

Introduced by \_\_\_\_\_

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Council Bill No. B 96-08

**AN ORDINANCE**

authorizing the City Manager to execute a Land and Water Conservation Fund project agreement with the Missouri Department of Natural Resources relating to construction of the Stephens Lake Park amphitheater; appropriating funds; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a Land and Water Conservation Fund project agreement with the Missouri Department of Natural Resources relating to construction of the Stephens Lake Park amphitheater. The form and content of the agreement shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. The sum of \$20,250.00 is hereby appropriated from the Federal Revenue Account No. 440-0000-461.10-00 C00095 to the Stephens Lake Park Development Account No. 440-8800-548.49-90 C00095.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

CERTIFICATION: I certify there are sufficient funds available in the Federal Revenue Account No. 440-0000-461.10-00 C00095 to cover the above appropriation.

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Director of Finance

**LAND AND WATER CONSERVATION FUND  
PROJECT AGREEMENT  
BETWEEN THE STATE OF MISSOURI  
AND A STATE AGENCY OR POLITICAL SUBDIVISION**

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**Project Sponsor**

**Project Number**

City of Columbia

29-01512

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**Project Title**

Stephens Lake Park - Amphitheater

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**Project Period**

10/30/07 - 12/31/2009

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**Project Scope (Description of Project)**

The city of Columbia will develop an amphitheater.

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**PROJECT COSTS:**

<b>Total Costs</b>	<u>\$45,000.00</u>
<b>Fund Support (not to exceed 50%)</b>	<u>45%</u>
<b>Fund Amount</b>	<u>\$20,250.00</u>
<b>Cost of this Stage</b>	<u>\$45,000.00</u>
<b>Assistance this Stage</b>	<u>\$20,250.00</u>

**ATTACHMENTS:**

The following attachments are hereby incorporated into this agreement:

1. Department of Natural Resources General Terms and Conditions
  2. Project Proposal
  3. Land and Water Conservation Fund Special Terms and Conditions
  4. Land and Water Conservation Fund Manual
  5. Project Boundary Map
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The State of Missouri, represented by the State Liaison Officer, State Inter-Agency Council for Outdoor Recreation and the State Agency or Political Subdivision named above (hereinafter referred to as the Recipient), mutually agree to perform this agreement in accordance with the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), with the provisions and conditions of the Land and Water Conservation Fund Grants Manual, and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances attached hereto and hereby made a part hereof.

The State of Missouri hereby promises, in consideration of the promises made by the Recipient herein, to obligate to the Recipient the amount of money referred to above, and to tender to the Recipient that portion of the obligation which is required to pay Missouri's share of the costs of the above project stage, based upon the above percentage of assistance. The Recipient hereby promises, in consideration of the promises made by the State of Missouri herein, to execute the project stage described above in accordance with the terms of this agreement.

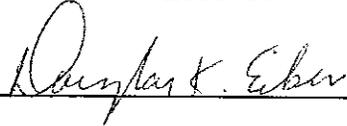
The provisions of this agreement remain in effect for all parties, their successors, interest and assigns.

The date of approval begins 10/30/2007

In witness thereof, the parties hereto have executed this agreement as of the date entered below.

**THE STATE OF MISSOURI**

**STATE AGENCY OR POLITICAL SUBDIVISION**

By: 

By: \_\_\_\_\_  
Signature

Douglas K. Eiken  
Alternate State Liaison Officer  
State Inter-Agency Council  
for Outdoor Recreation

\_\_\_\_\_  
Name

Director, Division of State Parks  
Title

\_\_\_\_\_  
Title

12/3/07  
Date

\_\_\_\_\_  
Date

**DEPARTMENT OF NATURAL RESOURCES**  
**GENERAL TERMS AND CONDITIONS**

I. Statutory Requirements

The Missouri Department of Natural Resources (MDNR) and any Recipient (Subgrantee / Contractor) employed under this agreement shall comply with all applicable federal, state, and local laws and, in particular, any and all applicable Federal laws and regulations cited in this agreement.

Any recipient, in connection with its application for financial assistance, shall include a certification that the Recipient is in compliance with the specific federal and state laws set forth below. Further, the Recipient shall report to the MDNR any instance in which the Recipient is determined by any administrative agency or by any court in connection with any judicial proceeding to be in noncompliance with any of the specific federal or state laws set forth below. Such report shall be submitted within ten (10) working days following such determination. Failure to comply with the reporting requirement may be grounds for termination of this agreement or suspension or debarment of the Recipient in accordance with paragraphs II (H) and (S) of these Terms and Conditions.

