

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

CC: _____
Amend No. _____

Date Prepared: July 20, 2010

Council Meeting Date: August 17, 2010

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, Deputy City Manager 

FROM: J.P. de la Montaigne, Community Services Director 

SUBJECT: Approve an Intergovernmental Agreement with Arizona Game & Fish Commission

RECOMMENDATION:

Discussion and possible action to approve a four-year Intergovernmental Agreement with the State of Arizona, Game & Fish Department that maintains Rio Vista Community Park as a facility in the State of Arizona Urban Fishing Program. This four year agreement will terminate on June 30th, 2014.

SUMMARY:

City Council is being requested to approve and continue the agreement with Arizona Game & Fish, thus allowing Rio Vista Community Park Pond to maintain its partnership in the Urban Fishing Program. This will allow the Game & Fish Department to promote and stock Rio Vista Pond, provide professional administrative services, enforce urban fishing rules and regulations, and monitor water quality to ensure the highest quality-fishing environment to City of Peoria and State of Arizona citizens. Promoting the program will be a statewide Game & Fish Department effort that will involve internal publications and media, which includes radio, television, and newspaper. In addition to this there will be public Sports Fishing Education clinics held regularly at Rio Vista Pond.

The pond will be stocked with catchable rainbow trout during the period from November through March and channel catfish from March through November. Catfish stocking will cease from July 15 through September 15 due to heat stress factors. Stockings will be made approximately every two weeks; however, adjustments to the schedule may be required due to climatic conditions, fish availability and condition, and/or water quality.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

Additionally sunfish will be stocked twice annually, once each in spring and late fall. Other approved fish species will be stocked as necessary to establish a resident fish population, augment existing fish populations, maintain a balanced fishery, and/or improve angler success rates.

FISCAL NOTE: Throughout the duration of the four-year contract, the City will be required to submit payments equivalent to \$12,320.00 over the term of this agreement. The costs have been accounted for and budgeted in Rio Vista's operating budget, Regulatory Account #: 1000-1531-520030. The payments will be made by the end of each fiscal year: by July 31st of FY 2010-2011 & 2011-2012 an amount of \$3,000.00 and by July 31st of FY 2012-2013 & FY 2013-2014 an amount of \$3,160.00.

ATTACHMENTS: Intergovernmental Agreement

CONTACT: Todd Wuellner, Sports Complex Supervisor at Rio Vista (623) 773-8605

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE
ARIZONA GAME AND FISH COMMISSION
AND
THE CITY OF PEORIA

Pursuant to A.R.S. § 11-952 *et. seq.*, this Intergovernmental Agreement is made this ____ day of _____, 2010, by and through the Arizona Game and Fish Commission (“Commission”), and the City of Peoria, an Arizona municipal corporation (“City”). The terms “Department” and “Director” in this Agreement hereinafter refer to the Arizona Game and Fish Department and its Director, acting as administrative agent for the Commission.

WHEREAS, the Commission has statewide responsibility for the management of wildlife, including fish, and the City owns certain park lands, including artificial lakes which it maintains for public use as recreation areas; and,

WHEREAS, both entities desire to provide urban sport fishing recreational opportunity to the extent such a program is found practical; and,

WHEREAS, the Commission has authority under A.R.S. § 17-231(B)(7) to make agreements with other entities for the operation of wildlife facilities and the conduct of related management studies, and the City has authority under A.R.S. § 9-276, to establish, regulate the use, open, etc. parks and has an established Parks and Recreation Department; and,

WHEREAS, the Department acts under the authority of the Commission;

NOW THEREFORE, the Parties agree to conduct an Urban Fishing Program, as follows:

AGREEMENT:

The Commission agrees that the Department Shall:

1. Conduct an information and education program to inform the public of the purpose and intent of the Urban Fishing Program. This program will include coverage in Department publications and outlets as well as the media (radio, television, newspapers) to ensure statewide coverage. This program also will include conducting Sport Fishing Education programs (fishing clinics) for the general public and requesting groups in cooperation with the City. Specific scheduling information about Department sanctioned programs will be provided to the City as soon as possible.
2. Adopt special regulations pertaining to Urban Fishing that will require an Urban Fishing License and bag and possession limits specific to designated Urban Fishing waters.

3. Print and issue Urban Fishing Licenses to Department-authorized license dealers in the local area and statewide. Licenses will also be available from Department offices.
4. Annually stock Rio Vista Pond with catchable rainbow trout from November through March and channel catfish from March through November. Catfish stocking will cease from July 5 through September 15 due to heat stress factors. Trout and catfish stockings will be made approximately every two weeks; however, adjustments to the schedule may be required due to climatic conditions, fish availability and condition, or lake water quality conditions.

