

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

THIS AGREEMENT is made and entered into between the Arkansas State Game and Fish Commission (hereinafter referred to as “AGFC” or the “Commission”) and **the City of Jonesboro, Arkansas**, (hereinafter referred to as “the City”) effective as of the last date shown on the signature page hereto.

WITNESSETH:

WHEREAS, pursuant to Amendment 35 to the Constitution of Arkansas, AGFC 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 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; and

WHEREAS, the Commission has determined that the Arkansas Youth Shooting Sports Program (hereinafter referred to as “AYSSP”) furthers the Commission’s mission by educating young Arkansans in firearm safety and precision shooting and fostering their enjoyment of the outdoors. The Commission also believes that advancing responsible development of outdoor public shooting ranges enables Arkansas hunters to develop and sharpen their firearm handling and shooting skills, which are instrumental for promoting effective harvesting of game; and

WHEREAS, the City is a municipal corporation duly organized in Craighead County, Arkansas, and is the fee title owner of a 208.72-acre site (hereinafter referred to as the “proposed site”) located within city limits and described and shown on the deeds and Boundary Survey attached hereto as Exhibit “A.”

WHEREAS, the City has communicated to the Commission that the City desires to build and operate a shooting sports facility (hereinafter referred to as the “Project” or “Range”) on the proposed site with the Range to be constructed and wholly owned, operated, and maintained by the City; and

WHEREAS, after carefully considering information and recommendations provided by the AGFC Director and staff, as well as the present priorities, needs, and public expectations, the Commission by Minute Order No. 17-070 adopted on September 21, 2017, has authorized the Director to assist the City in obtaining approval for a federal subgrant through the Pittman–Robertson Federal Aid in Wildlife Restoration Act’s Basic Hunter Education and Safety Program for eligibility to receive reimbursement up to \$2,000,000, with all such grant funds to be expended by the City for the shooting range construction consistent with the terms of the MOA and Subgrant; and

WHEREAS, the Commission will reimburse the City with said grant funding for construction of the Range in accordance with [the terms of the federal Subgrant Agreement that the parties are contemporaneously executing herewith]; and

WHEREAS, it is the desire of the City and AGFC to [enter into this Agreement to evidence the Commission’s commitment to provide financial support and consultation to construct the Range and the City’s commitment to construct, operate, and maintain the Range for at least 25 years and provide it primarily for use by the general public for recreational shooting; by AGFC for AYSSP, Hunter Education, Becoming an Outdoor Woman, and other educational programs; by certified Hunter Education Instructors for Hunter Education classes; and by certified AYSSP coaches for AYSSP training classes and official AYSSP team practices].

NOW, THEREFORE, AGFC and the City, in exchange for the mutual obligations and covenants contained herein, agree as follows:

I. Scope of Agreement

A. The AGFC agrees to:

1. [Execute contemporaneously herewith a federal Subgrant Agreement with the City in which the Commission commits to reimburse the City an amount not to exceed \$2,000,000.00 for the City’s actual cost of constructing the Range consistent with the terms of the Subgrant Agreement (the portion of the grant funds that is ultimately actually paid to the City is hereinafter referred to as the “AGFC Grant Funds”).]

B. The City agrees to:

1. [Accept and execute contemporaneously herewith the federal Subgrant Agreement and request reimbursement from grant funds for eligible Range construction costs consistent with the terms of the Subgrant Agreement. The City must take care to use and account for its Range construction expenditures in order to qualify for reimbursement as detailed in the Subgrant Agreement.
2. 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 City 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. The required instruments of conveyance have been duly recorded in the official deed records of Craighead County, Arkansas; are attached hereto as Exhibit “A”; and are incorporated herein by reference as if set out word for word.
3. Grant AGFC and its agents, employees, assigns, guests, and invitees, permission to enter on, over and across the proposed site for the purposes set forth herein. AGFC may inspect the Range at any reasonable time and may bring representatives of the U.S. Fish and

Wildlife Service and any other persons it deems advisable as part of the inspection team, and the City shall consent to their entry on City owned or controlled Range property.