A. Statutes related to nondiscrimination:

1. Title VI of the Civil Rights Act of 1964 (Public Law 88-352) which prohibits discrimination on the basis of race, color or national origin;
2. Title VII of the Civil Rights Act of 1964 found at 42 U.S.C. §2000(e) et.seq. which prohibits discrimination on the basis of race, color, religion, national origin, or sex;

3. Title IX of the Education Amendments of 1972, as amended (U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability;
5. Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 621-634), which prohibits discrimination on the basis of age;
6. Drug Abuse Office and Treatment Act of 1972 (Public Law 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
7. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Public Law 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
8. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
9. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et.seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
10. Chapter 213 of the Missouri Revised Statutes which prohibits discrimination on the basis of race, color, religion, national origin, sex, age, and disability;

11. The Americans with Disabilities Act (Public Law 101-336), 42 U.S.C. § 12101 et. seq., relating to nondiscrimination with respect to employment, public services, public accommodations, and telecommunications;
  12. Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made;
  13. The requirements of any other nondiscrimination statute(s) which may apply to the application.
- B. Will comply with environmental standards which may be prescribed pursuant to the following:
1. The Federal Clean Air Act, 42 U.S.C. § 7606, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities.
  2. The Federal Water Pollution Control Act 33 U.S.C. § 1368, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities.
  3. The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et. seq., as amended, particularly as it relates to the assessment of the environmental impact of federally assisted projects.
  4. The National Historic Preservation Act of 1966, 16 U.S.C. § 470 et. seq., as amended, relating to the preservation of historic landmarks.
  5. Earthquakes – Seismic Building and Construction Ordinances, §§ 319.200 – 319.207, RSMo (Cum. Supp. 1990), relating to the

adoption of seismic design and construction ordinances by certain cities, towns, villages and counties.

- C. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 and 4651 et. seq., relating to acquisition of interest in real property or any displacement of persons, businesses, or farm operations.
- D. The Hatch Act, 5 U.S.C. § 1501 et. seq., as amended, relating to certain political activities of certain state and local employees.
- E. The Archeological and Historic Preservation Act of 1974 (Public Law 93-291) relating to potential loss or destruction of significant scientific, historical, or archeological data in connection with federally assisted activities.
- F. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et. seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- G. The flood insurance purchase requirements of § 102(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- H. The Privacy Act of 1974, (Public Law 93-579), as amended, prohibiting the maintenance of information about any individual in a manner which would violate the provision of the Act.

- I. Public Law 93-348 regarding the protection of human subjects involved in research, development and related activities supported by this award of assistance.
- J. The Laboratory Animal Welfare Act of 1966 (Public Law 89-544), 7 U.S.C. § 2131 et. seq., pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by this award of assistance.
- K. The following additional requirements apply to projects that involve construction:
  - 1. The Davis-Bacon Act, as amended, 40 U.S.C. § 276a et. seq., respecting wage rates for federally assisted construction contracts in excess of \$2,000.
  - 2. The Copeland (Anti-Kickback) Act, 18 U.S.C. § 874, 40 U.S.C. § 276c.
  - 3. The Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 et. seq.
  - 4. Convict labor shall not be used on construction projects unless by convicts who are on work release, parole, or probation.
- L. The Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4801 et. seq., which prohibits the use of lead paint in construction or rehabilitation of residence structures.

## II. Administrative Requirements

The Missouri Department of Natural Resources (MDNR) shall apply the standards contained in state statutes and the federal Common Rule (Adopted by 29 federal agencies and contained in specific Codes of Federal Regulations, for each federal agency, under the title, "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments") in the administration of this agreement (subgrant / contract / cooperative agreement) and in particular those standards paraphrased as follows:

- A. Method of Payment. The Recipient (Subgrantee / Contractor) will be reimbursed for all allowable expenses incurred in performing the scope of services. The Recipient shall report project expenses and submit standard invoices, attached to the agreement, for payment. The form must be completed with the MDNR invoiced amount and local share detailed for the Recipient to be reimbursed. Invoices must provide a breakdown of project expenses by the object class detail contained in the agreement budget. Monthly or quarterly invoices must be received by the 10<sup>th</sup> of the month following the invoice period. No reimbursements will be made for expenditures incurred after the closing budget date unless a budget time period extension has been granted by the MDNR.
  - 1. Payments under nonconstruction grants will be based on the grant sharing ratio as applied to the total project cost for each invoice submitted unless the agreement specifically provides for advance payments. Advance payments may be authorized on a monthly basis to cover estimated expenditures for a thirty-(30) day period. MDNR programs may process advance payment requests ten working days prior to requested due dates.

2. All reimbursement requests, including those for advance payment, will show expenditures by object class categories and the following certification by the authorized Recipient official, I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made in accordance with the agreement and that payment is due and has not been previously requested. Advance payments will include the same expenditure itemization and certification for the previous advance payment period.

