

RESOLUTION NO. 08/09-11

BEFORE THE CITY COUNCIL OF THE CITY OF DAYTON
SITTING FOR THE TRANSACTION OF CITY BUSINESS

Title: *A Resolution Authorizing Execution of State-Local Agreement with the Land and Water Conservation Fund for Courthouse Square Rehabilitation Project No. OP 2490 NPS 41-01561*

WHEREAS, the City of Dayton was notified on August 22, 2006, that the Oregon Parks and Recreation Commission had approved a grant application for the use of Land and Water Conservation Fund money for specified rehabilitation in Courthouse Square Park; and

WHEREAS, the City has now received the grant agreements for execution; and

WHEREAS, the FY 2008/09 Budget did anticipate receipt of this grant;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Dayton, Oregon:

- 1) **THAT** the Mayor is hereby authorized to execute the State-Local Agreement with the Land and Water Conservation Fund for Courthouse Square Rehabilitation Project No. OP 2490 NPS 41-01561 (attached hereto as Exhibit A and by this reference made a part hereof); and
- 2) **THAT** the City Manager is hereby authorized to provide any additional certifications or forms necessary to finalize the agreement; and
- 2) **THAT** this resolution will be effective immediately upon adoption by the City Council.

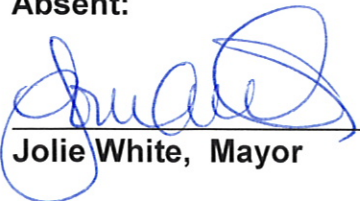
ADOPTED this 7th day of **July, 2008**.

In Favor of Adoption: Dickson, Evers, Hensley, White

Opposed to Adoption: None

Abstained: None

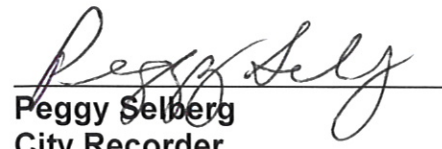
Absent: Blackburn, Hutchins, Webb



Jolie White, Mayor

7/8/2008

Date of Signing

ATTESTED BY:


**Peggy Selberg
City Recorder**

7/7/08

Date of Enactment

Attachment - Exhibit A

WKS4\RESOLUTIONS\08-09\R0809.11.ADOPTED

STATE-LOCAL AGREEMENT
LAND AND WATER CONSERVATION FUND

Project Title: Courthouse Square Rehabilitation
Project Number: OP 2490, NPS 41-01561

This Agreement is entered into between the STATE OF OREGON, by and through its Parks and Recreation Department, hereinafter called "OPRD," and City of Dayton, a Municipal Corporation of the State of Oregon, by and through its designated representative, hereinafter called "Project Sponsor:"

RECITALS

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 the Project Sponsor perform the Project, as defined herein, 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 for OPRD to reimburse Project Sponsor for up to 50 percent (50%) of Project Sponsor's costs in performing the Project.

NOW THEREFORE, the parties agree to the following:

1. **Effective Date and Duration:** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law . Unless otherwise terminated or extended the Project shall be completed and this Agreement shall expire on June 30, 2010.
2. **Notice to Proceed:** Project Sponsor may begin work upon receipt of a Notice to Proceed from the State. The Project Sponsor shall have one year from the date of the Notice to Proceed to commence substantial work (i.e., for Project Sponsor to award contracts for work or show at least 25% of work is complete if the work is performed by force account). Failure to comply with this schedule may result in cancellation of the Project and termination of this Agreement unless substantial justification for an extension is warranted. Any expenses incurred prior to the Effective Date will not be eligible for reimbursement.
3. **Project:** The Project consists of design and engineering, site preparation, installation of playground equipment, safety surfacing, demolition of old restroom and construction of new restroom, pathways, landscaping benches and lighting work as described in Project Sponsor's Grant Project Application (attached hereto as Exhibit A and incorporated herein).
4. **Project Funding:** The estimated total cost of the project is \$236,000.00. The maximum amount of the grant by the OPRD to Project Sponsor is fifty percent of \$236,000.00. The Project Sponsor shall in pay the costs of the Project and then may request reimbursement from the OPRD. The Project Sponsor may submit partial payment requests for work completed. Payment requests may be submitted no more than once per calendar quarter. Final payment will be made upon satisfactory completion of the Project. OPRD shall pay Project Sponsor no more than \$118,000.00 or 50% of the cost of the project for reimbursement, whichever is less. OPRD shall bill the Project Sponsor no more than \$4000.20 for OPRD administration expenses. In no event shall the sum of the payment to Project Sponsor and the OPRD administration retention exceed fifty percent (50%) of the total actual cost of the Project. OPRD will bill Project Sponsor for all OPRD administrative expense on each reimbursement request submitted by Project Sponsor.
5. **Reimbursements:** Reimbursements by the OPRD will be made only for those items identified in the