Stock sunfish twice annually; once each in spring and late fall. Other approved fish species will be stocked as necessary to: 1) establish a resident fish population, 2) augment existing fish populations, 3) maintain a balanced fishery, or 4) improve angler success rates.

5. Monitor basic water quality and biological indicators as needed to determine if lake conditions are suitable for fish stockings. Provide periodic lake assessment reports to the park manager. Notify the City by a phone call to park management staff of any public health or safety concerns found by the Department.
6. For each participating lake, design and provide one or more Fishing Information Stations (kiosks with bulletin board) so that current Urban Fishing Program information may be posted for the public. Design and provide Urban Fishing Program information and regulation signs, and replacements as needed, for all primary access points around each participating lake.
7. In cooperation with the City, conduct periodic angler surveys to ascertain angler effort and harvest, angler satisfaction, and relative success of the program.
8. Enforce all Commission rules and regulations and Arizona Revised Statutes, Title 17 (Game and Fish laws).
9. Provide advice, technical assistance, and guidelines on lake and fishery management to the City.
10. Establish an account with the State Treasurer to utilize funds paid to the Department by the City for operation of this program.

The City of Peoria Shall:

1. Conduct an information program to inform park users of the Urban Fishing Program and provide "Open to the Public" Sport Fishing Education programs at Rio Vista Pond. Install and maintain a Department-provided Fishing Information

Station (kiosk with bulletin board) at the lake to post current Urban Fishing Program information for the public. Install and maintain as needed, Department-provided Urban Fishing Program information and regulation signs at all primary access points around the lake. Make information on the Urban Fishing Program available to the public at park facilities and other outlets.

2. Pay to the Department the sum of \$12,320 over the four year term of this Agreement in accordance with the following schedule: By July 31 of Fiscal Years 2010-11 and 2011-12, pay to the Department the sum of three thousand dollars (\$3,000) each year to defray cost of program operations, including costs for fish required hereunder. Thereafter, by July 31 of Fiscal Years 2012-13 and 2013-14, pay to the Department the sum of three thousand one hundred and sixty dollars (\$3,160) each year to defray cost of program operations, including costs for fish required hereunder. Payments made to the Department may be leveraged to obtain federal grant funding or other grant funding opportunities. If this opportunity arises, the City will be notified in writing by the Department, and it will be necessary to verify that all or a portion of the municipal fees do not originate from federal sources.
3. Promptly notify the Department of anticipated and emergency management measures that may affect the management and operations of the Urban Fishing Program. This may include lake and landscape construction or repairs, water supply or aeration disruptions, and other activities or occurrences that may affect public health, safety, and access to fishing and stocking activities.
4. With assistance from the Department, develop and implement a lake management plan for the lake that includes operation and maintenance of the lake, the sport fishery, and facilities and accommodations for anglers.
5. Monitor and maintain the lake and water quality in a manner consistent with all other requirements and regulations upon the City. Regularly remove trash and debris from the lake. Actively control nuisance aquatic vegetation, and excessive or harmful algae blooms. Discourage excessive populations of domestic waterfowl and remove as necessary. Monitor the lake for fish kills and report incidences promptly to the Department by phone. For lakes with aeration systems, maintain a fully operational system to support good water quality. Manage and integrate landscape activities to be compatible with the maintenance of good lake water quality.
6. Enforce State, City and Park codes, rules, regulations and laws. Assist the Department in the enforcement of laws by reporting violations, or suspected violations.
7. Provide and maintain angler access to shoreline areas at the lake and provide suitable shoreline accommodations for angler use year round.

8. Provide access to Rio Vista Pond so that Sport Fishing Education contractors, Department personnel, and volunteer instructors may conduct Sport Fishing Education programs at no charge.
9. Provide suitable park and lake access to allow for the yearlong stocking of fish using large, heavy vehicles by the Department and their fish contractors at Rio Vista Pond.

The Parties Mutually Agree To:

1. Work in harmony for the common purpose of managing an Urban Fishing Program. Encourage a united and professional approach by personnel of both Parties in seeking solutions to problems and challenges that may arise in fish and angler management programs.
2. Meet annually at the supervisory level to discuss issues, operations and maintenance, planning, budgeting, and other activities relating to park management and the Urban Fishing Program. To review accomplishments and to develop and prioritize activities for the coming year, joint meetings will be held as necessary to foster close cooperation on Agreement implementation and Urban Fishing Program operations.
3. Cooperate and exchange biological, management and other information useful in the effective operation of an Urban Fishing Program.
4. Seek to obtain funding opportunities for projects that: 1) create, enhance, or restore fish habitat, water quality, or angler access; or 2) increase or enhance recreational angling opportunity. These funds may be transferred directly, or through reimbursement, to the City. Funding availability through the Department is uncertain, but may include support through the Sport Fish Restoration Federal Assistance Program, State Wildlife Grant Program, Arizona Heritage Fund, or other sources. To provide for the future transfer of special funds, the Parties agree to enter into mutually acceptable collection agreements. Future agreements will be developed within the framework of this Intergovernmental Agreement, and applicable grant and agreement requirements are to be approved by agency directors.

