

**COOPERATIVE AGREEMENT  
Between the  
Nebraska Department of Environmental Quality  
and the  
City of Lincoln  
Regarding the Implementation of  
Storm Water Management Plan Program**

THIS COOPERATIVE AGREEMENT is made and entered into by and between the Nebraska Department of Environmental Quality (NDEQ) and the City of Lincoln, (Sponsor)

WHEREAS, the Sponsor agrees to utilize funds which have been made available to NDEQ pursuant to Nebraska State Statute 46-2,139; and

WHEREAS, grant monies are being awarded to cities and/or counties with an NDEQ-approved storm water management plan to fund the duties required under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements; and

WHEREAS, grant funds in an amount up to \$377,866 are to be used to implement the entitled "Storm Water Management Plan Program".

NOW, THEREFORE, the parties do hereby agree to the terms and conditions of this Agreement as follows:

**I. TERM OF AGREEMENT**

This Agreement will remain in effect until all identified tasks are completed for the project "Storm Water Management Plan Program"; unless terminated under §P of this Cooperative Agreement, but will not remain in effect past June 30, 2008, unless extended by amendment.

**II. CONDITIONS OF AGREEMENT**

**A. General Conditions**

1. The Sponsor agrees to submit annual progress reports to the NDEQ by July 31<sup>st</sup>. These reports shall address project activity for the previous state fiscal year, which runs from July 1<sup>st</sup> – June 30<sup>th</sup>, and contain the following components:
  - a. Progress to date;
  - b. Financial report of money spent for each approved activity element;
  - c. Significant findings or events;
  - d. Corrective actions taken to resolve any problems that are encountered.
2. The Sponsor agrees to submit annual MBE/WBE reports to the NDEQ by July 31<sup>st</sup>, covering project activity for the previous state fiscal year, which runs from July 1<sup>st</sup> – June 30<sup>th</sup>.
3. The Sponsor agrees that if indirect costs are authorized, as specified in the approved plan, they will be charged at the approved indirect rate.
4. The Sponsor agrees that any contract, interagency agreement, subagreement and/or procurement of equipment greater than \$15,000 under this grant must receive NDEQ approval prior to expenditure of funds associated with those

transactions. Copies of all subagreements and interagency agreements will be provided to the NDEQ.

5. Any such purchased equipment shall be retained by the NDEQ upon completion of the project unless otherwise authorized in writing by the NDEQ.
6. A Quality Assurance/Quality Control Project Plan must be approved by NDEQ prior to expending any funds for environmental monitoring. Any environmental data collected must be provided to NDEQ.
7. The Sponsor agrees to recognize the contributions and/or involvement of the Nebraska Department of Environmental Quality in project publicity, reports, newsletters, and other materials. The Sponsor shall work with the NDEQ to ensure that all necessary peer review requirements are met. A minimum of 10 copies of printed outreach material and 2 copies of videos produced under this grant shall be provided to the NDEQ unless otherwise specified.
8. A final project report must be submitted to NDEQ within 30 days after completion of the project or termination date.
9. The Sponsor must establish a separate accounting for activities related to this agreement; this account must include the grant award and the Sponsor's cash match.
10. Project tasks must not include flood control or normal operations and maintenance activities.

#### **B. Grant Conditions**

Pursuant to EPA Assistance Agreement No. FS997573-98-0, the following grant conditions shall be complied with by all recipients of federal grant funds.

1. The Sponsor agrees to comply with all the following provisions, rules and regulations (can be obtained from NDEQ):
  - a. Office of Management and Budget Circulars A-102, A-133, A-87 and 40 CFR Parts 31, 32, and 35.
  - b. Procurement standards of 40 CFR 31.32(g).
  - c. Prohibitive lobbying 18 U.S.C. Section 1913, Section 607(a) of Public Law 96.74.
  - d. Recipient agrees to comply with Federal Register, Volume 53, No. 102, dated May 26, 1988, Debarment and Suspension Under EPA, Assistance, Loan and Benefit Programs, which requires all solicitations for subagreements to include the following statement:

The prospective participants must certify by submittal of EPA Form 5700-49, Certification Regarding Debarment, Suspension and Other Responsibility Matters, that to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

