and Final Inspection:** At the end of grant-funded Project construction, the Recipient shall submit to the Commission a notice of completion for the Project. After receiving the Recipient's notice of completion or the expiration of this

Agreement, the Commission will perform a final inspection of the Project. If the final inspection reveals that the Range does not conform to the Range Plans and Specifications or is otherwise unsuitable, unfit, or unsafe for its intended uses as expressed herein, then the Commission shall provide the Recipient written notice of the nonconforming work or other problem(s); and the Recipient shall be required to correct the same at its sole expense within a reasonable time, which shall be specified in the notice.

- 16. Audit:** This Agreement is subject to the requirements of the Single Audit Act of 1984 (as amended and/or revised) and 2 CFR 200.501. The Recipient agrees to provide the Commission with a copy of their most current audit report and a copy of any subsequent audit report that includes this subgrant no later than six (6) months from the end of the Recipient's fiscal year. All audit reports must include the corresponding management letter. Additionally, the Recipient agrees to immediately notify the Commission of any audit that discloses material noncompliance or reportable conditions specifically related to this Project.
- 17. Federal Funding Accountability and Transparency Act (FFATA):** The Recipient shall comply with the FFATA and assist the Commission with FFATA compliance.
- 18. Retention of and Access to Records:**

 - a) In accordance with 2 CFR Part 200.333, the Recipient shall maintain all financial and programmatic records, supporting documents, statistical records and other records pertinent to performance under this Agreement during the term of this Agreement and for up to five (5) years (note: this is two (2) years longer than the minimum of three (3) years required by the CFR) after Project completion and approval of the Recipient's final expenditure report to the Commission. If any litigation, claim or negotiation, audit, or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later.
 - b) In accordance with 2 CFR Part 200.336, the U.S. Fish and Wildlife Service, the Comptroller General of the United States, the Commission, or any of their authorized representatives shall have the right of access to such records during the required retention period or as long as the records are retained, whichever is later.
 - c) Records for real property acquired with Federal funds must be retained for 5 years after final disposition.
 - d) Federal award-related information, where practicable, should be collected, transmitted and stored in open and machine readable formats as required by 2 CFR Part 200.335.
 - e) In the event any work is subgranted or subcontracted, the Recipient shall similarly require each subgrantee and subcontractor to maintain and allow access to the records.

19. Duration:

- a) The period of performance for this Agreement shall begin **[on the last date shown on the signature page hereto]**, and end at 11:59 p.m. U.S. Central Time on **[June 30, 2020]**, unless terminated earlier in accordance with its terms herein.
- b) The Range must be completed by the end date of this Agreement.
- c) This Agreement may be terminated by mutual consent of the parties upon good cause shown with thirty (30) days' written notice. Any such termination of the Agreement is without prejudice to any obligations or liabilities of either party already accrued prior to such termination.
- d) Additionally, AGFC shall also have the immediate right to terminate this Agreement if:
 - i. the USFWS does not approve amending the Grant Award to specifically add this Project and authorize use of the federal grant funds to construct the Range;
 - ii. the Recipient fails to meet a deadline identified above in Paragraph 5.b);
 - iii. the Environmental Assessment for the Construction of a Public Shooting Range indicates that the proposed site is not suitable;
 - iv. the USFWS Section 7 Biological Evaluation / Assessment concludes that the Project is likely to adversely affect ESA-listed species or their critical habitat;
 - v. the Range Plans and Specifications do not conform to this Agreement and applicable NRA standards, and the Recipient fails to correct the nonconformance within a reasonable time after notification from AGFC;
 - vi. the Recipient fails to commence work on the Project within **[six (6) months]** from the Commission issuance of the notice to proceed, or by any date agreed upon in writing for commencement of work;
 - vii. the Recipient fails to complete construction of the Range by the date specified herein;
 - viii. once completed, the Range does not conform to the Range Plans and Specifications, and the Recipient fails to correct the nonconforming work within a reasonable time after notification from AGFC;
 - ix. once completed, the Range is unsuitable, unfit, or unsafe for its intended uses as expressed herein, and the Recipient fails to correct the problem(s) within a reasonable time after notification from AGFC; and/or
 - x. the Range becomes the subject of a lawsuit successful in permanently enjoining the completion of its construction or commencement of its operation as a sport shooting facility.

Upon termination for any of the preceding reasons, the Recipient shall immediately upon demand reimburse the Commission one hundred percent (100%) of the grant funds that Recipient received under this Agreement.

