

RESOLUTION NO. 5081

A RESOLUTION AUTHORIZING THE ALBANY PARKS AND RECREATION DEPARTMENT TO ACCEPT A FEDERAL LAND AND WATER CONSERVATION FUND GRANT FROM THE OREGON PARKS AND RECREATION DEPARTMENT FOR THE ACQUISITION OF UNION PACIFIC RAILROAD PROPERTY ADJACENT TO SWANSON PARK AND DELEGATING AUTHORITY TO THE CITY MANAGER TO SIGN THE AGREEMENT.

WHEREAS, the Oregon Parks and Recreation Department has awarded the City of Albany a Federal Land and Water Conservation Fund Grant in the amount of 50 percent of the land purchase price or a maximum of \$36,962.60; whichever is less, and

WHEREAS, the City of Albany Parks and Recreation Department desires to purchase the property to meet additional parking needs at the aquatic center in Swanson Park, and

WHEREAS, matching funds have been budgeted in the 2004-2005 Fiscal Year budget; and

IT IS HEREBY ORDERED that the City of Albany accepts the Local Government Grant from the Oregon Parks and Recreation Department for the acquisition of Union Pacific Railroad property adjacent to Swanson Park as specified above and delegating authority to the City Manager to sign the State-Local Agreement.

DATED AND EFFECTIVE THIS 15<sup>th</sup> DAY OF DECEMBER 2004.

  
Mayor

ATTEST:

  
City Clerk

STATE-LOCAL AGREEMENT  
LAND AND WATER CONSERVATION FUND

\* WAIVER OF  
3 RETROACTIVITY

This agreement, made and entered into this 23 day of April, 2004 by and between the STATE OF OREGON, by and through its Parks and Recreation Department, hereinafter called "State," and City of Albany, a Municipal Corporation of the State of Oregon, by and through its City Council or designated representative, hereinafter called "Sponsor;"

WITNESSETH:

WHEREAS, Sponsor proposes to undertake the following outdoor recreation project: Swanson Park Acquisition, OP 2435, in Linn County, Oregon, hereinafter called the "project", and to that end, proposes to perform work and/or acquire land as set out and described below:

Project Description/Scope of Work: Acquire approximately 30,472 square feet of property for park and recreation purposes adjacent to existing park in Albany.

WHEREAS, federal matching funds for acquisition and development of outdoor recreation areas are available under the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), as administered by the Department of the Interior; and

WHEREAS, it is the intent of the parties hereto that Sponsor acquire land and/or perform the development work, as set out above in accordance with the Land and Water Conservation Fund Act of 1965, other applicable federal and state statutes, and the requirements of the Department of the Interior; and that State apply to the Department of the Interior for funds with which to reimburse the state for administration costs (2.73% of total project cost), and to reimburse Sponsor for up to 50 percent (50%), less the state administrative charge, of sponsor's costs in acquiring such land and/or performing such work.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

1. The State hereby approves the project proposal and authorizes Sponsor to acquire land and/or perform the work of the project in accordance with the above description. As hereinafter used, "work of the project" shall include both acquisition of land for and development work of the project, and "cost of the project" shall include both costs of acquisition of land for and development work of the project, if such is required.
2. The estimated total cost of the project is \$76,000.00. Sponsor shall in the first instance; pay all the costs of the project and then request reimbursement upon completion of the project. State shall pay sponsor no more than \$36,962.60 for reimbursement and State shall retain no more than \$1,037.40 for State administration expenses. In no event shall the sum of the payment to Sponsor and the State administration retention exceed fifty percent (50%) of the total actual cost of the project. In the event the actual total cost of the project is less than the estimated total cost set forth above, State's administrative retention shall not exceed 2.73 percent of the total project cost. The Sponsor may submit partial payment requests for work completed. Final payment will be made upon

completion of the project. The State may perform an audit of Sponsor's records pertaining to the project. All State administrative charges shall be reflected on all reimbursements to the Sponsor.