B. Retention and Custodial Requirements for Records. Financial records, supporting documents, and other pertinent agreement records shall be retained for a period of three years starting from the date of submission of the final financial status report. Authorized representatives of Federal Awarding Agencies, the Comptroller General of the United States, and the MDNR shall have access to any pertinent books, documents, and records of Recipients to make audits or examinations. The Recipient will further agree to permit monitoring by the MDNR and / or authorized representative.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

C. Program income shall be deducted from outlays, which may be both federal and nonfederal, unless the MDNR as negotiated with the Recipient, or federal awarding agency specifies an alternative method in the agreement, described in the "Uniform Administrative

Requirements For Grants and Cooperative Agreements to State and Local Governments". When anticipated and authorized, program income is added to the funds committed to the agreement and must be credited back to the original fund or project from which it was earned. A Recipient, having earned program income, may then invoice the MDNR for costs incurred against program income if given permission by the federal awarding agency, through the MDNR, as negotiated with the Recipient.

- D. Match or Cost Share Funding. In general, match or cost sharing represents that portion of project costs not borne by state appropriations. The matching share will usually be prescribed as a minimum percentage. If stated in dollars only, the MDNR sharing ratio will be total project costs divided into the Recipient match or cost share funding amount. In kind (non-cash) contributions are allowable project costs when they directly benefit and are specifically identifiable to the project or program.
1. Match or cost share funding will be established by the MDNR, through negotiation with the Recipient. Signature by both the MDNR and Recipient, on the agreement signature form, firmly affixes the match or cost sharing ratios. Full expenditure of recipient match or cost share funding is required over the life of the agreement. Recipient must invoice the MDNR, as required by the particular agreement, and provide financial records for total expenditure of state and match or cost share funding. The MDNR will reimburse the Recipient for its percentage portion agreed to by signature less any negotiated withholding.
  2. Failure to provide one hundred percent (100%) of the match or cost share ratio of total expenditures as identified on the

agreement signature form may cause that recipient to become ineligible to receive additional financial assistance from the MDNR for a period of five (5) years.

- E. Financial Management Systems. The financial management systems of Recipients must meet the following standards:
1. Financial reporting. Accurate, current, and complete disclosure of financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the agreement;
  2. Accounting Records. Maintain records, which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to agreement awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income;
  3. Internal Control. Effective control and accountability must be maintained for all recipient cash, real and personal property, and other assets. Recipients must adequately safeguard all such property and must assure that it is used solely for authorized purposes;
  4. Budget Control. Actual expenditures or outlays must be compared with budgeted amounts for each agreement;
  5. Allowable Costs. Applicable OMB cost principles, federal agency program regulations, and the agreement scope of work will be followed in determining the reasonableness, allowability, and allocability of costs;

6. Source Documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract, and agreement award documents;
  7. Cash Management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by the MDNR must be followed whenever advance payment procedures are used.
- F. Reporting of Program Performance. A performance report for each program, function, or activity shall be submitted at least annually and / or after completion of the project, as specified by the agreement scope of work. Performance report requirements, if not expressly stated in the scope of work, should include, as a minimum, a comparison of actual accomplishments to the goals established, reasons why goals were not met, and other pertinent information.
- G. Budget and Scope of Work Revisions. For non-construction grants, recipients must request and receive prior written approval to transfer funds from a direct cost budget category(ies) when the cumulative amount of such transfers exceed or are expected to exceed ten percent (10%) of that budget category. The revision must meet requirements applicable to OMB cost principles. Official notification is to be transmitted to the MDNR whenever a recipient makes a revision for less than ten percent (10%).
1. Prior notification is also required by recipients to add budget items requiring approval, for allowability of costs, in

accordance with OMB Circular A-87, A-122, or A-21, as applicable.

2. Changes to the scope of services described in the agreement must receive prior approval from the MDNR. Approved changes in the scope of work or budget shall be incorporated in written amendment to the agreement.
  3. For construction grants, prior approval is required to revise any budget resulting from changes in the scope or objective of the project.
- H. Termination for Cause. The MDNR may terminate any agreement in whole, or in part, at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the terms and conditions of the agreement. The MDNR shall promptly notify the Recipient in writing of such a determination and the reasons for the termination, together with the effective date. MDNR payments to or recoveries from recipients under agreements terminated for cause shall be in accord with the legal rights and liabilities of the parties.
- I. Termination for Convenience. Either the MDNR or Recipient may terminate the agreement in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds.
- J. Equipment Management. The following standards shall govern the utilization and disposition of equipment acquired with agreement funds:

1. Procedures for managing equipment whether acquired in whole or in part with agreement funds will, as a minimum, meet the following requirements until disposition takes place.
  - a. Property records must be maintained that include a description of the equipment, a serial number or other identification number, the source of property, the acquisition date, and cost of the property, percentage of federal participation in the cost of the property, the location, use and condition of the property.
  - b. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - c. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
2. When original or replacement equipment acquired under this agreement is no longer needed for the original project or program, disposition will be made as follows:
  - a. For items with a per unit fair market value of less than \$1,000, MDNR will transfer title to the Recipient who may use the property for other activities without reimbursement to MDNR.
  - b. For items having a per unit fair market value of \$1,000 or more, MDNR reserves the right to transfer title. However, the Recipient may retain the property for other uses

provided that compensation is made to MDNR. The amount of compensation shall be computed by applying the percentage of MDNR participation in the cost of the original project to the current per unit fair market value of the property. If the Recipient has no need for the property and the property has further use value, the Recipient shall request disposition instructions from MDNR.