General Provisions:

1. Effective Date and Duration. This Agreement shall not be in effect until signed by all Parties hereto. Unless terminated earlier by operation of the terms of this Agreement, or by agreement of the Parties in writing, this four (4) year Agreement will terminate on June 30, 2014.
2. Termination Generally. Either Party may terminate this Agreement upon sixty

(60) days' written notice to the other Party. Upon termination, all work performed pursuant to this Agreement will cease, and all unencumbered monies deposited for use by the Department will be returned to the City.

3. Notices. All written notices concerning this Agreement shall be delivered in person or sent by certified mail, return receipt requested, or first class mail, postage prepaid, to the Parties as follows:
 - A. To the City of Peoria:
Mr. Todd Wuellner
Peoria Sports Complex
16101 N. 83rd Avenue
Peoria, AZ 85382
 - B. To the Department:
Mr. Kirk Young
Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, Arizona 85086
4. Non-discrimination. In carrying out the terms of this Agreement, the Parties agree to comply with Executive Order 99-4 prohibiting discrimination in employment, the provisions of which are incorporated herein by reference.
5. Audit. Pursuant to A.R.S. § 35-214 all books, accounts, reports, files, electronic data, and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona for five (5) years after completion of this Agreement.
6. Arbitration. To the extent required pursuant to A.R.S. § 12-1518, and any successor statutes, the Parties agree to use arbitration, after exhausting all applicable administrative remedies, to resolve any dispute arising under this Agreement, where not in conflict with Federal Law, with each Party to bear its own attorney's fees and costs.
7. Termination for Conflict of Interest. This Agreement is subject to termination pursuant to A.R.S. § 38-511.
8. Termination for Non-Availability of Funds. Every obligation of the Parties under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds for the continuance of this Agreement are not allocated or are not available, this Agreement shall terminate automatically on the date of expiration of funding. In the event of such termination, the Parties shall incur no further obligation or liability under this Agreement other than for payment of services rendered prior to the expiration of funding.

9. Other Agreements. This Agreement in no way restricts either Party from participating in similar activities with other public or private agencies, organizations, or individuals.
10. Compliance with Applicable Law. All work performed pursuant to this Agreement shall be in compliance with all applicable state and federal laws and regulations.
11. Severability. In the event that any provision of this Agreement or portion thereof is held invalid, illegal, or unenforceable, such provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.
12. Illegal Immigration. The Parties agree to comply with Executive Order 2005-30, "Ensuring Compliance with Federal Immigration Laws by State Employers and Contractors," the provisions of which are hereby incorporated by reference.
13. Employer-Employee Relationship. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between City and any State employee, or between State and any City employee. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other Party's obligation to withhold Social Security and income taxes for any of its employees.
14. Indemnity. Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees, hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
15. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and correctly sets forth the rights, duties and obligations of each to the other as of its date. All prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. The provisions hereof may be abrogated, modified, rescinded, or amended in whole or in part only by mutual written consent executed by the Parties.

CITY OF PEORIA, an Arizona municipal corporation

By: _____ Date _____
Bob Barrett, Mayor

ATTEST: _____
Mary Jo Waddell, City Clerk

APPROVAL OF THE PEORIA CITY ATTORNEY:

I have reviewed the above-referenced Intergovernmental Agreement between the City of Peoria, Arizona and the Arizona Game and Fish Commission and declare this Agreement to be in proper form and within the power and authority granted to the City of Peoria under the laws of the State of Arizona.

Dated this _____ day of _____, 2010 _____
Stephen M. Kemp, Peoria City Attorney

ARIZONA GAME AND FISH COMMISSION

By: _____ Date _____
Larry D. Voyles
Secretary to the Commission and
Director, Arizona Game and Fish Department

APPROVAL OF THE ARIZONA GAME AND FISH COMMISSION ATTORNEY:

I have reviewed the above-referenced Intergovernmental Agreement between the City of Peoria, Arizona and the Arizona Game and Fish Commission and declare this Agreement to be in proper form and within the power and authority granted to the Arizona Game and Fish Commission under the laws of the State of Arizona.

Dated this _____ day of _____, 2010 _____
Jim Odenkirk, Attorney
Arizona Game and Fish Commission