

RESOLUTION NO. C- 28474

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AUTHORIZING THE CITY
MANAGER TO SUBMIT AN APPLICATION FOR AND TO
ENTER AN AGREEMENT AND ALL AMENDMENTS WITH
THE STATE DEPARTMENT OF PARKS AND RECREATION
FOR FUNDING UNDER THE STATE URBAN PARKS AND
HEALTHY COMMUNITIES PROGRAM UNDER THE
CALIFORNIA CLEAN WATER, CLEAN AIR, SAFE
NEIGHBORHOOD PARKS, AND COASTAL PROTECTION
ACT OF 2002 FOR THE PACIFIC ELECTRIC MULTI-USE TRAIL

WHEREAS, the State of California provides grants to public entities under
the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection
Act of 2002 ("Act"); and

WHEREAS, the State Department of Parks and Recreation ("State") has the
responsibility for administration of the State Urban Parks and Healthy Communities
Program under the Act; and

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

WHEREAS, if a grant is given to the applicant, the applicant must enter an
agreement with the State relating to the grant program;

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

Section 1. That the City Manager of the City of Long Beach is hereby
authorized to submit an application for grant funds for the acquisition of two parcels of the
former Pacific Electric Railroad Right-of-Way and the acquisition of one parcel in the City

1 of Signal Hill adjacent to the two parcels of the former Pacific Electric Railroad Right-of-
2 Way, together with the creation of a multi-use trail, and the installation of benches,
3 landscaping, and other recreation amenities ("Project").

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

8 Sec. 3. The City of Long Beach certifies that it has or will have sufficient
9 funds to operate and maintain the Project.

10 Sec. 4. The City of Long Beach certifies that it has reviewed, understands
11 and agrees to the General Provisions in the Procedural Guide, which General Provisions
12 are attached to this Resolution.

13 Sec. 5. The City of Long Beach certifies that it has or will have available,
14 prior to commencement of any work on the Project, matching funds in the amount of
15 \$211,671.

16 Sec. 6. The City of Long Beach certifies that the Project conforms to the
17 recreation element of its General Plan.

18 Sec. 7. This resolution shall take effect immediately on its adoption by the
19 City Council, and the City Clerk shall certify the vote adopting this resolution.

20 I hereby certify that the foregoing resolution was adopted by the City Council

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of the City of Long Beach at its meeting on October 19, 2004, by the following vote:

Ayes: Councilmembers: Colonna, O'Donnell, Kell,
Richardson, Reyes Uranga,
Gabelich, Lerch.

Noes: Councilmembers: None.

Absent: Councilmembers: Lowenthal, Baker.


City Clerk

Grant Contract
Special Provisions

General Provisions

A. Definitions

1. The term "Act" as used herein means the Appropriation for the Program.
2. The term "Application" as used herein means the individual Application and its required attachments for grants pursuant to the enabling legislation and/or Program.
3. The term "Acquisition" means to obtain fee title or a lesser interest in real property, specifically, conservation easement or conservation rights. Leases or rentals do not constitute Acquisition.
4. The term "Acquisition and Development" means a Project that combines Acquisition of real property with Development.
5. The term "Department" means the California Department of Parks and Recreation.
6. The term "Development" means capital improvements to real property by construction using Bond Act funds.
7. The term "Grantee" as used herein means the party described as the Grantee on page 1 of this Contract. The term "Project" as used herein means the Project described on page 1 of this Contract.
8. The term "State" as used herein means the State of California Department of Parks and Recreation.

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 Contract.

The 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. The Grantee shall complete the Project in accordance with the time of Project Performance set forth on page 1, and under the terms and conditions of this Contract.
3. The Grantee shall comply as lead agency with the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq., Title 14, California Code of Regulations, Section 15000 et. seq.)
4. The Grantee shall comply with all applicable current laws and regulations affecting Development Projects, including, but not limited to, legal requirements for construction Contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities.

5. The Grantee shall permit periodic site visits, including a final inspection upon Project completion by the State, to determine if Development work is in accordance with the approved Project Scope.
6. Prior to the commencement of any work, the Grantee agrees to submit any significant deviation from the original Project Scope in writing to the State for prior approval. Changes in the Project Scope must be approved in writing by the State and must meet the exact need described in the original Project Application.
7. If the Project includes Acquisition of real property, the Grantee agrees to comply with all applicable state and local laws or ordinances affecting relocation and real property Acquisition.
8. The Grantee shall provide for public access to Project Facilities/Venues in accordance with the intent and provisions of the enabling legislation and/or Program.
9. Grantees shall have (1) fee title, (2) lease hold or (3) other interest to the 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. Every Grantee for a Grant pursuant to this chapter and the entity that will operate and maintain the property, if that entity is different than the Grantee, shall agree to comply with all of the following requirements: (1) To operate and maintain the property developed pursuant to the State Urban Parks and Healthy Communities Act so that it is usable by residents of the Project's service area. With the approval of the department, the Grant recipient, or its successor in interest in the property, may transfer its property interest and the responsibility to operate and maintain the property, in accordance with the terms of the Grant and any applicable law, to a public agency or nonprofit organization that is able to operate and maintain the property in perpetuity. Any attempt to make a transfer in violation of this subdivision is void. (2) To use the property only for the purposes for which the Grant was made and to make no other use or sale or other disposition of the property, except as authorized by specific act of the Legislature. If the use of the property is changed to a use that is not permitted by the terms of the Grant, or if the property is sold or otherwise disposed of, the Grant recipient shall reimburse the state an amount equal to the amount of the Grant, the fair market value of the land and any improvements constructed with the Grant, or the proceeds from the sale or other disposition, whichever amount is greatest. If the property that is sold or otherwise disposed of is less than the entire interest in the property funded with the Grant, the Grant recipient shall reimburse the state 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 amount is greater. In lieu of seeking reimbursement pursuant to (2), the Department may impose restrictions on the use of public park property identical to the requirements for the preservation of public parks set forth in the Public Park Preservation Act of 1971 (Chapter 2.5 (commencing with Section 5400)) with respect to any property used, sold, or otherwise disposed of in a manner not permitted by the terms of the Grant.
11. Lands or interests in land acquired with grant funds shall be acquired from a willing seller.

