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MEMORANDUM **Community Services Department - Memo No. CS08-090**

DATE: OCTOBER 29, 2007

TO: MAYOR AND CITY COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
 RICH DLUGAS, ASSISTANT CITY MANAGER *RD*
 MARK M. EYNATTEN, COMMUNITY SERVICES DIRECTOR *ME*

FROM: DAVID E. McDOWELL, ASSISTANT COMMUNITY SERVICES
 DIRECTOR *DEM*

SUBJECT: RESOLUTION No. 4140 AUTHORIZING AMENDMENT No.1 TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA GAME AND FISH COMMISSION AND THE CITY OF CHANDLER TO EXPAND THE URBAN FISHING PROGRAM TO INCLUDE THE ADDITION OF VETERANS OASIS LAKE AND MODIFY THE FUNDING ACCORDINGLY.

RECOMMENDATION: Adopt Resolution No. 4140 amending the Intergovernmental Agreement between the Arizona Game and Fish Commission and the City of Chandler to expand the Urban Fishing Program to include Desert Breeze Park Lake and Veterans Oasis Park Lake and authorize the Mayor to sign the documents.

BACKGROUND & DISCUSSION: The Arizona Game and Fish Commission and the City of Chandler entered into a four year agreement in August of 2006 to provide an Urban Fishing Program at Desert Breeze Lake (Attachment A). The City and the Arizona Game and Fish Department have worked together to provide urban fishing opportunities at the Desert Breeze Park Lake since 1990. The purpose of Amendment No 1 (Attachment B) is to add the newly constructed Veterans Oasis Lake to the urban fishing program. This lake will provide a second accessible, affordable fishing opportunity for residents. Under the terms of this agreement and the amendment, the Arizona Game and Fish Department will stock Desert Breeze Lake and Veterans Oasis Lake with trout in winter months and catfish in warm weather. They will provide an initial fish stocking at Veterans Oasis Lake to establish and maintain a resident fish population and healthy lake environment. The Arizona Game and Fish Department will also monitor basic water quality, provide periodic lake assessment reports and assist the City with lake and fish management.

FINANCIAL IMPLICATIONS: The participation fee paid by each city is based upon the size of the lake. Annual costs for Desert Breeze for the 2006-07 fiscal year were \$3,440. The annual cost for fiscal years 2008 through 2009-10 for both lakes will be \$8,460 per year. The total costs over the four-year term of this agreement will be \$29,970.

PROPOSED MOTION: Move to adopt Resolution No. 4140 and authorize the Mayor to sign Amendment No. 1 to the Intergovernmental Agreement between the Arizona Game and Fish Commission and the City of Chandler to provide an Urban Fishing Program at Desert Breeze Park Lake and Veterans Oasis Park Lake.

RESOLUTION NO. 4140

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER ARIZONA APPROVING AMENDMENT No. 1 TO THE AGREEMENT WITH THE ARIZONA GAME AND FISH COMMISSION TO PROVIDE AN URBAN FISHING PROGRAM AT DESERT BREEZE AND VETERANS OASIS PARK LAKES

WHEREAS, the City of Chandler desires to participate with the Arizona Game and Fish Department to conduct an Urban Fishing Program at the Desert Breeze and Veterans Oasis Park Lakes,

WHEREAS, the Arizona Game and Fish Commission has statewide responsibility for wildlife management, including fish, and the City of Chandler 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 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. § 9-240(B)(9) and A.R.S. § 4-494 to provide recreation through a Parks and Recreation Department;

WHEREAS, the parties agree to conduct an urban fishing program according to the terms of the agreement,

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona, hereby approves Amendment No. 1 to the Intergovernmental Agreement between the City of Chandler and the Arizona Game and Fish Commission and authorizes the Mayor to sign the agreement.

PASSED AND ADOPTED BY THE City Council of the City of Chandler, Arizona, this _____ day of _____, 2007.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM

CITY ATTORNEY



Amendment No. 1
To
Intergovernmental Agreement KR06-0975-EQS
Between
The Arizona Game and Fish Commission and The City of Chandler

The purpose of this Amendment is to expand the Urban Fishing Program to include the addition of Veterans Oasis Park Lake and modify funding accordingly.

Whereas, The City of Chandler and the Arizona Game and Fish Commission entered into an Intergovernmental Agreement dated September 1, 2006 for the purpose of conducting an Urban Fishing Program, and

Whereas, both parties desire to provide an urban sport fishing recreational opportunity to the extent such a program is found practical, and

Whereas, an expansion of the Urban Fishing Program is desired to include the new Veterans Oasis Park Lake;

Therefore: The Intergovernmental Agreement is further modified as follows:

The Commission Agrees That the Department Shall:

4. Annually stock Desert Breeze Lake *and Veterans Oasis Lake* with catchable rainbow trout 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. 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 hybrid sunfish twice annually, once each in late 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.

The City of Chandler Agrees to:

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 Desert Breeze Lake *and Veterans Oasis Lake*. 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 \$29,970 over the term of this Agreement in accordance with the following schedule: By August 31 of Fiscal Year 2006-7, pay to the Department the sum of three thousand four hundred and forty dollars (\$3,440) to defray cost of program operations, including costs for fish required hereunder. *By August 31 of Fiscal-Year 2007-8, pay to the Department the sum of three thousand seven hundred and sixty dollars (\$3,760). By December 31, 2007 pay to the Department the sum of five thousand, eight hundred and fifty dollars (\$5,850) for the period from January 1, 2008 to June 30, 2008. This total includes two thousand, three hundred and fifty dollars (\$2,350) to defray cost of program operations, including costs for fish required hereunder, and three thousand five hundred dollars (\$3,500) for a one-time program start-up fee as partial offset for an initial lake stocking of sunfish and bass.* Thereafter, by July 31 of Fiscal Years (2008-9, and 2009-10), pay to the Department the sum of eight thousand four hundred and sixty dollars (\$8,460) 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.