The Recipient acknowledges that doing business with any party appearing on the non-procurement portion of the "List of Parties Excluded from Federal Procurement Programs" may result in disallowance of costs under this agreement and may also result in suspension or debarment.
  - e. Rules governing "Fair Share" of federal funds to Minority Business Enterprises (MBEs), Women-owned Business Enterprises (WBEs), Small Business Enterprises (SBEs), Small Disadvantaged Businesses (SDBs), and Small Business in Rural Areas (SBRAs). Affirmative steps outlined in 40 CFR 30.44, or 40 CFR 33.240, or 40 CFR 35.6580, or Section 129 of Public Law 100-590, whichever is applicable. ("Fair Share" Percentages: Supplies, 5% MBE, 12% WBE; Equipment, 6% MBE, 11% WBE; Services, 5% MBE, 11% WBE; and Construction, 6% MBE, 8% WBE.) The Sponsor agrees to include in its bid specifications, and require all of its prime contractors to include in their bid specifications for

subcontracts, a "Fair Share". The Sponsor agrees to document the official grant files with all efforts taken to achieve the "Fair Share" and to report quarterly to NDEQ all "Fair Share" procurement efforts regardless of the size of the sub-agreement.

- f. Section 204 of the Demonstration Cities and Metropolitan Development Act of 1996 as amended (42 USC Section 3334).
- g. Provisions of the American with Disabilities Act.
- h. Hotel and Motel Fire Safety Act of 1990.
- i. EPA Order 1000.25 regulating the use of recycled paper.

**C. Statement of Costs**

Financial reporting is subject to review by NDEQ. The Sponsor will submit with their annual report a cost documentation of project expenses. For purposes of this agreement, expenditures and match claims shall be related to budget items as described in the approved work plan, included as Attachment A. The Sponsor must contribute and report a 20% cash match by completion of the project.

**D. Disbursements**

1. The Sponsor shall receive full payment of the award in the amount of \$377,866 within thirty (30) working days after receipt of this cooperative agreement signed by the Sponsor's authorized representative. The NDEQ shall not be held responsible for delays in payment, due to causes beyond its control.
2. The Sponsor must not make expenditures for activities in the work plan that are not in their Storm Water Management Plan until NDEQ has given approval for such activities through amendment of the Sponsor's Storm Water permit.

**E. Work Description and Schedule**

This agreement encompasses the project commonly known as "Storm Water Management Plan Program". The project shall complete objectives and work items as described in the work plan (Attachment A).

**F. Amendments**

This agreement may be amended in writing at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law or requirements of the EPA or NDEQ.

**G. Forfeiture, Repayment and Delays in Disbursement of Funds**

NDEQ may recover from the Sponsor any costs, which result from violation of any of the conditions of this Agreement by the Sponsor or failure of the Sponsor to complete and maintain the project in the manner described in the work plan (Attachment A), including any amendments thereto which have been properly approved.

**H. Remedies Not Exclusive**

The use by either the Sponsor or the NDEQ of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party from using such remedy, or limit the application of any other remedy provided by law.

**I. Assignment**

No assignment or transfer of this agreement or any part hereof, rights hereunder, or interest herein by the Sponsor shall be valid unless and until it is approved by the NDEQ and made subject to such reasonable terms and conditions as the NDEQ may impose.

**J. Waiver of Rights**

The Sponsor or NDEQ may from time to time waive any of their rights under this Agreement. However, any waiver of rights with respect to a default of any condition of this Agreement shall not be deemed to be a waiver with respect to any other default.

**K. Inspection of Books, Records and Reports**

The duly authorized representative of either party shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or related matters during regular office hours. Each party shall maintain and make available for such inspection accurate records of all its costs, disbursements and receipts with respect to its activities under this Agreement. A single audit is required (OMB A133) if \$300,000 or more is provided by the federal funding in any one year period. Copies of the single audit report should be sent to NDEQ.

**L. Independent Contractor**

The Sponsor is and shall perform this Agreement as an independent contractor and as such shall have and maintain exclusive control over all of its employees, agents and operations. Neither the Sponsor nor any person employed by the Sponsor shall act, propose to act or be deemed the NDEQ's agent, representative or employee. The Sponsor assumes full and exclusive responsibility for the payment of all premiums, contributions, payroll taxes and other taxes now or hereafter required by any law or regulation and agrees to comply with all applicable laws, regulations and orders relating to social security, unemployment compensation, OSHA, affirmative action, equal employment opportunity and other laws, regulations and orders of like nature. For any work hereunder subject to the Veterans Readjustment Assistance Act of 1974, or the Rehabilitation Act of 1973, the parties hereto shall comply with all provisions thereof, together with all applicable rules, regulations and orders of the Department of Labor, and the notices required pursuant to 41 CFR 60-1.4, 60-250.4 and 60-741.4 which are hereby incorporated by reference into this Agreement.