C. Project Costs

The Grant monies to be provided to the Grantee under this Contract may be disbursed as follows:

1. If the Project includes Acquisition of real property, the State may disburse to the Grantee the grant monies as follows, but not to exceed, in any event, the total State Grant Amount set forth on page 1 of this Contract:
 - a. Up to a 10% advance of the total State Grant Amount

- b. After the property is in escrow, the Grantee may request up to 80% of the total State Grant Amount as specified in the approved Application, or 100% of the actual Acquisition cost, whichever is less. The Grantee shall immediately place these funds in escrow.
 - c. The remaining State 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.
- 2. If the Project includes Development, the State may disburse to the Grantee the grant monies as follows, but not to exceed in any event the total State Grant Amount set forth of page 1 of this Contract:
 - a. Up to a 10% advance of the total State Grant Amount.
 - b. On proof of award of a construction Contract or commencement of construction by force account, up to 80% of the total State Grant Amount, not to exceed 80% of the total dollar amount of any or all awarded construction contracts.
 - c. The remaining State 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.

D. Project Administration

- 1. The Grantee shall promptly submit written Project reports as the State may request. In any event, the Grantee shall provide the State a report showing total final Project expenditures.
- 2. The Grantee shall make property and Facilities/Venues developed pursuant to this Contract available for inspection upon request by the State.
- 3. The Grantee shall use any monies advanced by the State under the terms of this Contract solely for the Project herein described.
- 4. If grant monies are advanced, the Grantee shall place these 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 as approved by 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. The Grantee shall use income earned by the Grantee from use of the Project to further Project purposes, or, if approved by the State, for related purposes within the Grantee's jurisdiction.

E. Project Termination

- 1. Any Grant funds that have not been expended by the Grantee shall revert to the fund and be available for Appropriation by the Legislature for one or more of the local assistance programs that the Legislature determines to be the highest priority statewide.
- 2. The Grantee may unilaterally rescind this Contract at any time prior to the commencement of the Project. After Project commencement this Contract may be rescinded, modified or amended only by mutual agreement in writing between the Grantee and the State.

3. Failure by the Grantee to comply with the terms of this Contract or any other Contract under the Act may be cause for suspension of all obligations of the State hereunder. However, such failure 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 Contract.
4. Because the benefit to be derived by the State, from the full compliance by the Grantee with the terms of this Contract, is the Preservation, protection and net increase in the quantity and quality of parks, public recreation Facilities/Venues and/or historical resources 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 Contract, 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 Contract by the State would be inadequate compensation to the State for any breach by the Grantee of this Contract. The Grantee further agrees therefore, that the appropriate remedy in the event of a breach by the Grantee of this Contract shall be the specific performance of this Contract, unless otherwise agreed to by the State.
5. The Grantee and the State agree that if the Project includes Development, final payment may not be made until the Project conforms substantially to this Contract.

F. Hold Harmless

1. The Grantee shall waive all claims and recourse 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 Contract except claims arising from the concurrent or sole negligence of the State, its officers, agents, and employees.
2. The Grantee shall indemnify, hold harmless and defend the State, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability 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 the State, its officers, agents, or employees.
3. The Grantee agrees that in the event the State is named as codefendant under the provisions of Government Code Section 895 et. seq., the Grantee shall notify the State of such fact and shall represent the State in the legal action unless the State undertakes to represent itself as codefendant in such legal action in which event the State shall bear its own litigation costs, expenses, and attorney's fees.
4. The Grantee and the State agree that in the event of judgment entered against the State and the Grantee because of the concurrent negligence of the State and the 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. The 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. The Grantee acknowledges that it is solely responsible for compliance with items to which it has certified.

G. Financial Records

1. The 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. The Grantee also agrees to retain such financial accounts, documents and records for three years following Project termination or final payment.

The Grantee and the 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 Contract or matters related thereto. The 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 Contract.

2. The Grantee shall use a generally accepted accounting system.

H. Use of Facilities/Venues

1. The Grantee agrees that the Grantee shall use the property developed with grant monies under this Contract 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 developed for a period commensurate with the type of Project and the proportion of State grant funds and local funds allocated to the capital costs of the Project, as determined by the State.

I. Nondiscrimination

1. The Grantee shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of any property or Facility/Venue developed pursuant to this Contract.
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/Venues shall be open to members of the public generally, except as noted under the special provisions of this Project Contract 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 in this Contract as though set forth in full in this Contract.

K. Severability

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