<u>Fiscal Year</u>	<u>Payment Schedule</u>	<u>Payment Amount</u>
2006 – 2007	August 31, 2006	\$ 3,440
2007 – 2008	August 31, 2007	\$ 3,760
2007 – 2008	December 31, 2007	\$ 5,850
2008 – 2009	July 31, 2008	\$ 8,460
2009 – 2010	July 31, 2009	\$ 8,460

8. Provide access to Desert Breeze Lake and Veterans Oasis Lake 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 Desert Breeze Lake and Veterans Oasis Lake.

General Provisions:

2b. To the Department:
Mr. Eric Swanson
 Arizona Game and Fish Department
 5000 W. Carefree Highway
 Phoenix, Arizona 85086

All other Terms and Conditions will remain the same.

CITY OF CHANDLER

**ARIZONA GAME AND FISH
COMMISSION**

By: _____
Boyd Dunn, Mayor

By: _____
Duane L. Shrouf
Secretary to the Commission and Director,
Arizona Game and Fish Department

ATTEST: _____
City Clerk

Approved As To Form:

City Attorney


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

Agreement made this ____ day of _____, 2006, pursuant to A.R.S. § 11-952 *et. seq.*, between the Arizona Game and Fish Commission (“Commission”), and the City of Chandler (“City”). The terms “Department” and “Director” hereinafter refer to the Arizona Game and Fish Department and it’s Director, acting as administrative agent for the Commission.

WHEREAS, the Commission has statewide responsibility for wildlife management, 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. §§ 9-240(B)(9) and 4-494 to provide recreation through a 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 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 and online at the Department's web site.
4. Annually stock Desert Breeze Lake with catchable rainbow trout 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. 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 hybrid sunfish twice annually, once each in late 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 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 Desert Breeze Lake. 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 \$14,720 over the term of this Agreement in accordance with the following schedule: By August 31 of Fiscal Year 2006-7, pay to the Department the sum of three thousand four hundred and forty dollars (\$3,440) to defray cost of program operations, including costs for fish required hereunder. Thereafter, by July 31 of Fiscal Years (2007-8, 2008-9, and 2009-10), pay to the Department the sum of three thousand seven hundred and sixty dollars (\$3,760) 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 Desert Breeze Lake 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 Desert Breeze Lake.

Both Parties 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 agencies 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 Agreement, and applicable grant and agreement requirements are to be approved by agency directors.

General Provisions:

1. Either party may terminate this Agreement upon sixty (60) days' written notice to the other party. Upon termination, all work will cease and all unencumbered monies deposited for use by the Department will be returned to the City.
2. All written communication concerning this Agreement shall be delivered in person or sent by registered, certified, or first class mail, postage prepaid, to the persons specified as follows:

- a. To the City of Chandler
Mr. Dave McDowell
Chandler Parks and Recreation Department
Mall Stop 501, P.O. Box 4008
Chandler, Arizona 85244-4008
 - b. To the Department:
Mr. Lawrence M. Riley
Arizona Game and Fish Department
2221 West Greenway Road
Phoenix, Arizona 85023
3. Non-discrimination. In carrying out the terms of this Agreement, the parties agree to comply with Executive Orders 99-4 prohibiting discrimination in employment, the provisions of which are incorporated herein by reference.
 4. Pursuant to A.R.S. § 35-214 all books, accounts, reports, files, electronic data, and other records relating to this contract shall be subject at all reasonable times to inspection and audit by the State for five years after completion of the contract.
 5. This Agreement shall not be in effect until signed by all parties hereto and filed with the Office of the Arizona Secretary of State. Unless earlier terminated by operation of the terms of this Agreement, or by agreement of the parties in writing, this Agreement will terminate on June 30, 2010.
 6. 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 out of this Agreement, where not in conflict with Federal Law, with each party to pay its own attorney's fees and costs.
 7. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.
 8. 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.
 9. 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.

10. 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.
11. This Agreement and all obligations upon State or City arising therefrom shall be subject to any limitation imposed by budget law. The parties represent that they have within their respective budgets sufficient funds to discharge the obligations and duties assumed under this Agreement. If for any reason the State or the Chandler City Council do not appropriate sufficient monies for the purpose of maintaining this Agreement, this Agreement shall be deemed to terminate by operation of law on the date of expiration of funding. In the event of such cancellation, State and City shall have no further obligation to the other party other than for payment for services rendered prior to cancellation.
12. 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 written instrument executed by the parties and recorded with the Arizona Secretary of State.
13. In the event that any provision, or any portion of any provision, of this Agreement, or the application thereof, is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall have no effect on the remaining portion of any provision or any other provision, or their application, which can be given effect without the invalid provision or application and to this end the provisions of this Agreement shall be deemed to be severable.

CITY OF CHANDLER

By: _____
Mayor Date

ATTEST: _____
City Clerk

APPROVAL OF THE CHANDLER CITY ATTORNEY:

I have reviewed the above-referenced Intergovernmental Agreement between the City of Chandler, 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 Chandler under the laws of the State of Arizona.

Dated this _____ day of _____, 2006 _____
Chandler City Attorney

ARIZONA GAME AND FISH COMMISSION

By: _____
Secretary to the Commission and
Director, Game and Fish Department Date