

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 16, 2013 AGENDA**

Subject:	Type:	Submitted By:
THOMPSON CREEK, PHASE VI, PART 2 WATERSHED RESTORATION NET GRANT CONTRACT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ASSISTANT PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared authorizing the execution of a 2013 Grant Contract with the Nebraska Environmental Trust (NET) for funding from their Environmental Trust Fund for activities associated with Thompson Creek Watershed Management. This is identified in the CIP as Phase VI, Part 2 of the Thompson Creek project.

FISCAL IMPACT

The FY 12/13 Capital Improvement Program (CIP) provides funding for this project.

RECOMMENDATION

Approval subject to review by the City Attorney.

BACKGROUND

The City submitted grant applications to the Nebraska Department of Environmental Quality (NDEQ) and the Nebraska Environmental Trust (NET) in the fall of 2012 for funding of the Thompson Creek Watershed Management Project. Those applications were required in order to seek funding from the PMRNRD at the 60% level in their Urban Drainageway Program. A grant application was made to the PMRNRD in early March 2013 and is currently pending review and approval.

A grant from the NDEQ using EPA Section 319 funds has been approved for \$525,000. subject to completion of documentation and a grant from the Papio-Missouri River Natural Resources District is pending. If subsequent years of the grant request to the NET are approved, then funding of the City share of the project will need to be considered in the FY 14 and FY 15 budgets.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE NEBRASKA ENVIRONMENTAL TRUST (NET) FOR ACTIVITIES ASSOCIATED WITH THOMPSON CREEK WATERSHED MANAGEMENT FOR THOMPSON CREEK PHASE VI, PART 2 IN LA VISTA.

WHEREAS, the City Council of the City of La Vista has determined that said Thompson Creek improvements are necessary; and

WHEREAS, the FY 2012/13 Capital budget contains funding for this project; and

WHEREAS, the project has been designated as being eligible for a grant from the Nebraska Environmental Trust in the amount of \$525,000.; and

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, authorize the Mayor to enter into an agreement with Nebraska Environmental Trust for a grant for activities associated with Thompson Creek Watershed Management for Thompson Creek Phase VI, Part 2 in La Vista subject to review by the City Administrator and City Attorney.

PASSED AND APPROVED THIS 16TH DAY OF APRIL, 2013

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

NEBRASKA ENVIRONMENTAL TRUST

2013 GRANT CONTRACT

A. PARTIES TO THE CONTRACT

This contract is entered into by and between the Nebraska Environmental Trust (the Trust) and the **La Vista, City of** (the Sponsor).

B. PRIMARY CONSIDERATIONS OF THE CONTRACT

The Sponsor submitted an application, **13-110 – Thompson Creek Watershed Restoration** to the Trust for a grant on or before September 4, 2012. On April 4, 2013, following evaluation of the application and any attachments, the Trust Board approved a grant in the amount of up to **\$525,000** to be awarded as provided by this contract consistent with the Environmental Trust Fund Act of 1992 and subsequent provisions, rules and regulations and pending available funds. The project application and all associated documents are by reference made part of this contract. By entering into this contract, the Sponsor(s) commit to the implementation of the project as described in the application, and subsequent correspondence, documentation and amendments.

At the request of the Trust, a new budget outline will be by the Sponsor. This outline replaces any previous project budget information submitted and is by reference made part of this grant contract.

C. TERM OF THE FUNDING PERIOD AND CONTRACTUAL OBLIGATIONS

The project funding period shall begin with the last date this contract is signed and shall terminate on **June 30, 2014**. Funds not expended within this period shall be immediately forfeited by the Sponsor without action by the Trust. The terms and conditions of this contract shall remain in effect for the useful life of the project and its components, except as otherwise provided.

D. REPORTING OBLIGATIONS OF THE SPONSOR

1. Financial Reports and request for disbursement.

The Sponsor hereby agrees to submit properly documented statements of costs for which grant funds are sought, pursuant to the terms of this contract, for approved grant activities on a form that will be supplied by the Trust. Proper documentation shall be considered to be copies of original invoices containing the name, address and social security number or federal tax identification number of the vendor and an itemized list of services or goods with costs and the date of service or delivery. These statements and reports shall be signed by the project representative of the Sponsor(s).

The Trust will reimburse the Sponsor for these costs following receipt of the statements and reports specified in this section, subject to conditions contained in this section, Section E and elsewhere in this contract.

The Sponsor agrees to file such statements and reports according to the following schedule:

<u>Project Period</u>	<u>Report Due Date</u>
From inception through June 30, 2013	July 31, 2013
From July 1 through September 30, 2013	October 31, 2013
From October 1 through December 31, 2013	January 31, 2014
From January 1 through March 31, 2014	April 30, 2014
From April 1 through June 30, 2014	July 31, 2014

2. Project progress and activity reports.

The Sponsor agrees to provide periodic reports including a narrative description of all project activities, participants, outcomes, variances and deviations from the project application according to the above schedule.