- c. MDNR shall issue disposition instructions within 120 calendar days after the Recipient's request. MDNR may pick up the property or instruct the Recipient to ship the property elsewhere. Shipping costs shall be paid by MDNR.
- d. Title is transferred to the Recipient if disposition instructions are not issued by MDNR within 120 calendar days after the Recipient's request, or if so instructed.

K. Inventions and Patents. If any recipient produces subject matter, which is or may be patentable in the course of work sponsored by this agreement, such subject matter shall be promptly and fully disclosed to the MDNR. In the event that the Recipient fails or declines to file Letters of Patent or to recognize patentable subject matter, the MDNR reserves the right to file same. The MDNR grants to the Recipient an option to acquire an exclusive license including the right to sublicense with a royalty consideration to the MDNR.

L. Copyrights. Except as otherwise provided in the terms and conditions of this agreement, the author or the Recipient is free to copyright any books, publications, or other copyrightable material developed in the course of this agreement, however, the MDNR and

federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for state government purposes.

- M. **Prior Approval For Publications.** It is the policy of the MDNR to review and approve draft copies of all publications and other printed materials, which are intended for distribution. The Recipient shall submit two draft copies of each publication and other printed materials to the MDNR, which are intended for distribution and are financed, wholly or in part, by agreement funds. Printing and distribution may follow receipt of written approval of the MDNR.
- N. **Procurement Standards.** Recipients shall use their own procurement procedures provided that procurements conform to standards set forth in the "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments".
1. No work or services, paid for wholly or in part with state or federal funds, will be contracted without the written consent of the MDNR.
  2. Recipient agrees that any contract, interagency agreement sub-agreement, and / or equipment to be procured under this award which was not included in the approved workplan must receive formal MDNR project officer approval prior to expenditure of funds associated with that contract, agreement, sub-agreement, or equipment purchase.
- O. **Audit Requirements.** Recipients shall arrange for independent audits as prescribed in OMB Circular A-128, Single Audit Act of

1984. When the Recipient has its yearly audit conducted by a governmental agency or private auditing firm, the relevant portion(s) of the audit report will be submitted to the MDNR, and if not, an audit is to be arranged for independent audit as prescribed in OMB Circular A-128 or A-133, as applicable.

- P. Allowability of Costs. Allowability of costs shall be determined in accordance with cost principles contained in OMB Circular A-87 (Revised) for State and local governments, Circular A-122 for nonprofit organizations and Circular A-21 for educational institutions.
- Q. Conflict of Interest. No party to this agreement and no officer, agent, or employee of either party to this agreement who exercises any functions or responsibilities in the review or approval of the performance of this agreement shall participate in any decision relating to this agreement which would affect their personal or pecuniary interest, directly or indirectly.

No state employee shall perform any service for consideration paid by the Recipient during one year after termination of the employee's state employment in which the former state employee attempts to influence a decision of the MDNR or in the relation to any case, decision, proceeding or application with respect to which the former employee personally participated during the period of state employment.

- R. State Appropriated Funding. The Recipient agrees that funds expended for the purposes of this agreement must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the agreement period, as well as being awarded by the federal or state agency supporting the project.

Therefore, the agreement shall automatically terminate without penalty or termination costs if such funds are not appropriated and / or granted. In the event that funds are not appropriated and / or granted for the agreement, the Recipient shall not prohibit or otherwise limit the MDNR's right to pursue alternate solutions and remedies as deemed necessary for the conduct of state government affairs. The requirements stated in this paragraph shall apply to any amendment or the execution of any option to extend the agreement.

- S. Debarment and Suspension. Recipients must not make any award at any time to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance under Executive Order 12549, "Debarment and Suspension". A Debarment / Suspension form is to be completed by recipients and be attached to the recipient application and be attached to the agreement document prior to signature by the MDNR official. Furthermore, recipients are also responsible for written debarment / suspension certification of all subcontractors receiving funding through a federally funded grant.

MDNR's administrative policy on the debarment and suspension of recipients for certain activities, MDNR Policy No. 6030, is expressly incorporated herein by reference. A copy of this policy is available to recipients upon request.

- T. Anti Lobbying. No portion of this award may be used for lobbying or propaganda purposes as prohibited by 18 U.S.C. § 1913 or § 607(a) of Public Law 96-74.
1. Recipient agrees to comply with the Anti-Lobbying Act, § 319 of Public Law 101-121, effective December 23, 1989.

