

**AGREEMENT BETWEEN THE CITY OF LINCOLN, NEBRASKA
AND
CHRIS BEUTLER, BEUTLER DEVELOPMENT SERVICES**

THIS AGREEMENT is entered into this _____ day of _____, 2004 by and between the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City" and Chris Beutler, hereinafter referred to as "Contractor."

WHEREAS, an important goal of the City of Lincoln is to create and implement integrated fund development programs for various participating City Departments to assist with funding programs and projects; and

WHEREAS, in an effort to achieve this goal, the City proposes to engage the Contractor in accordance with the terms and conditions set forth herein to render certain special personal services in the nature of a Fund Development Coordinator; and

WHEREAS, Contractor possesses certain skills, experience, education, and competency to perform these services on behalf of the City, and the City desires to engage Contractor for such special services on the terms herein provided:

NOW, THEREFORE, IN CONSIDERATION of the mutual obligations of the parties hereto, the parties do agree as follows:

I.

EMPLOYMENT OF CONTRACTOR

The City hereby agrees to engage Contractor, and Contractor agrees to perform services on behalf of the City through the Parks and Recreation Department and Finance Department in creating and implementing a Fund Development Program.

II.

SCOPE OF SERVICES

Contractor agrees to undertake, perform, and complete in an expeditious satisfactory, and professional manner the following services as required by the City:

- A. Meet with representatives of the Parks and Recreation Department and other identified City Departments who may have interest in creating and implementing a fund development program. Assist the City in determining and prioritizing opportunities for creation of such programs.

- B. Work with the advisory boards and staff of identified Departments and the Lincoln Parks and Recreation Foundation to establish written policies and procedures regarding acceptance of gifts, recognition of donors, endowments, etc.
- C. Prepare a development plan for the initial 12-month period including prioritization of the following:
 - 1. Annual giving programs;
 - 2. Memorial giving;
 - 3. Planned and estate giving; and
 - 4. Special projects and programs.
- D. Organize databases and prospects listings including corporations, foundations and individuals.
- E. Develop publicity materials and standard fund raising letters to support fund development programs for identified Departments.
- F. Orient and train Department staff and volunteers regarding fund development programs.
- G. Publicize and implement planned giving programs.
- H. Implement annual appeal for corporate and individual giving.
- I. Implement fundraising campaign for renovation of the Sunken Gardens, and/or other special projects as identified.
- J. Prepare recommendations for review by the Mayor, Lincoln Parks and Recreation Foundation and advisory boards and staff of participating Departments staff regarding ongoing operation of fund development programs.

III.

TERM OF AGREEMENT

The term of this Agreement shall be for one year and may be renewed annually prior to anniversary date of the contract for each of three additional years by mutual agreement of the Contractor and the City.

IV.

COMPENSATION

The City agrees to pay the Contractor an annual fee of \$60,000.00 to be paid in twelve equal installments on the last business day of each month beginning June 30, 2004. Contractor shall be entitled to an escalation clause of 3.5% per year. It is anticipated that the Contractor shall work on average 1,250 hours per year. The Contractor will prepare and submit to the City a summary of

activities and related time expended on a monthly basis. It is agreed that compensation will be reduced by an appropriate amount should the time that the Contractor is involved with activities associated with this contract fall short of the projected 1,250 hours annually. The Contractor will be reimbursed for use of personal vehicles at the rate per travel mile specified for employee use of personal vehicles by the City. The Contractor will submit documentation of travel miles with monthly summary of activities. In addition, the City shall from time to time pay amounts sufficient to reimburse customary and reasonable expenses not to exceed on average \$1,000.00 per year for the life of the contract, based upon an itemized monthly statement and satisfactory documentation supporting the same, approved in the sole discretion of the City.

V.

CLERICAL SUPPORT AND OFFICE SPACE

The City will employ a clerical support staff person to assist the Contractor. The City also agrees to provide suitable office space and office equipment, including a telephone and personal computer, at a City office building.

VI.

