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RESOLUTION NO. C-28479

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3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH AMENDING RESOLUTION NO. C-
5 28295 AUTHORIZING THE CITY MANAGER TO SUBMIT AN
6 APPLICATION FOR AND TO ENTER AN AGREEMENT AND
7 ALL AMENDMENTS WITH THE STATE RESOURCES
8 AGENCY FOR FUNDING UNDER THE SAFE DRINKING
9 WATER, CLEAN WATER, AND WATERSHED PROTECTION
10 AND FLOOD PROTECTION BOND ACT OF 2000 FOR
11 ACQUISITION OF LAND TO BE DEVELOPED AS A PARK

12
13 WHEREAS, the State of California provides grants to public entities under
14 the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Bond
15 Act of 2000 ("Act"); and

16 WHEREAS, the State Resources Agency ("Agency") has the responsibility
17 for administration of the grant program; and

18 WHEREAS, the Agency requires that the applicant for grant funds approve
19 submission of the application by resolution; and

20 WHEREAS, if a grant is given to the applicant, the applicant must enter an
21 agreement with the Agency relating to the grant program; and

22 WHEREAS, an amendment to Resolution No. C-28295 is necessary to
23 clarify the City's assurances with respect to the grant;

24 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
25 follows:

26 Section 1. That the City Manager of the City of Long Beach is hereby
27 authorized to apply for grant funds for the acquisition of 0.76 acres of land located along
28 the lower Los Angeles River which land will form a park area of open space, habitat and

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1 recreation ("Land Acquisition Project").

2 Sec. 2. The City Manager is hereby authorized and appointed to conduct all
3 negotiations and execute and submit all documents including but not limited to
4 applications, agreements, amendments, payments requests, and other documents which
5 may be necessary to complete the Land Acquisition Project with grant funds.

6 Sec. 3. The City of Long Beach certifies that it has or will have sufficient
7 funds to operate and maintain the Land Acquisition Project after it is completed.

8 Sec. 4. The City of Long Beach certifies that it has reviewed and
9 understands the "Special and General Provisions" contained in the Sample Project
10 Agreement shown in the Procedural Guide relating to the grant, which are attached to this
11 Resolution.

12 Sec. 5. The City of Long Beach certifies, based on conversations with the
13 State Resources Agency, that it understands the application submitted by the City for funds
14 constitutes assurances relating to the Project.

15 Sec. 6. This resolution shall take effect immediately on its adoption by the
16 City Council, and the City Clerk shall certify the vote adopting this resolution.

17 I hereby certify that the foregoing resolution was adopted by the City Council
18 of the City of Long Beach at its meeting on November 9, 2004, by the following vote:

19 Ayes: Councilmembers: Lowenthal, Baker, Colonna,
20 O'Donnell, Kell, Richardson,
21 Reyes Uranga, Gabelich, Lerch.

22
23 Noes: Councilmembers: None.

24
25 Absent: Councilmembers: None.

26
27 
28 _____
City Clerk

GRANT AGREEMENT

Special Provisions

1. Prior to acquiring an easement or other interest in land pursuant to this grant, a public hearing in the local community shall be held. Notification shall be given to the County Board of Supervisors of the affected county, adjacent landowners, affected water districts, local municipalities, and other interested parties. Evidence of compliance with provision is required before grant funds can be disbursed.
2. Recipients of grant funding pursuant to the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000 shall post signs acknowledging the source of the funds pursuant to the sign guidelines issued by the Secretary of the Resources Agency.

General Provisions

A. Definitions

1. The term "Act" means the enabling legislation for the program under which grants are being given.
2. The term "Acquisition" means to acquire a fee interest or any other interest including easements and development rights in real property, from a willing seller.
3. The term "Application" as used herein means the individual application form and its required attachments for grants pursuant to the enabling legislation and/or program.
4. The term "Development" means improvements to real property by construction of new facilities or renovation or additions to existing facilities.
5. The term "Grantee" means an applicant who has a signed agreement for grant funds.
6. The term "Project" means the acquisition, development or other activity described on page 1 of this Agreement to be accomplished with grant funds.
7. The term "State" means the State of California, Secretary of the Resources Agency.

B. Project Execution

1. Subject to the availability of grant monies in the Act, the State hereby grants to the Grantee a sum of money (grant monies) not to exceed the amount stated on page 1 in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the Description of Project on page 1 and under the terms and conditions set forth in this Agreement.

Grantee shall assume any obligation to furnish any additional funds that may be necessary to complete the Project. Any modification or alteration in the Project as set forth in the application on file with the State must be submitted to the State for approval.

2. Grantee shall complete the Project in accordance with the time of Project performance set forth on page 1, unless an extension has been formally granted by the State and under the terms and conditions of this Agreement. Extensions may be requested in advance and will be considered in the event of circumstances beyond the control of the Grantee.