Recipient further acknowledges that failure to file or amend the disclosure form, if required, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. Recipient also agrees to include in all solicitation documents the following:
  - a. Sub-recipients who request or receive, from the grant recipient, an agreement, or sub-agreement exceeding \$100,000, at any tier under a federal grant shall comply with the Anti-Lobbying Act, § 319 of Public Law 101-121, and file an Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to the next tier above.
  - b. Recipient acknowledges that if any expenditure is made as prohibited by the Act, that he shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- U. Press Releases. Recipient agrees that all statements, press releases, requests for proposals, bid solicitations, and other documents describing the program / project for which funds are now being awarded, will include a statement of the percentage of the total cost of the program / project which is financed with Federal money, and the dollar amount of federal funds for the program / project.
- V. Recycled Paper. The Grantee must use recycled paper consisting of at least fifty percent (50%) waste paper, with ten percent (10%) or greater being post consumer waste, for all reports which are prepared as a part of this grant award and delivered to the Department of Natural Resources. The Grantee must use recycled

paper for any materials that it produces and makes available to any and all parties other than the Department of Natural Resources. The chasing arrows symbol representing the recycled content of the paper will be clearly displayed on at least one page of any materials provided to any and all parties other than the Department of Natural Resources. This requirement does not apply to reports, which are prepared on forms supplied by the Grantee agency. This requirement applies even if the cost of recycled paper is higher than that of virgin paper.

- W. Disadvantaged Business Enterprise Utilization. In accordance with federal administrative provisions, special efforts must be made, for those agreements using federal Environmental Protection Agency (EPA) funding, to assure that a Fair Share Objective of eight percent (8%) be made available to minority, women's and small disadvantaged business enterprise firms, including historically black colleges and universities, when utilizing agreement funds to purchase supplies equipment, construction and services related to this award agreement.
1. The Recipient agrees to take all necessary affirmative steps required to assure that small and minority firms, women's business enterprises and labor surplus area firms are used when possible as sources when procuring supplies, equipment construction and services related to this award agreement. The Recipient agrees to include information about these requirements in solicitation documents. Affirmative steps shall include:
    - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- b. Ensuring that small and minority and women's business enterprises are solicited whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority and women's business enterprises;
  - d. Establishing delivery schedules, where the requirements of work will permit which would encourage participation by small and minority and women's business enterprises;
  - e. Using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, and;
  - f. Requiring any prime contractor or other recipient, if sub-agreements are to be let, to take the affirmative steps in subparagraphs a. through e. of this section.
2. The Recipient agrees to submit, to the MDNR's project officer, a completed Standard Form 334, MBE / WBE Utilization Report, within thirty (30) days after the end of each federal / state fiscal quarter.
- X. Disputes. Program staff should attempt to resolve disagreements concerning the administration or performance of the underlying agreement. If an agreement cannot be reached, the cognizant division director will provide a written decision. Such decision of the division director shall be final unless a request for review is submitted to the department director within ten (10) business days after the division director's decision. Such request shall include:
1. A copy of the division director's final decision;

2. A statement of the amount in dispute;
3. A brief description of the issue(s) involved; and
4. A concise statement of the objections to the final decision. A decision by the department director shall constitute final department action.

**DEPARTMENT OF NATURAL RESOURCES**  
**ADDENDUM TO GENERAL TERMS AND CONDITIONS**

The Land and Water Conservation Fund Grant requirements supercede the MDNR Terms and Conditions in the following areas only. All other terms and conditions shall remain in effect.

**Administrative Requirements in Section VII, Page 18, Paragraph A**

Monthly reimbursements may not be requested. Quarterly reimbursements may be submitted (minimum of \$5000) in conjunction with Quarterly Reports. Quarterly reports will be due on the 30<sup>th</sup> day of April, July, October, and January for the duration of your project period. No advance payments will be made for completion of a project.

**Procurement Standards in Section VII, Page 27, Paragraph N.1**

Recipients shall not be required to obtain written consent of the MDNR before contracting for materials or services, unless the cost of such work or services is expected to exceed \$10,000. Three bids are required for all materials or services contracted.

**LAND & WATER CONSERVATION FUND PROJECT AGREEMENT**  
**For State Agencies and Political Subdivisions**  
**SPECIAL TERMS AND CONDITIONS**

The following special terms and conditions shall apply in addition to the preceding Department of Natural Resources General Terms and Conditions.