- e) In the event the Arkansas General Assembly fails to appropriate sufficient funds or make monies available for any fiscal year covered by the term of this Agreement, this Agreement shall be terminated on the last day of the last fiscal year for which sufficient funds were appropriated or monies made available for such purposes. This provision shall not be construed to abridge any other right of termination the Commission may have.
 - f) Upon expiration or termination of this Agreement for any reason, the Recipient shall return to the Commission all unexpended grant funds, including interest income.
- 20. Amendment:** Amendments to this Agreement may be proposed by either party upon written notice to the other party, and such amendments shall become effective as soon as signed by both parties hereto. The Recipient agrees to submit to AGFC for prior approval any changes which alter the budget of the Range (as contained in Exhibit “A”), the use of the Range, its functional layout, the completion period, or the project scope. Should changes occur or problems be encountered during the duration of this Agreement, the Recipient should contact AGFC immediately.
- 21. Non-Discrimination:** The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with a program on the basis of race, color, national origin, age, and sex, or disability. This paragraph is to be included in all contracts and subcontracts.
- 22. Equal Employment Opportunity:** During the performance of this Agreement, the parties hereto shall abide by the provisions of Executive Order 11246, as amended, and agree not to discriminate in employment practices or subcontracts with regard to race, color, sex, age, religion, national origin, or disability.
- 23. Terms of Acceptance and Legal Compliance:** The Recipient shall at all times observe and fully comply with any and all applicable federal, state, and local laws, statutes, orders, ordinances, regulations, policies, and guidelines in performing under this Agreement, including, but not limited to, laws controlling bidding, procurement; use of registered engineers, architects, or other professionals; building codes; and civil rights acts. The Recipient shall also comply with the terms and conditions contained in the following exhibits, all of which are attached hereto and incorporated herein by reference as if set out word for word: Exhibit “A” (the Commission’s grant award from the U.S. Fish and Wildlife Service); Exhibit “B” (the Range Plans and Specifications); Exhibit “C” (“Assurances – [Construction Programs]”); and Exhibit “E” (“Contract and Grant Disclosure Certification Form”). The Recipient shall ensure that all contractors and subcontractors on this Project comply with the above.

Additionally, the Recipient agrees and assures that it will comply with the federal regulations, program legislation or regulation, and special award terms and conditions applicable to the Commission's grant award from the U.S. Fish and Wildlife Service. The federal regulations (including cost principles and administrative requirements) applicable to this Agreement are listed by recipient type in Exhibit "F" ("*U.S. Fish and Wildlife Service Financial Assistance Award Terms and Conditions*"), which is attached hereto and incorporated herein by reference as if set out word for word (copy also available at <https://www.fws.gov/grants/atc.html>). Additional federal compliance requirements governing this Agreement are available in the U.S. Fish and Wildlife Service's Wildlife & Sport Fish Restoration Program ("WSFRP") Toolkit located at <https://fawiki.fws.gov/display/WTK/Toolkit+Homepage>.

24. **Conflict of Interest:** No official or employee of the Recipient shall participate personally through decisions, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, award, cooperative agreement, claim, controversy, or other particular matter in which grant funds (including interest income or other income generated by Project activities) are used, where to his/her knowledge, he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest, or has less than an arms-length transaction.
25. **Appearance:** In the use of grant funds, officials or employees of the Recipient shall avoid any action that might result in, or create the appearance of, using their official position for private gain; giving preferential treatment to any person; losing complete independence or impartiality; making an official decision outside official channels; or adversely affecting public confidence in the integrity of the Commission or the Federal Aid in Wildlife Restoration Program – Basic Hunter Education and Safety Program.
26. **Whistleblower Protection:** In accordance with 41 U.S.C. § 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection:
 - a) This award and related subawards and contracts over the simplified acquisition threshold, defined in 41 U.S.C. § 134, and all employees working on this award and related subawards and contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).
 - b) Recipients, and their subrecipients and contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. § 4712.

c) The Recipient shall insert this paragraph, including this subparagraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.

- 27. National Historic Preservation Act Compliance:** If the Recipient encounters the following while performing under this Agreement, it shall immediately stop all work in the vicinity of the discovery and take reasonable measures to avoid or minimize harm to the finds: archeological deposits, including but not limited to pottery or ceramics, stone tools, projectile points, dugout canoes, metal implements, historical building material, that could be associated with Native American, early European, or American settlements; historic resources (as defined by Section 301 of the National Historic Preservation Act, “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource”); or bones or human remains. The Recipient shall immediately notify the Commission’s principal contact, who shall immediately inform the Wildlife and Sport Fish Restoration Program (“WSFR”) and consult with the State Historic Preservation Office (“SHPO”). The Recipient shall not resume work in any areas identified until consultation is completed, appropriate measures have been taken to ensure that the project is in compliance with the NHPA, and the Commission’s principal officer authorizes the resumption of work. Additional conditions may apply. The Recipient shall insert this paragraph in all subawards and contracts related to this award.
- 28. Applicable Law:** This Agreement shall be governed by the laws of the State of Arkansas. With respect to any claim for monetary damages against the Commission, the appropriate venue shall be in the Arkansas State Claims Commission, Pulaski County, Arkansas.
- 29. Inventions:** The Recipient and its principal officer shall comply with the stipulations of Public Law 96-517, as amended.
- 30. Principal Contacts:**
- | | |
|--|---|
| <u>Recipient Principal Officer:</u>
Honorable Harold Perrin
Mayor, City of Jonesboro
300 South Church Street
PO Box 1845
Jonesboro, AR 72403
Tel: (870) 932-1052
Fax: (870) 933-4619
E-mail: hperrin@jonesboro.org | <u>Commission Principal Contact:</u>
Grant Tomlin, Assistant Chief
AGFC Education Division
2 Natural Resources Dr.
Little Rock, AR 72205
Tel: (501) 470-9904
E-mail: grant.tomlin@agfc.ar.gov |
|--|---|