4. Be 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 operation and maintenance of the Range and other work-in-kind associated with this Agreement.
5. Be responsible for all aspects of constructing, owning, operating, and maintaining the Range using the City's own funding sources to do so. The Range must be properly operated and maintained for general public use, and it should appear attractive and inviting to the public. Proper sanitation and sanitary facilities should be maintained in accordance with applicable health standards. Buildings, roads, and other improvements should be kept in reasonable repair throughout their useful life to prevent undue deterioration and to encourage public use. **The Range and all improvements shall be constructed, owned, operated, and maintained in a manner that reasonably prevents shooting and depositing lead into or over water, wetlands, or property outside the shot-fall zone.**
6. Prior to Range operation develop a policy governing usage of the Range for purposes consistent with this Agreement and submit it to the Commission for approval. The City shall notify AGFC in advance of any proposals to use the Range for purposes other than those described within the approved policy and shall not move forward with such proposals until AGFC advises they are consistent with this Agreement.
7. Mitigate long-term significant impacts to soils, ground water, and surface water from lead deposition by, prior to beginning Range operation, implementing and maintaining the Lead Management Plan, attached to the Subgrant Agreement as Exhibit "D" and incorporated herein by reference as if set out word for word. The City is responsible for following the plan and regularly completing proper removal and recycling or disposal of recovered lead 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 City shall perform such lead reclamation on the Range in accordance with the Lead Management Plan. As stated on page 38 of the Environmental Assessment for the Construction of a Public Shooting Range, the plan shall include a "5-year lead reclamation interval" at a minimum. The City shall perform lead reclamation in accordance with the Plan at the stated interval or earlier if the amount of lead accumulated may compromise the integrity of the catch system at the base of the shot curtain or no longer be adequately contained to minimize the fate and transport of lead in the hydric system on the proposed site. Additionally, the City shall perform semi-annual monitoring of the soil pH level in all shotfall areas (skeet, trap, pistol, and rifle) and take such action as is needed (e.g. apply lime) to maintain the appropriate soil pH value for shooting ranges (between 6.5 and 8.5) to minimize the fate and transport of lead in the hydric system on the proposed site.

8. Complete Range construction by June 30, 2020, and begin operation within thirty (30) days thereafter. In the event the City fails to do so, the City shall immediately upon demand reimburse the Commission one hundred percent (100%) of the AGFC Grant Funds.
9. Provide, install, and permanently display, maintain, and replace as necessary a readily visible sign at the main entrance to the completed Range acknowledging the Range was partially funded by the Commission and the Federal Aid in Wildlife Restoration Program created through the Pittman-Robertson Act. This sign must display the program symbol for the Federal Aid in Wildlife Restoration Program. The program symbol should also be displayed at other appropriate on-site locations and in literature pertaining to the Range. The Commission will assist the City with the design of the signage and provide the program symbol and Wildlife Restoration Program signs. The program symbol may not be altered.
10. 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 City 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.”
11. Keep the Range continuously open for public use, except for reasonable closure, during the 25-year anticipated useful life of the improvements and term of this Agreement for free or for a reasonable fee to be set in consultation with AGFC. The 25-year period shall begin on the date that AGFC provides the City with a certificate of closure evidencing that the City has satisfactorily completed the Project. The City shall keep the Range open to the general public no less than five (5) full days (at least 8 hours per day) per week.
12. Ensure that any income generated from the Range (e.g., use fees) is expended only for the maintenance and operation of the Range and is reported annually to AGFC (using the form attached hereto as Exhibit “B”) within sixty (60) days of the end of the City’s fiscal year. The report must state the number of users, fees collected, and how the revenue from fees were used. All records pertaining to the receipt and expenditure of Range income shall be maintained in accordance with applicable federal and state laws, rules, and regulations. AGFC or any of its authorized representatives shall have access to such records during the required 5-year retention period or as long as the records are retained, whichever is longer.

13. Be responsible for locking the Range buildings and entry gate and otherwise appropriately securing the Range and associated equipment when it is not in use.
14. Be responsible for policing the Range and associated equipment.
15. Be responsible for the ongoing expense and maintenance of city utility service for the Range (i.e. water and sewer).
16. Be responsible for the ongoing expense and maintenance of all necessary electrical service to the Range.
17. Be responsible for the satisfactory maintenance and operation of the Range and all improvements and for adopting regulations and ordinances as necessary to ensure such.
18. Provide all maintenance and repairs necessary to keep the Range in a safe, clean, and good working condition, including, but not limited to, replacement of damaged or missing materials, mowing, trash pickup, and removal of any obstructions from the area.
19. Promptly notify AGFC if the Range is rendered unfit for continued use by an act of God, vandalism, or other cause.
20. Retain total, direct ownership and control over the Range and its operations throughout the 25-year anticipated useful life of the improvements and term of this Agreement, and not, without prior written approval from AGFC, sell, transfer, encumber its title, or otherwise abandon any portion of the Range (abandonment includes, but is not limited to, changing the intended use of the Range or ceasing adequate maintenance or operation of the Range). The 25-year period shall begin on the date that AGFC provides the City with a certificate of closure evidencing that the City has satisfactorily completed the Project.