A final report is also due 30 days after the termination of the contract. This report must include a summary of the activities, partners, and results of the project from inception to completion and include all in-kind and matching contributions. This final report must also include quantifying results and statistics about the project's success. The report should include results such as volumes recycled, acres planted, acres restored, linear feet of bank restored, etc.

E. CONDITIONS GOVERNING TRANSFER OF FUNDS

The Trust will transfer the funds specified in this contract to the Sponsor following receipt and audit of required documentation as specified in Section D. The Trust may, at its discretion, reduce the amount of any transfer or withhold payment pending resolution of any dispute regarding any expenditure, activity or statement submitted by the Sponsor.

All funds disbursed to the Sponsor pursuant to this contract shall be disbursed solely for costs necessarily incurred in the execution of the project as described in the application and associated documents, including any amendments thereto which are approved by the Trust.

Any and all interest earned by the grant funds after transfer to the Sponsor are considered a part of the grant and are subject to all requirements and conditions of the grant. Such interest is to be reported on the first report filed by the Sponsor as required in Section D of this contract after such interest is accounted to the Sponsor.

Costs paid, accrued or authorized by the Sponsor prior to the effective date of this contract shall be incurred at the risk of the Sponsor and the Sponsor shall not be entitled to reimbursement without specific Trust approval.

The Trust may suspend financial assistance provided under this contract pending corrective action required of the Sponsor by the Trust or pending a decision to terminate the grant by the Trust as described in Section K of this agreement or under any provisions of Nebraska law.

F. PROJECT MODIFICATION

The Sponsor will promptly report all proposed additions, deletions or modifications of any component of the project, or any changes in the purpose or purposes of the project by submitting to the Trust in writing a request to amend the agreement. The Trust will not be liable for funding any portion of such additions, deletions or modifications until and unless it has affirmed in writing to the Sponsor approval of the amendments proposed. Requests for extensions of the expiration date must be received prior to the expiration date of the contract to be considered. If the extension request puts the project beyond the three year project limit it must be considered by the Trust board. The board will consider whether additional time will allow the project to be completed as stated in the application and/or as previously modified and whether delays in the project timeline are due to circumstances beyond the control of the sponsor. Any funds remaining at the end of the project period will be returned to the Trust.

G. PUBLIC NOTICE OF GRANT AWARD

The Sponsor agrees to provide prominent display of the Trust logo and text acknowledging the use of the grant at any project site impacted by the grant, on major pieces of equipment purchased with grant funds, and in publications referencing the funded project. Language provided by the Trust shall be included in all media releases and other publicity pieces developed by the Sponsor about the funded project.

To the extent requested by the Trust, and its agents, to include the Nebraska Lottery, the Sponsor agrees to: 1) the use of the Sponsor's name, project name and description; 2) documentation of project development activities and successes for use in broadcasts, publications and advertisements; 3) placement of signs provided

by the Trust and the Nebraska Lottery on the project location or otherwise displaying acknowledgment that said project is funded, or partially funded, by the Nebraska Lottery; and 4) coordination with the Trust and the Nebraska Lottery in various events, including announcement of the grant, presentation of signs and displays, and similar events.

H. LICENSES/PERMITS

The Sponsor shall acquire, obtain or receive all state and federal licenses and/or permits required by law prior to initiation of the project. It is the responsibility of the Sponsor to discover and comply with all state, local and federal rules, regulations or laws that pertain to the implementation and completion of the project. The Sponsor shall include copies of all such licenses/permits to the Trust with the activity reports submitted to the Trust office.

I. SITE INSPECTIONS

The Sponsor agrees to promptly submit to all requests for site inspections by any state or federal official acting in the course of his/her duties. The Sponsor agrees to make available all financial records and documents as necessary on request of the Trust or its agents. Financial records, supporting documents and all other records pertinent to this grant shall be retained for a period of three years following notification from the Trust Board that the grant has been officially closed, except the records shall be retained beyond the three-year period if audit findings have not been resolved.

J. TRANSFER/DISPOSAL OF REAL OR PERSONAL PROPERTY

The Sponsor will not sell, lease, transfer, exchange, mortgage or encumber in any manner whatsoever all or any portion of any real (including land acquisitions, easements or improvements) or other property acquired in whole, or in part, by Trust funds without the prior written permission of the Trust, which will not be unreasonably withheld. The Sponsor shall notify the Trust in writing of any proposed sale, lease, transfer, exchange, mortgage or encumbrance at least thirty days in advance and obtain written approval from the Trust. In the event that the Trust does not agree to the sale, lease, transfer, exchange, mortgage or encumbrance of said property, the Sponsor may repay the value of the grant to the Trust and is released from all further obligations. Otherwise repayment will be calculated according to the adopted policies of the Trust board regarding the transfer or sale of Trust funded equipment. The Sponsor will notify the Trust when any equipment purchased in whole or in part with grant funds is no longer usable during the service life of the equipment.