A. Definitions

1. The term "NPS" as used herein means the National Park Service, United States Department of the Interior, which is the federal granting agency.
2. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.
3. The term "Manual" as used herein means the Land and Water Conservation Fund Manual.
4. The term "State" as used herein means the state of Missouri represented by the Department of Natural Resources.
5. The term "Secretary" as used herein means the Secretary of the Interior or any representative lawfully delegated the authority to act for such Secretary.
6. The term "Council" as used herein means the State Inter-Agency Council for Outdoor Recreation, State of Missouri.
7. The term "State Liaison Officer" as used herein means the State Liaison Officer of the State Inter-Agency Council for Outdoor Recreation, or any representative delegated by the State Liaison Officer to act for him / her in his / her official capacity.
8. The term "State Agency" as used herein means the Missouri Department of Natural Resources.
9. The term "Political Subdivision" as used herein includes, but is not limited to, any city, county, school district, town or village, when acting under powers granted by State Statute, in the State of Missouri.
10. The term "Recipient" as used herein means the State Agency or Political Subdivision to which funds are to be transferred pursuant to this agreement. Wherever a term, condition, obligation, or

requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the recipient political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State.

B. Assurance

The parties to the project agreement specifically recognize that the Land and Water Conservation Fund assistance project creates an obligation to maintain the property described in the project agreement consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is the acknowledged intent of the parties hereto that recipients of assistance will use moneys granted hereunder for the purposes of this program, and that assistance granted from the Fund will result in a net increase, commensurate at least with the Federal cost-share, in a participant's outdoor recreation inventory. It is intended by both parties hereto that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

1. The Recipient agrees that it will meet the following specific requirements.
2. The Recipient agrees that the property described in the project agreement and the dated project boundary map made part of that agreement is being acquired or developed with Land and Water Conservation Fund assistance, or is integral to such acquisition or development, and that, without the approval of the Secretary, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity. The Secretary shall approve such conversion only if it is found to be in accord with the then existing Statewide Comprehensive Outdoor Recreation Plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location. This replacement land becomes subject to Section 6(f)(3) protection. The approval of conversion shall be at the sole discretion of the Secretary, or his designee. Prior to the completion of this project, the State Liaison Officer and the Director may mutually alter the area described in the project agreement and the signed and dated project boundary map to provide the most

satisfactory public outdoor recreation unit, except that acquired parcels are afforded Section 6(f)(3) protection as Fund reimbursement is provided.

In event the NPS provides Land and Water Conservation Fund assistance for the acquisition and / or development of property subject to reversionary interests with full knowledge of those reversionary interests, conversion of said property to other than public outdoor recreation uses as a result of such reversionary interest being exercised is approved. In receipt of this approval, the Recipient agrees to notify the State Liaison Officer of the conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions. The Recipient further agrees to effectuate such replacement within a reasonable period of time, acceptable to the National Park Service (NPS), after the conversion of property takes place. The provisions of this paragraph are also applicable to: leased properties acquired and / or developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by all the NPS; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the NPS.

3. The Recipient agrees that the benefit to be derived by the United States from the full compliance by the Recipient with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement. The Recipient agrees that payment by the Recipient to the State of an amount equal to the amount of assistance extended under this agreement by the State would be inadequate compensation to the State for any breach by the Recipient of this agreement. The Recipient further agrees, therefore, that the appropriate remedy in the event of a breach by the Recipient of this agreement shall be the specific performance of this agreement.
4. The Recipient agrees to comply with the policies and procedures set forth in the Land and Water Conservation Fund Manual. Provisions of said Manual are incorporated into and made a part of the project agreement.

5. The Recipient agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by Manual requirements.
6. The Recipient agrees that a permanent record shall be kept in the participant's public property records and available for public inspection to the effect that the property described in the scope of the project agreement, and the dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.

C. Nondiscrimination

1. The Recipient shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that Title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall on the ground of race, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or by otherwise subjected to discrimination in the use of any property or facility acquired or developed pursuant to the project agreement. The Recipient shall immediately take any measures necessary to effectuate this provision. This assurance shall be binding on the State or any political subdivision or other appropriate public agency to which Fund assistance or property acquired or developed with Fund assistance has been transferred for public recreation purposes.
2. The Recipient shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
3. The Recipient shall comply with the regulations and guidelines promulgated pursuant to the Civil Rights Act of 1964 by the Secretary of the Interior and the National Park Service.
4. The preceding paragraph is interpreted to provide further that, when Federal assistance is extended to any part within a system, including those parts receiving Federal assistance, the entire

system is subject to the obligations and prohibitions imposed by Title VI of the 1964 Civil Rights Act and the provisions of the Code of Federal Regulations, Title 43, Part 17.

5. The Recipient shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the Manual. Fees charged to non-residents may not exceed twice that charged to residents. Preferential reservations or annual permit systems solely for local residents are prohibited.

D. Applicable Federal Circulars

The Recipient shall comply with applicable regulations, policies, guidelines and requirements including 43 CFR Part 12.41 – 12.92 (Administrative Requirements and Cost Principles for Assistance Programs), A-87 (Cost Principles for State and Local Governments), and A-128 (Audits of State and Local Government) as they relate to the application, acceptance and use of Federal funds for this federally assisted project.