3. Grantee shall comply as lead agency with the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq.) and other environmental laws before any grant funds for construction are made available. Funds for planning and document preparation may be available sooner if included in the grant work plan. CEQA compliance shall be completed within one year from date of Grant Agreement.
4. If the Project includes Development, the Grantee certifies that the project plans comply with all current laws and regulations which apply to Development Projects, including, but not limited to, legal requirements for construction contracts, building codes health and safe codes, and disabled access laws.
5. Grantee shall permit periodic site visits by the State to determine if development work is in accordance with the approved Project Scope, including a final inspection upon Project completion.
6. Prior to the commencement of any work, Grantee agrees to submit in writing any significant deviation from the original Project Scope to the State for prior approval. Changes in Project Scope must continue to meet the need cited in the original application or they will not be approved.
7. If the Project includes acquisition of real property, the Grantee agrees to comply with all applicable state and local laws or ordinances that apply to relocation and real property Acquisition by public agencies.
8. Grantee shall provide for public access to the Project facilities in accordance with the intent and provisions of the enabling legislation and/or program.
9. Grantee must have (1) fee title, (2) lease hold (3) other interest to Project lands and demonstrate to the satisfaction of the State that the proposed Project will provide public benefits that are commensurate with the type and duration of the interest in land as determined by the State that is held by the Grantee.
10. Grantee will provide photos during and after implementation of Project at the request of the State.
11. Lands acquired with funds from this grant shall be acquired from a willing seller of the land.
12. Grantee shall maintain and operate the property funded pursuant to this chapter for a period that is commensurate with the Project and the proportion of state funds and local matching funds or property allocated to the capital costs of the Project. With the approval of the State, the Grantee, or the Grantee's successor in interest in the property may transfer the responsibility to maintain and operate the property in accordance with this section. Grantee shall use the property for the purposes for which the grant was made and shall make no other use or sale or other disposition of the property, except as authorized by specific act of the Legislature. The agreements specified in this section shall not prevent the transfer of the property from the Grantee to a public agency, if the successor public agency assumes the obligations imposed by those agreements. If the use of the property is changed to a use that is not permitted by the category from which the grant funds were appropriated, or if the property is sold or otherwise disposed of, an amount equal to (1) the amount of the grant (2) the fair market value of the real property, or (3) the proceeds from the sale or other disposition, whichever is greater, shall be used by the Grantee for a purpose authorized by that category, pursuant to agreement with the State as specified in this section, or shall be reimbursed to the fund and be available for appropriation by the Legislature only for a purpose authorized by that category. If the property sold or otherwise disposed of is less than the entire interest in the property

funded in the grant, an amount equal to either the proceeds from the sale or other disposition of the interest or the fair market value of the interest sold or otherwise disposed of, whichever is greater, shall be used by the Grantee for a purpose authorized by the category from which the funds were appropriated, pursuant to agreement with the State as specified in this section, or shall be reimbursed to the fund and be available for appropriation by the Legislature only for a use authorized by that category.

C. Project Costs

The Grant monies to be provided Grantee under this agreement will be disbursed as follows:

1. If the Project includes Acquisition of real property, and is through negotiated purchase, the State may disburse up to 100% of the amount of the State approved purchase price together with State approved costs of Acquisition when an escrow is opened. The amount disbursed in any event shall not exceed the State Grant amount set forth on page 1 of this Agreement. The remainder, if any, shall be reimbursed after the Project is completed.
2. If the Project includes Development, the State may disburse to Grantee the grant monies as follows, but not to exceed in any event the State grant amount set forth of page 1 of this Agreement:
 - a. On a reimbursement basis for preliminary costs, or construction and development costs. Ten percent of the grant amount will be held back and issued as a final payment upon completion of the project.
 - b. Remaining grant funds shall be paid up to the amount of the Grant or the actual Project cost, whichever is less, on completion of the Project and receipt of a detailed summary of Project costs from the Grantee and completion of site inspection by the State.
 - c. Advance payments may be made if warranted by compelling need at the discretion of the State.
 - d. Payment Documentation:

All payment requests must be submitted using a completed Payment Request Form. (Appendix F). This form must be accompanied by an itemized list of all charges documenting check numbers, amounts, dates, recipients, and purpose of expenditures. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate or inaccurate, the State will inform the Grantee and hold the payment request until all required information is received or corrected. Any penalties imposed on the Grantee by a contractor because of delays in payment will be paid by the Grantee and is not reimbursable under this grant.
3. Funds in this award have a limited period in which they must be expended. All Grantee expenditures must occur prior to the end of the term of this agreement.