Recipient Administrative Contact:

Honorable Harold Perrin
Mayor, City of Jonesboro
300 South Church Street
PO Box 1845
Jonesboro, AR 72403
Tel: (870) 932-1052
Fax: (870) 933-4619
E-mail: hperrin@jonesboro.org |

Commission Administrative Contact:

Arkansas Game and Fish
Commission
Jeff Crow, Director
2 Natural Resources Dr.
Little Rock, AR 72205
Tel: (501) 223-6300

31. Miscellaneous:

- a) The parties are contemporaneously executing herewith a Memorandum of Agreement, which governs the operation and maintenance of the completed Range.
- b) The parties agree that they are not entering into a legal partnership, joint venture or other such arrangement, nor is the purpose of the parties to enter into a commercial undertaking for monetary gain.
- c) The officials executing this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of their respective party organization or entity, and that the terms and provisions hereof constitute valid and enforceable obligations of each.
- d) No transfer or assignment of this Agreement, or any part thereof or interest therein, shall be made unless all of the parties first approve such transfer or assignment in writing.

32. Exhibit List: The following exhibits are attached hereto and incorporated by reference as if set out word-for-word herein:

- a) Exhibit "A" – The Commission's grant award from the U.S. Fish and Wildlife Service
- b) Exhibit "B" – "*Boundary Survey*" and "*Range Plans and Specifications*"
- c) Exhibit "C" – "*Assurances - Construction Programs*"
- d) Exhibit "D" – "*Lead Management Plan*"
- e) Exhibit "E" – "*Contract and Grant Disclosure Certification Form*"
- f) Exhibit "F" – "*U.S. Fish and Wildlife Service Financial Assistance Award Terms and Conditions*" (eff. 01-06-17)
- g) Exhibit "G" – "*Environmental Assessment for the Construction of a Public Shooting Range*"
- h) Exhibit "H" – "*USFWS Section 7 Biological Evaluation / Assessment*"

33. Entire Agreement and Order of Precedence:

- a) This Subgrant Agreement and the above-referenced Memorandum of Agreement constitute the entire agreement between the parties as to the Range.

- b) In the event that there is any conflict, contradiction, or ambiguity between any documents, exhibits, and attachments that form part of said entire agreement, the same shall be resolved by giving precedence in the following order:
- i. **Prior to completion of Range construction:** (1) the bodies of this federal Subgrant Agreement and any written amendments thereto (later having precedence over earlier) shall be given first priority and govern their respective construction components; (2) their referenced or attached documents, plans, specifications, and exhibits shall be given second priority; and (3) the body of the Memorandum of Agreement and any written amendments thereto (later having precedence over earlier) shall be given third priority, with its referenced or attached documents, plans, specifications, and exhibits being given fourth priority.
 - ii. **Following completion of Range Construction:** (1) the body of the Memorandum of Agreement and any written amendments thereto (later having precedence over earlier) shall be given first priority and govern the ongoing maintenance and operation of the Range; (2) its referenced or attached documents, plans, specifications, and exhibits shall be given second priority; and (3) the bodies of this federal Subgrant Agreement and any written amendments thereto (later having precedence over earlier) shall be given third priority for the remainder, if any, of their respective terms, with their referenced or attached documents, plans, specifications, and exhibits being given fourth priority.
- c) In the event of a conflict between good practice and the requirements of the Commission or its authorized agent, the matter shall be promptly submitted to the Commission's authorized agent, who shall promptly have a determination made in writing. Any deviation from this Agreement by the Recipient without such a determination shall be at its own risk and expense.

34. Survival: Rights and obligations that by their nature should survive or that this Agreement expressly states will survive shall remain in full force and effect following completion, expiration, termination, or cancellation of this Agreement. The parties shall cooperate with each other during and following termination or expiration of this Agreement as to those surviving rights and obligations, and to comply with all applicable laws, rules, and regulations. The parties specifically, but without limitation, agree that this paragraph and Paragraphs 5.b)iii, 5.b)v, 5.b)xiii, 5.b)xxv, 6.d), 6.e), 12, 16, 18, 19.d), 19.f), 21, 22, 23, 28, and 33 will survive the completion, expiration, termination, or cancellation of this Agreement.

35. Signatures of authorized officials:

**ARKANSAS STATE GAME AND FISH
COMMISSION**

CITY OF JONESBORO, ARKANSAS

By: _____
Pat Fitts, Director

By: _____
Harold Perrin, Mayor

Dated this [_____] day of [_____] , 2018.

Dated this [_____] day of [_____] , 2018.

ATTESTED TO:

By: _____
[Donna Jackson, City Clerk]