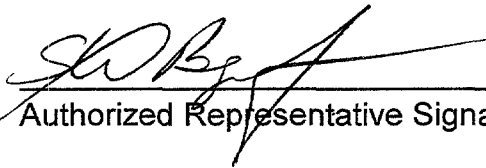
3. Upon completion of the project, Sponsor shall be responsible for the operation and maintenance of said facility for public outdoor recreation in the manner and according to the standards set forth in the Department of the Interior Manual.
4. It is understood by the parties hereto that no funds of State are, under this agreement, except as covered by a separate agreement, committed to payment of any costs of the project, and that obligations imposed upon State to apply for federal funds as well as the right of Sponsor to receive any reimbursement for any costs of the project shall extend only to those portions of the project, including the estimated costs thereof, approved by the Department of the Interior. Furthermore, if Sponsor fails to perform any of the work of the project and such failure, because of commitments made by State to the Department of the Interior, forces State to perform any work necessary to bring the project to a useful state of completion (as determined by State and the Department of the Interior), Sponsor shall reimburse State for all State's costs in performing such necessary completion work, less any federal funds received by State for such work.
5. Sponsor hereby agrees to comply at all times with the LAND AND WATER CONSERVATION FUND PROJECT AGREEMENT (the Federal Project Agreement), General Provisions attached hereto marked "Exhibit A" and by this reference made a part hereof, in accordance with paragraph E of part I (Definitions) of Exhibit A. Sponsor hereby undertakes separately to perform its obligations set forth in said Federal Project Agreement. The benefit to be derived from the full compliance by the Sponsor with the terms of this agreement is the preservation, protection, and the net increase in the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money and other assistance furnished under the terms of this agreement, the Sponsor agrees that payment by the Sponsor to the State of an amount equal to the value of any assistance extended under this agreement would be inadequate compensation to State for any breach by the Sponsor of this agreement. The Sponsor further agrees, therefore, that the appropriate remedy for State in the event of a breach by the Sponsor of this agreement shall be the specific performance of the agreement.
6. Sponsor shall complete the work of the project by December 31, 2006.
7. Provisions of State law applicable to this agreement are hereby incorporated.
8. Sponsor shall execute this agreement through its regular and customary means, by its City Council, or designated representative.
9. Sponsor shall comply with and are subject to the requirements of the Office of Management and Budget Circular A-133, which implement the Single Audit Act of 1984 (P.L. 98-502). Title 49 CFR Part 90.

10. The Sponsor shall perform the work under this agreement as an independent contractor and shall indemnify, defend and hold harmless the State of Oregon and Oregon Parks and Recreation Department and its officers, employees, and agents from all claims, suits, actions, loses, damages, liabilities, costs and expenses of any nature, resulting from, arising out of or relating to the activities of the Sponsor or the Sponsors officers, employees, sub-contractors, or agents under this agreement. The State shall be responsible for the acts, omissions, or negligence of its own officers, employees or agents, and only to the extent permitted by the Oregon Tort Claims Act ORS 30.260-30.300, and the Oregon Constitution, Article XI, Section 7.
11. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE STATE AND THE SPONSOR. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF THE TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH A WAIVER, CONSENT, MODIFICATION, OR CHANGE IF MADE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIVES, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THE AGREEMENT. THE DELAY OR FAILURE OF THE STATE TO ENFORCE ANY PROVISIONS OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY THE STATE OF THAT PROVISION OR ANY OTHER PROVISION. THE RECIPIENT, BY THE SIGNATURE BELOW OR ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY IT'S TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year first above mentioned.

SPONSOR: City of Albany

STATE OF OREGON, by and through its  
Parks and Recreation Department

  
\_\_\_\_\_  
Authorized Representative Signature

Steve Bryant, City Manager

Print Name and Title

December 15, 2004

Date

\_\_\_\_\_  
Authorized Representative of the Oregon  
Parks and Recreation Department

**LAND AND WATER CONSERVATION FUND  
PROJECT AGREEMENT GENERAL PROVISIONS**

**Part I - Definitions**

- A. The term "NPS" or "Service" as used herein means the National Park Service, United States Department of the Interior.
- B. 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.
- C. The term "Manual" as used herein means the Land and Water Conservation Fund Grants Manual (NPS-34).
- D. The term "project" as used herein means a single project, a consolidated grant, a project element of a consolidated grant, or project stage which is subject to the project agreement.
- E. The term "State" as used herein means the State or Territory which is a party to the project agreement, and, where applicable, the political subdivision or public agency 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. For purposes of these provisions, the terms "State," "grantee," and "recipient" are deemed synonymous.
- F. The term "Secretary" as used herein means the Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.