In the event that the City removes or abandons the Range during the 25-year period without prior approval from AGFC, the City shall be liable to AGFC for AGFC's costs and expenses in enforcing this Agreement plus reimbursement of the AGFC Grant Funds to AGFC on a prorated basis using the formula: $(\text{Remaining Useful Life In Fractional Years} / 25) \times \text{AGFC Grant Funds}$. (For example, if the Range is abandoned 5.5 years—i.e. 5 years and 6 months—into its 25-year useful life, then the calculation would be $(19.5 / 25) \times \text{AGFC Grant Funds}$.) The City shall immediately pay AGFC said amount upon demand. The parties acknowledge that (i) it would be impractical to fix the actual damages suffered by AGFC as a result of the City's failure to perform as required hereunder; and (ii) the amount of the liquidated damages represents a fair and reasonable compensation to AGFC for such default.

21. Be responsible for scheduling usage of the Range by the public and monitoring usage to ensure it is appropriate and safe.

22. Require all range employees, shooters, and spectators to wear approved hearing and eye protection at all times when on or within 50 feet of the firing line and post signs accordingly.
23. Provide AGFC the option to use the Range for at least five (5) days per calendar year for events or programs, including, but not limited to, AYSSP, Hunter Education, Becoming an Outdoor Woman, and other educational programs. In addition, the City shall afford preferential use of the Range to Hunter Education classes conducted by certified Hunter Education Instructors and to AYSSP training classes and official AYSSP team practices conducted by certified AYSSP coaches. All use in this paragraph shall be at no cost to AGFC (i.e., no facility charge), except that the City may charge AGFC a fee per shooting round. Such charge shall not exceed Fifty Percent (50%) of the normal advertised rate for the general public [example: if one round of shooting would cost a member of the public Five Dollars (\$5.00), then the City may charge AGFC no more than Two Dollars and 50/100 (\$2.50) per round]. Charges for use of the Range for AYSSP training classes and official team practices shall not exceed Fifty Percent (50%) of the normal advertised rate for the general public.
24. Ensure that the primary purpose and predominant use of the Range is for recreational shooting by the general public. The City shall schedule any other events or usage (including, without limitation, usage for law enforcement purposes) at the Range in a manner that does not interfere with or frustrate (i) the primary purpose and predominant use of the Range; (ii) the AGFC's option to use the Range; and (iii) the availability of the Range for Hunter Education classes, AYSSP training classes, and official AYSSP team practices.
25. Supervise recreational activities on and adjacent to the Range at its own risk, and further agree that AGFC shall have no liability for any damages or claims asserted by the City or third parties, including, but not limited to, claims for personal injury, death, or property loss.
26. Implement and maintain all mitigation measures described in the Range Plans and Specifications, Lead Management Plan, 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, attached to the Subgrant Agreement as Exhibits "B," "D," "G," and "H," respectively, and incorporated herein by reference as if set out word for word. Specifically, but without limitation, the City shall install and maintain (1) 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 and (2) 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. Additionally, the City shall ensure that all earthen backstops on the Range are constructed and maintained using soil having the appropriate pH value for shooting ranges (between 6.5 and 8.5), thereby limiting the fate and transport of lead in the hydric system on the proposed site.

27. Promptly notify AGFC of any audit, inspection, or other internal or external compliance check that discloses material noncompliance or reportable conditions specifically related to the Range.
28. Avoid taking or permitting an employee or official to take any action that might result in, or create the appearance of, using an 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.
29. Provide coordination for a public dedication of the completed Range.
30. Place signs at the Range site and include in all publicly distributed Range literature, regulations, brochures, and other handouts or flyers apprising the public of the availability or usage of the Range, the following statement:

“This facility was funded in part by the Federal Aid in Wildlife Restoration Program – Basic Hunter Education and Safety Program (Grant #AR W-F14AF01316) of the U.S. Fish and Wildlife Service through an agreement with the Arkansas Game and Fish Commission. Under Title VI of the 1964 Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, Title II of the American with Disabilities Act of 1990, the Age Discrimination Act of 1975, and Title IX of the Education Amendments of 1972, discrimination is prohibited on the basis of race, color, national origin, age sex or disability. If you believe that you have been discriminated against in any program, activity, or facility, or if you need more information, please write to:

Chief of Human Resources
Arkansas Game and Fish Commission
2 Natural Resources Drive
Little Rock, AR 72205

-or-

The Civil Rights Coordinator for Public Access
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive,
Mail Stop: WSFR-4020
Arlington, VA 22203”

The City agrees to cooperate with civil rights reviews conducted by the U.S. Department of Interior, Fish and Wildlife Service and comply with findings requiring resolution. |

31. 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 City, 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.