**M. Nondiscrimination**

The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska and their subcontractors from discriminating against any employee, or applicant for employment in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability or national origin. The Sponsor's signature is a guarantee of compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The Sponsor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.

**N. Drug Free Workplace**

The Sponsor by executing this Agreement, certifies and assures that it operates a drug free workplace as addressed in the State of Nebraska Drug Free Workplace Policy of July 7, 1989.

**O. Publication Rights**

All parties shall have publication and reproduction rights for all reports and materials which are produced as a result of this Agreement.

**P. Termination**

This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

1. Not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and
2. An opportunity for consultation with the terminating party prior to termination.

**Q. Project Managers**

The Project Manager for each party to this agreement shall be as follows. The Project Manager may be changed by either party upon written notification.

<u>NDEQ</u>	<u>Sponsor</u>
Deana Barger	Ben Higgins
Source Water Coordinator	Senior Engineer
Planning Unit	City of Lincoln
402-471-6988	402-441-7589

**III. EFFECTIVE DATE OF COOPERATIVE AGREEMENT**

This Cooperative Agreement shall be effective upon the later of the dates signed below.

**NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY**

BY: Thomas R. Lamberson

TITLE: Deputy Director



DATE: November 21, 2006

**CITY OF LINCOLN**

BY: Coleen J. Seng

TITLE: Mayor

DATE: \_\_\_\_\_

FEDERAL TAX ID NUMBER: 47-6006256

ATTACHMENT A

# STORM WATER MANAGEMENT PLAN PROGRAM

## WORKPLAN

for the City of Lincoln (Sponsor)  
 Regarding Implementation of the  
 Storm Water Management Plan for Permit NE0133671

CONTACT INFORMATION	
PROJECT MANAGER NAME <b>Ben Higgins</b>	TITLE <b>Senior Engineer</b>
STREET ADDRESS <b>901 N. 6<sup>th</sup> Street</b>	E-MAIL ADDRESS <b>bhiggins@lincoln.ne.gov</b>
CITY / STATE / ZIP CODE <b>Lincoln / NE / 68046</b>	PHONE NUMBER <b>402-441-7589</b>
AWARD AMOUNT <b>\$377,866</b>	PROJECT END DATE <b>June 30, 2008</b>

ACTIVITY ELEMENTS & TIMELINE				
	MINIMUM CONTROL MEASURE	SECTION/SUBSECTION AND ACTIVITY ELEMENT DESCRIPTION FROM APPROVED SWMP	COST (PERCENTAGE OF GRANT)	EXPECTED COMPLETION DATE
1 & 2	Education and Outreach/ Public Participation	<p><b>5.1.2.1</b> Develop and implement measures to reduce pollutants to the maximum extent practical.</p> <p><b>5.1.3.1</b> Addressing runoff containing oil and grease and metals from public streets through educational programs.</p> <p><b>5.1.6.1</b> Fertilizer and pesticide control and education. Educational programs with literature available and personnel available to talk to the general public.</p> <p><b>5.1.7.1</b> Developing educational video and brochures.</p>	9%	June 30, 2008
3	Illicit Discharge Detection & Elimination	<p><b>5.1.2.1</b> Develop and implement measures to reduce pollutants to the maximum extent practical.</p> <p><b>5.2.1.2.</b>, Table 5-4 System evaluation and periodic filed sampling of storm sewer system, mapping and compiling database of storm sewer system, compiling Geographical Information System of entire storm sewer system.</p> <p><b>5.2.3.2</b> Storm Sewer investigations based upon field screening results or other information.</p>	15%	June 30, 2008

## ATTACHMENT A

	MINIMUM CONTROL MEASURE	SECTION/SUBSECTION AND ACTIVITY ELEMENT DESCRIPTION FROM APPROVED SWMP	COST (PERCENTAGE OF GRANT)	EXPECTED COMPLETION DATE
4	Construction Site Runoff	<p><b>5.1.2.1</b> Develop and implement measures to reduce pollutants to the maximum extent practical.</p> <p><b>5.4.1.1.</b>, Table 5-6 Development of guidelines and procedures, development of ordinances, and inspection, monitoring and enforcement of BMP's on construction sites.</p>	9%	June 30, 2008
5	Post-Construction Runoff	<p><b>5.1.2.1</b> Develop and implement measures to reduce pollutants to the maximum extent practical. Preserving open space, stream corridor, and implementing BMP's. Basin wide master planning to address water quantity and quality issues.</p> <p><b>5.1.4.1</b> Stormwater management and open space preservation to enhance the natural and beneficial functions of floodplains.</p>	67%	June 30, 2008