E. Project Application

1. The application for Federal Assistance bearing the same project number as the agreement and associated documents is by this reference made a part of the agreement.
2. The Recipient possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the Recipient to act in connection with the application and to provide such additional information as may be required.
3. The Recipient has the ability and intention to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

F. Project Execution

1. The project period shall begin with the date of approval of the project agreement or the effective date of a waiver of retroactivity and shall terminate at the end of the stated or amended project period unless the project is completed or terminated sooner in which event the project shall end on the date of completion or termination.
2. The Recipient shall execute and complete the approved project in accordance with the time schedule set forth in the project proposal. Failure to render satisfactory progress or to complete this or any other project which is the subject of Federal assistance under this program to the satisfaction of the Director and / or State Liaison Officer may be cause for the suspension of all obligations of the United State and / or the State of Missouri under this agreement.
3. The Recipient will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480), DOI Section 504 Regulations (43 CFR Part 17), and the Uniform Federal Accessibility Standards. The Recipients will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
4. The Recipient shall secure completion of the work in accordance with construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.
5. In the event the project covered by the project agreement, including future stages of the project, cannot be completed in accordance with the plans and specifications for the project; the Recipient shall bring the project to a point of recreational usefulness agreed upon by the State Liaison Officer and Director or his designee.
6. All significant deviations from the project proposal shall be submitted to the State Liaison Officer prior to commencement of construction.
7. Development plans and specifications shall be maintained by the recipient for a period of three years.
8. The Recipient will provide for and maintain competent and adequate architectural / engineering supervision and inspection at the construction site to insure that the completed work conforms with

the approved plans and specifications; that it will furnish progress reports and such other information as the State may require.

9. The Recipient will comply with the terms of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.
10. In addition to those laws noted above and in the Department of Natural Resources General Terms and Conditions, the Recipient will comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement of water pollution; Executive Order 11990 relating to the protection of wetlands; the Clean Water Act - Section 404: River and Harbor Act of 1899, Section 10 regarding any work or structure in, over or under navigable waters or the discharge of dredged or fill material into rivers, streams, lakes, and wetlands. The Recipient will comply with the Emergency Wetlands Resource Act of 1986 (PL 99-645); the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661, 662); and the Endangered Species Act of 1973.
11. The Recipient will insure that the facilities under its ownership or permanent lease, which shall be utilized in the accomplishment of the project, are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities. Pursuant to 40 CFR, Part 15.20 and that it will notify the State of the receipt of any communication from the Director or the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.

The Recipient agrees to comply with all applicable standards, orders, regulations issued pursuant to the Clean Air Act of 1970 and to insert this clause into any contract or subcontract in excess of \$100,000.

12. The Recipient will comply with Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469-a et. seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see CRF Part

800.8) by the activity, and notifying the Federal granting agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal granting agency to avoid or mitigate adverse effects upon such properties. The Recipient will comply with Executive Order 12185, Conservation of Petroleum and Natural Gas, and other pertinent acts that may be promulgated.

G. Construction Contracted for the Recipient Shall Meet the Following Requirements:

1. Contracts for construction shall comply with the provisions of 43 CFR Part 12, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (A-102 Uniform Rule), and with the provisions of the Land and Water Conservation Fund Manual.
  - a. Plans, specifications, and contracts shall be retained by the recipient for a minimum of three years. All contracts over \$10,000 must be approved by the Grant Management Section and must include contractor compliance documentation provided in the Land and Water Conservation Fund Manual.
  - b. Contracts for purchase of materials, equipment, supplies, or construction in excess of \$10,000 shall be awarded through a process of competitive bidding involving formal advertising, with adequate purchase description, sealed bids, and public openings. Copies of all advertisements, bids, and a copy of the contract shall be retained for audit purposes.
  - c. Contracts for purchase of materials, equipment, supplies, or construction less than \$10,000 shall be awarded in accordance with the Recipients' normal procedures, except that they must include documentation assuring compliance with the state rules and regulations concerning prevailing wage and minority and women in business.
  - d. The Recipient shall provide notice of contract awards to Director of Office of Federal Contract Compliance Programs (OFCCP) within ten (10) days after the award. Notice includes name, address, and telephone number of contractor, employer identification number, dollar amount of contract, estimated starting and completion dates, contract number, and geographical area in which the contract is to be performed.