D. Project Administration

1. Grantee shall promptly submit written project reports as the State may request. In any event Grantee shall provide State a report showing total final Project expenditures.
2. Grantee shall make property and facilities acquired or developed pursuant to this Agreement available for inspection upon request by the State.
3. Grantee agrees to use any monies advanced by the State under the terms of this Agreement solely for the Project herein described.
4. If grant monies are advanced, the Grantee shall place monies in a separate interest bearing account, setting up and identifying such account prior to the advance. Interest earned on grant monies shall be used on the Project or paid to the State. If grant monies are advanced and not expended, the unused portion of the grant shall be returned to the State within 60 days of completion of the Project or end of the Project Performance Period, whichever is earlier.
5. Grantee shall use any income earned by the Grantee to further Project purposes, or, if approved by the State, for related purposes within the Grantee's jurisdiction.
6. Grantee shall submit all documentation for project completion and final reimbursement within 90 days of project completion, but no later than May 1, 2004. The May 1, 2004 date does not apply if the State has formally granted an extension of the project completion date.

E. Project Termination

1. Grantee may unilaterally rescind this Agreement at any time prior to the commencement of the Project. After Project commencement this Agreement may be rescinded, modified or amended by mutual agreement in writing between Grantee and State.
2. Failure by the Grantee to comply with the terms of this Agreement or any other Agreement under the Act may be cause for suspension of all obligations of the State hereunder.
3. Failure of the Grantee to comply with the terms of this Agreement shall not be cause for the suspension of all obligations of the State hereunder if in the judgment of the State such failure was due to no fault of the Grantee. In such case, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this Agreement.
4. Because the benefit to be derived by the State, from the full compliance by the Grantee with the terms of this Agreement, is the preservation, protection and net increase in the quantity and quality of river parkways, riparian habitat, river and aquatic habitat, and stream and trail projects available to the people of the State of California and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of grant monies under the provisions of this agreement, the Grantee agrees that payment by the Grantee to the State of an amount equal to the amount of the grant monies disbursed under this Agreement by the State would be inadequate compensation to the State for any breach by the Grantee of this Agreement. The Grantee further agrees therefore, that the appropriate remedy in the event of a breach by the Grantee of this Agreement shall be the specific performance of this Agreement, unless otherwise agreed to by the State.

5. Grantee and State agree that if the Project includes Development, final payment may not be made until the Project conforms substantially to this Agreement.

F. Hold Harmless

1. Grantee shall waive all claims and recourses against the State including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this Agreement except claims arising from the concurrent or sole negligence of State, its officers, agents, and employees.
2. Grantee shall indemnify, hold harmless and defend State, its officers, agents and employees against any and all claims demands, damages, costs, expenses or liabilities costs arising out of the Acquisition, Development, construction, operation or maintenance of the property described as the Project which claims, demands or causes of action arise under Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of State, its officers, agents, or employees.
3. Grantee agrees that in the event State is named as codefendant under the provisions of Government Code Section 895 et seq., the Grantee shall notify State of such fact and shall represent State in the legal action unless State undertakes to represent itself as codefendant in such legal action in which event State shall bear its own litigation costs, expenses, and attorney's fees.
4. Grantee and State agree that in the event of judgment entered against the State and Grantee because of the concurrent negligence of the State and Grantee, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
5. Grantee shall indemnify, hold harmless and defend the State, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the Grantee has certified. Grantee acknowledges that it is solely responsible for compliance with items to which it has certified.

G. Financial Records

1. Grantee shall maintain satisfactory financial accounts, documents and records for the Project and to make them available to the State for auditing at reasonable times. Grantee shall also retain such financial accounts, documents and records for three years following Project termination or completion.
2. Grantee and State agree that during regular office hours each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or matters related thereto. Grantee shall maintain and make available for inspection by the State accurate records of all of its costs, disbursements and receipts with respect to its activities under this Agreement.
3. Grantee shall use any generally accepted accounting system.

H. Use of Facilities

1. Grantee agrees that the Grantee shall use the property acquired or developed with grant monies under this agreement only for the purposes for which the State grant monies were requested and no other use of the area shall be permitted except by specific act of the Legislature.
2. The Grantee shall maintain and operate the property acquired or developed for a period as determined by the State in the Minimum Land Tenure requirements as shown in the application package.

I. Nondiscrimination

1. The Grantee shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, or physical handicap in the use of any property or facility acquired or developed pursuant to this Agreement.
2. The Grantee 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 and pursuant to law.
3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this Project Agreement or under provisions of the enabling legislation and/or program.

J. Application Incorporation

The Application and any subsequent change or addition approved by the State is hereby incorporated by reference into this Agreement as though set forth in full in this Agreement.

K. Severability

If any provision of this Agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

L. Waiver

No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether expressed or implied will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.