**Part II - Continuing Assurances**

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. 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.

- A. The State agrees, as recipient of this assistance, that it will meet the following specific requirements and that it will further impose these requirements, and the terms of the project agreement, upon any political subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement.
- B. The State agrees that the property described in the project agreement and the signed and 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 or for the term of the lease in the case of leased property. The Secretary shall approve such conversion only if it is found to be in accord with the then existing comprehensive statewide 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 reasonably equivalent usefulness and location. This replacement land becomes subject to Section 6(f)(3) protection. The approval of a conversion shall be at the sole discretion of the Secretary, or his designee. Prior to the completion of this project, the State 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.

2. The State 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 State to act in connection with the application and to provide such additional information as may be required.
3. The State 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.

C. 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. For project elements added to a consolidated grant, the project period will begin on the date the project element is approved.
2. The State shall transfer to the project sponsor identified in the Application for Federal Assistance or the Description and Notification Form all funds granted hereunder except those reimbursed to the State to cover administrative expenses.
3. The State will cause work on the project to be commenced within a reasonable time after receipt of notification that funds have been approved and assure that the project will be prosecuted to completion with reasonable diligence.
4. The State will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480) and DOI Section 504 Regulations (43 CFR Part 17). The State will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
5. The State shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.
6. 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 State shall bring the project to a point of recreational usefulness agreed upon by the State and the Director or his designee.
7. The State 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 NPS may require.
8. The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (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.
9. The State 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, and Executive Order 11990 relating to the protection of wetlands.
10. The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been

Government Appropriations Act), for procurement of goods and services (including construction services) having an aggregate value of \$500,000 or more, the amount and percentage (of total costs) of federal funds involved must be specified in any announcement of the awarding of a contract.

**E. Retention and Custodial Requirements for Records**

1. Financial records, supporting documents, statistical records, and all other records pertinent to this grant shall be retained in accordance with 43 CFR Part 12 for a period of three years; except the records shall be retained beyond the three-year period if audit findings have not been resolved.
2. The retention period starts from the date of the final expenditure report for the project or the consolidated project element.
3. State and local governments are authorized to substitute microfilm copies in lieu of original records.
4. The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examination, excerpts and transcripts.

**F. Project Termination**

1. The Director may temporarily suspend Federal assistance under the project pending corrective action by the State or pending a decision to terminate the grant by the Service.
2. The State may unilaterally terminate the project or consolidated project element at any time prior to the first payment on the project or consolidated project element. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement.
3. The Director may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the determination and the reasons for the termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
4. The Director or 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 grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the State for the Federal share of the noncancelable obligations, properly incurred by the grantee prior to termination.
5. 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 and the Director or that all funds provided by the National Park Service be returned.

**G. Lobbying with Appropriated Funds**

The State must certify, for the award of grants exceeding \$100,000 in Federal assistance, that no Federally appropriated funds have been paid or will be paid, by or on behalf of the State, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding, extension, continuation, renewal, amendment, or modification of this grant. In compliance with Section 1352, title 31, U.S. Code, the State certifies, as follows:

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The State must include with its application for assistance a specification of the site(s) for the performance of work to be done in connection with the grant.

#### **I. Civil Rights Assurance**

The State certifies that, as a condition to receiving any Federal assistance from the Department of the Interior, it will comply with all Federal laws relating to nondiscrimination. These laws include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), which prohibits discrimination on the basis of race, color, or national origin; (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap; (c) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et. seq.), which prohibits discrimination on the basis of age; and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, handicap or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the applicant. **THE APPLICANT HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.**

**THIS ASSURANCE shall apply to all aspects of the applicant's operations including those parts that have not received or benefited from Federal financial assistance.**

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

**THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date.**

The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, and subrecipients and the person whose signature appears on the grant agreement and who is authorized to sign on behalf of the Applicant.

#### **J. Debarment and Suspension**

**Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;