K. TERMINATION OF THE CONTRACT PRIOR TO EXPIRATION DATE

The Sponsor understands and agrees that failure to comply with any of the terms of this contract may result in the revocation or cancellation of Trust approval and funding and/or a demand for repayment of any funds previously paid to the Sponsor by the Trust.

The Trust may terminate the project, in whole or in part, at any time before the expiration date of this contract whenever the Trust determines that the Sponsor has failed to comply with the conditions of the grant. The Executive Director of the Trust will promptly notify the Sponsor in writing of the determination and the reasons for the termination, together with the effective date.

By mutual agreement, the project may be terminated, modified or amended. When both parties agree to terminate the grant, in whole or in part, the parties will agree upon the termination conditions, including the effective date, and in the case of a partial termination, the portion to be terminated. The Sponsor shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

Trust payments to the Sponsor or recoveries by the State of Nebraska under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.

L. LIABILITY

The Sponsor agrees to hold and save the State of Nebraska, the Environmental Trust Board, and their officers, agents and employees free and harmless from any and all claims, demands, damages, losses, costs, expenses or liability due to, or incidental to, either in whole or in part, and whether directly or indirectly, the design, construction, operations, repairs, maintenance, implementation, assistance or failure of the project, or any of its works or facilities.

M. ADDITIONAL TERMS AND CONDITIONS

HISTORIC PRESERVATION:

The Sponsor agrees to undertake at its own expense any action that may be required to determine the presence of cultural resources and to undertake any subsequent measures which may be required to ensure the preservation of such resources which may be discovered. The Sponsor agrees to comply with the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended, where historic structures are determined to exist on any site where Trust Funds are expended.

THREATENED & ENDANGERED SPECIES:

The Sponsor agrees to undertake at its own expense any action that may be required to ensure compliance with the Nongame and Endangered Species Conservation Act is Neb. Rev. Stat. 37-801 to 37-811.

OPERATIONS:

All operation, replacement and maintenance of the project shall be carried out and applied in such a manner so as to accomplish the purposes of the project as set forth in the Sponsor's application and associated materials, including any amendments thereto which have been approved by the Trust, for the useful life of the project.

ENGINEERING:

The Sponsor will provide for and maintain competent and adequate architectural and engineering supervision and inspection at the construction site as appropriate to ensure that the completed work conforms substantially in accordance with the proposed plans and specifications, according to accepted standards and practices.

EQUIPMENT:

The Sponsor will report to the Trust all equipment purchased with full or partial funding on a form to be provided by the Trust. The Sponsor will identify such equipment as purchased with Trust funding in the Sponsor's inventory for the useful life of the equipment.

The Sponsor will obtain at least two (2) bids for any equipment purchased costing \$1,000.00 or more, for which more than one vendor is available. The Sponsor will provide the names of bidders to the Trust at the time a request for reimbursement is submitted. Such bids shall be held in the Sponsor's files for three (3) years.

The Sponsor agrees to purchase and maintain property insurance at its own expense to insure all equipment valued at \$1,000 or more which is purchased in whole or in part with funds received from the Trust. This insurance shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism, and malicious mischief. Such insurance shall be maintained on all such equipment in an amount equal to the replacement value of the equipment for the useful life of the equipment (as defined in the Nebraska Depreciation for personal property used in business tables). The Sponsor shall name the Trust beneficiary of the policy and shall assure that proof of coverage shall be kept current. Evidence of current coverage will be requested annually by the Trust office. Upon request for reimbursement the Sponsor will provide the Trust with the policy of insurance for equipment purchased, in whole or in part, with funds received from the Trust.

REAL ESTATE:

Additional conditions exist beyond the expiration date of this contract. These conditions include continued access to the properties affected by this contract for periodic reviews and visits, annual accounting reports on Trust funded Defense Funds (Easements Only) and proof of annual tax payments. The Trust must also be notified in writing of any plans to sell, lease, transfer, exchange, mortgage or encumber the property. The Sponsor will be required to obtain written Trust approval for any such transaction and negotiate the terms of the transaction with the Trust (which may include partial or whole repayment of the grant). If the Trust determines, at any time prior to or following expiration of this contract, that the Sponsor has failed to comply with the terms and conditions of this contract it may take action to recover Trust contributions to the project. The terms and conditions of this contract shall survive the expiration date of this contract.

Nebraska law shall govern the interpretation and enforcement of this contract. The parties acknowledge that this contract, as outlined in Section B, contains the entire agreement between them, supersedes any prior agreements and conversations, and may not be modified except by written agreement signed by all parties.

NEBRASKA ENVIRONMENTAL TRUST

AUTHORIZED REPRESENTATIVE OF SPONSOR

Gloria J. Erickson

By: _____
Gloria Erickson, Chair

Date: April 4, 2013

Mark A. Brohman

By: _____
Mark A. Brohman, Executive Director

Date: April 4, 2013

By: _____

Printed Name: _____

Title: _____

Date: _____

Federal Tax Identification Number

-OR-

Social Security Number of Individual