32. To the extent permitted by Arkansas law, 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 City's activities or performance under this Agreement or the use, construction, maintenance, and operation of the Range. Furthermore, notwithstanding the foregoing, the City 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.

II. Term

This Agreement shall become effective [as soon as signed by both parties] and shall remain in force until 11:59 p.m. U.S. Central Time on [June 30, 2045], unless terminated earlier in accordance with its terms herein.

III. Termination

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. AGFC shall also have the immediate right to terminate this Agreement if: (1) it exercises its right to terminate the federal Subgrant Agreement as provided therein; (2) the City fails to complete construction of the Range by 11:59 p.m. U.S. Central Time on June 30, 2020, and begin operation within thirty (30) days thereafter; (3) at any time after completion, the Range is unsuitable, unfit, or unsafe for its intended uses as expressed herein, and the City fails to correct the problem(s) within a reasonable time after notification from AGFC; and/or, (4) the Range becomes the subject of a lawsuit successful in permanently enjoining its continued operation as a sport shooting facility.

IV. 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.

V. Notices

Any notices required hereunder shall be in writing addressed as follows:

To City:

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

To AGFC:

Jeff Crow, Director
Arkansas Game and Fish Commission
2 Natural Resources Dr.
Little Rock, AR 72205

With copy to:

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

VI. Miscellaneous

- A. 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.
- B. It is the intent of the parties that Arkansas Code Ann. §§ 18-11-304 through 18-11-306 shall be applicable to the fullest extent of the law so that AGFC and the City shall not be liable or responsible in any manner for any personal injury, whether resulting in death or not, nor for any property loss or damage, sustained or alleged to have been sustained by any person or persons whomsoever, whether such person or persons shall be on the Range with the permission or at the sufferance of the City or AGFC.
- C. It is the intent of the parties that Arkansas Code Ann. § 16-105-502 shall be applicable to the fullest extent of the law so that AGFC and the City shall not be subject to civil liability or criminal prosecution for noise or noise pollution resulting from the operation or use of the Range.
- D. The parties shall comply with all applicable federal and state laws and regulations in connection with the respective activities of each pursuant to this Agreement including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200); the Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts (50 CFR Part 80); the Clean Water Act of 1977 (33 U.S.C. §§ 1251 *et seq.*), Section 116 of the National Historic Preservation Act of 1966 (16 U.S.C. 470); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1534); Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation (Americans with Disabilities) Act of 1973 (29

U.S.C. 795); 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 the National Environmental Policy Act of 1969 (942 U.S.C. 4321-4347). During the performance of this Agreement, each party agrees not to discriminate in its programs, employment practices (see Executive Order 11246, as amended), contracts, or subcontracts with regard to race, color, sex, age, religion, national origin or disability. Further, the parties agree that no individual will be turned away or otherwise denied access to or benefit from any program or activity that is directly associated with the Range on the basis of race, color, national origin, age, and sex, or disability. The City shall incorporate, or cause to be incorporated, into all contracts and subcontracts the preceding nondiscrimination language.

- E. The officials executing this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of the City and the Commission, respectively, and that the terms and provisions hereof constitute valid and enforceable obligations of each.
- F. This Agreement shall be interpreted and construed in accordance with 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.
- G. 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.

VII. Exhibit List

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

- A. Exhibit "A" – Boundary Survey and Instruments of Conveyance evidencing the City's fee title ownership of the proposed site of the Range with right of public access to and from a public road.
- B. Exhibit "B" – Annual Range Income Report Form.

VIII. Entire Agreement and Order of Precedence

- A. This Memorandum of Agreement and the above-referenced federal Subgrant 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:
 - a. **Prior to completion of Range construction:** (1) the body of the 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 this 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.

b. **Following completion of Range Construction:** (1) the body of this 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 the federal Subgrant Agreement 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 City without such a determination shall be at its own risk and expense.

IX. 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 to safeguard subject safety and continuity of treatment, and to comply with all applicable laws, rules, and regulations.

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]