SERVICES TO BE CONFIDENTIAL

All services, including reports, opinions, and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the participating City Department(s), without the prior written approval of the City. Contractor assumes liability for any breach of confidentiality that may occur through the action of the Contractor.

VII.

TERMINATION

Either the City or Contractor may terminate this agreement at any time by giving written notice to the other party of such termination at least sixty (60) days before the effective date of such termination. Either party has the right to terminate this agreement if the other party fails to perform as required in this agreement. Termination rights under this section may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing. Upon termination, the City shall pay the Contractor for any services completed up to the date of termination. The City may terminate this agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, released,

or otherwise not forthcoming through no fault of the City. In the event of unavailability of funds to pay any amounts due under this agreement, the City shall immediately notify the Contractor, and this agreement shall terminate without penalty or expense to the City.

VIII.

EQUAL EMPLOYMENT

In connection with the performance of work under this Agreement, Contractor agrees that he shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In the employment of any persons to perform the terms of this Agreement, Contractor shall fully comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code and shall take affirmative action to ensure that applicants are employed and that employees are treated appropriately during employment without regard to their race, color, religion, sex, disability, national origin, age, or marital status.

IX.

ASSIGNABILITY

The Contractor shall not assign any interest in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to Contractor from the City under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the City.

X.

INTEREST OF CONTRACTOR

Contractor covenants that he presently has no interest including, but not limited to, other projects or independent contracts and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by him under this Agreement.

XI.

**OWNERSHIP, PUBLICATION,
AND USE OF MATERIAL**

All reports, studies, information, data, statistics, forms and any other materials or properties produced under this Agreement shall be the sole and exclusive property of the City. No such materials or properties produced, in whole or in part, under this Agreement shall be subject to private use or copyright by Contractor without the express written consent of City. City shall have the unrestricted authority to publish, disclose, distribute and otherwise use or copyright, in whole or

in part, any such reports, studies, data, statistics, forms, or otherwise materials or properties produced under this Agreement.

XII.
HOLD HARMLESS

Contractor agrees to maintain such insurance as will fully protect both Contractor and City from any and all claims under any workmen's compensation act or employer's liability laws, and from any and all other claims of whatsoever kind or nature for damage to property or for bodily injury, including death, made by anyone whomsoever which may arise from the work performed under this Agreement, either by Consultant, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them. Consultant shall exonerate, indemnify, and hold harmless City from and against, and shall assume full responsibility for, payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security, and income tax laws, with respect to Consultant or any such employees of Consultant as may be engaged in the performance of this Agreement. The City and its agents and employees shall not be held liable for any liabilities, penalties, or forfeitures or for any damages to goods, properties, or effects of Consultant, or of any other persons whatsoever, nor for personal injury to or death of them caused by or resulting from any negligent act or omission of Consultant; provided, however, that the provisions of this paragraph shall not relieve the City of its liability for damages to Consultant caused by City's negligent acts or omissions. Consultant further agrees to indemnify and hold harmless City and City's agents and employees against and from any and all of the foregoing liabilities, and any and all costs or expenses incurred by City on account of any claim therefor.

XIII.
NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid or return receipt requested to the following addresses:

City of Lincoln, Nebraska
Steve Hubka, Budget Officer
Finance Department
555 So. 10th Street
Lincoln, NE 68508

Chris Beutler
Beutler Development Services
3315 M Street
Lincoln, NE 68510

XIV.

INDEPENDENT CONTRACTOR

It is agreed that City is interested only in the results obtained and that the Contractor shall perform as an independent contractor. Contractor is, for purposes arising out of this Agreement, an independent contractor, and shall not be deemed an employee of the City. It is expressly understood and agreed that Contractor shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits and injury leave or other leave benefits.

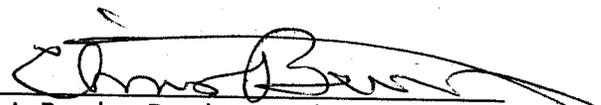
XV.

This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the date first written above.

**CITY OF LINCOLN, NEBRASKA
A MUNICIPAL CORPORATION**

Coleen Seng, Mayor



Chris Beutler, Beutler Development Services