2. The Recipient shall insure that contractors engaged in Federally assisted construction contracts provide data and reports to the appropriate OFCCP regional office as required or requested and that they include the above required documentation in contracts with subcontractors.
3. The Recipient shall insure that the provisions of the Equal Opportunity Clauses are followed for construction contracts involving force account labor.
4. The Recipient shall (1) comply with the above provisions in construction work carried out by itself, (2) assist and cooperate actively with the Secretary of the Interior and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the above contract provisions and with the rules, regulations and relevant orders of the Secretary of Labor, (3) obtain and furnish to the Secretary of the Interior and the Secretary of Labor such information as they may require for the supervision of such compliance, (4) enforce the obligation of contractors and subcontractors under such provisions, rules, regulations, and orders, (5) carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the Secretary of the Interior pursuant to Part II, subpart D of Executive Order No. 11246, as amended, and (6) refrain from entering into any contract with a contractor debarred from Government contracts under Part II, Subpart D, of the Executive Order No. 11246, as amended. In addition, the Recipient agrees that the State Liaison Officer may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant; refrain from extending any further assistance to the Recipient under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Recipient; and refer the case to the Department of Justice of appropriate legal proceedings.
5. Land and Water Conservation Fund projects are exempt from compliance with the Davis-Bacon Act per Section 675.3.2C of the Land and Water Conservation Fund Manual. However, the DNR General Terms and Conditions require prevailing wage.

#### H. Project Costs

1. Project costs eligible for assistance shall be determined upon the basis of the criteria set forth in the Manual and OMB Circular A-87.

2. The agreement may include the use of the indirect cost rate currently approved, in accordance with Circular A-87 for the State that is a part to this agreement. An administrative surcharge may be required to match the indirect costs recovered from federal funds for the administration of the Land and Water Conservation Fund grant program. If an administrative surcharge is initiated under this agreement, the Recipient will be responsible for providing the 50% match to the indirect costs recovered from federal funds at the time of reimbursement of project costs.

I. Project Administration

1. The Recipient shall promptly submit such reports and documentation as the Director and / or State Liaison Officer may request.
2. Properties and facilities acquired or developed with Fund assistance shall be available for inspection by the Director of State Liaison Officer at such intervals as the Director of State Liaison Officer shall require.
3. The project shall be acquired, developed, and managed in accordance with the terms of this agreement and in compliance with the Land and Water Conservation Fund Manual.

J. Project Termination

1. The Recipient may unilaterally terminate the project at any time prior to the first payment on the project. After the initial payment, the project may be terminated, modified, or amended by the Recipient only by mutual agreement of the State Liaison Officer and the Director.
2. The State may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the grant. The State will promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to Recipients or recoveries by the State under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
3. The State may terminate grants in whole, or in part, at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results

commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The State may allow full credit to the Recipient for the Federal share of the non-cancelable obligations, properly incurred by the Recipient prior to termination.

4. Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the State Liaison Officer and the Director or that all funds provided by the National Park Service be returned.

K. Reimbursement Schedule

1. Claims for reimbursement shall be submitted within ninety (90) days of the end of the project period or within ninety (90) days of completion of the project, whichever comes first, or the Council may terminate obligation for reimbursement.

L. Utility Wires

1. The Recipient must (1) place all new electric wires under 15KV and telephone wires underground, and (2) take all reasonable steps to bury, screen, or relocate existing overhead lines at development or acquisition projects. In no case shall mass recreation use areas be located under electric wires.

Source

Mike Hood  
*MH*

**TO:** City Council

**FROM:** City Manager and Staff 

**DATE:** March 31, 2008

**RE:** Stephens Lake Park - Amphitheater Grant Approval

Fiscal Impact

YES x

NO

Other Info.

**Summary:** The Department of Parks and Recreation recently received notice of final approval (grant agreement) of a Land and Water Fund Grant in the amount \$20,250.00 for partial funding for the construction of the Stephens Lake Park - Amphitheater. This grant will provide additional funding for the construction of the amphitheater stage area and related improvements. Construction of the amphitheatre was planned as part of the phase I improvements to Stephens Lake Park and is one of the final elements of that phase to be completed. A public hearing on the phase I improvements was held and Council authorized staff to proceed with the project at the April 7, 2003, City Council meeting. Construction work on the amphitheater is expected to begin during the 2008 construction season.

Total cost of the amphitheater improvements is estimated at approximately \$45,000. The City's matching funds in the amount of \$24,750 will come from park sales tax monies already appropriated to this project. Staff is requesting the Council approve the ordinance accepting the grant, authorizing the City manager to sign the grant agreements, and appropriating the funds to the Stephens Lake Park Improvement Project.

**Discussion:** The amphitheater is expected to attract a wide range of patrons to the park to enjoy a variety of entertainment. The new facility is expected to host many performance activities and is being designed to provide high quality acoustical setting for music and theater in the park. The facility will be programmed during the year on a regular basis by Parks and Recreation Staff for music events and movies in the park. Other programming will occur throughout the year and will offer many groups and organization a new venue for their activities. The variety of activities that are programmed at the new amphitheater will increase the community's entertainment base and will help improve the overall support for the performing arts in Columbia.

The additional funding from the grant will used to expand the electrical, acoustical and aesthetic features and services of the amphitheater as part of the initial development. Construction is expected to begin during the 2008 construction season.

**Suggested Council Action:** Approve the ordinance accepting the grant, authorizing the City Manager to sign the grant agreements, and appropriating the funds.