Grant Application and approved by the OPRD to be reimbursable. Substitutions of the elements of the Project or deletion of elements will not be eligible for and will not receive reimbursement.

- 6 **Continued Operation:** Upon completion of the Project, 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.
- 7 **Funds Allocated:** It is understood by the parties hereto that no OPRD funds other than the Grant Funds are committed to payment of any costs of the Project, and that obligations imposed upon OPRD to apply for federal funds as well as the right of Project 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 Project Sponsor fails to perform any of the work of the project and such failure, because of commitments made by OPRD to the Department of the Interior, causes OPRD to perform any work necessary to bring the Project to a useful state of completion (as determined by OPRD and the Department of the Interior), Project Sponsor shall reimburse OPRD for all OPRD's costs in performing such necessary completion work, less any federal funds received by OPRD for such work.
- 8 **Match:** The Project Sponsor shall contribute matching funds or the equivalent in labor, materials, or services, which are shown as eligible match in the rules, policies, and guidelines for the Land & Water Conservation Fund Grant Program.
- 9 **Final Report:** Project Sponsor must submit a final report and request for final reimbursement within 60 days of the date the project is completed or the Expiration Date, whichever is earlier. The final report shall include full and final accounting of all expenditures and description of the work accomplished.
- 10 **Project Sponsor Obligations:** Project Sponsor hereby agrees to comply at all times with all applicable federal and state laws. Without limiting the generality of the foregoing, Project Sponsor shall comply with the LAND AND WATER CONSERVATION FUND PROJECT AGREEMENT (the Federal Project Agreement), General Provisions attached hereto marked "Exhibit B" and by this reference made a part hereof, in accordance with paragraph E of part I (Definitions) of Exhibit B. Project Sponsor hereby undertakes separately to perform its obligations set forth in said Federal Project Agreement. The benefit to be derived from full compliance by the Project 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 OPRD 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 Project Sponsor agrees that payment by the Project Sponsor to the OPRD of an amount equal to the value of any assistance extended under this Agreement would be inadequate compensation to OPRD for any breach by the Project Sponsor of this Agreement. The Project Sponsor further agrees, therefore, that the appropriate remedy for OPRD in the event of a breach by the Project Sponsor of this Agreement shall be the specific performance of the Agreement.
- 11 **Termination:**
 - a.) The OPRD reserves the right to cancel this Agreement if substantial work has not commenced on the Project within one year of issuance by the OPRD of the Notice to Proceed.
 - b.) The OPRD, upon thirty (30) days written notice to the Project Sponsor, may terminate this Agreement if the OPRD fails to receive funding or appropriations, limitations, or other expenditure authority at levels that, in OPRD's reasonable administrative discretion, are sufficient to pay the allowable costs of the Project to be funded hereunder, or if state law, regulation or guidelines be modified, changed or interpreted in such a way that the Project, or any portion of the Project is no longer eligible for Local Government Grant Program funding.

- c.) The OPRD, upon thirty (30) days written notice to the Project Sponsor, may terminate this Agreement if Project Sponsor fails to perform, observe, or discharge any of its agreements or obligations set forth herein and such failure remains uncured at the end of the 30 day period or such longer period, if any, as OPRD may specify in the notice.
12. **Amendments:** This Agreement may only be amended by a written instrument signed by both parties.
13. **Publicity:** Project Sponsor shall make every effort to acknowledge and publicize the OPRD's participation and assistance with the project. Prior to the completion of the project, the Project Sponsor agrees to place signage acknowledging the OPRD's grant program support. The Project Sponsor also agrees to maintain the signage throughout the life of the project. OPRD may withhold final reimbursement payment until signage has been placed.
14. **Public Access to the Project:** The Project Sponsor shall allow open and unencumbered public access to the Project to all persons without regard to race, color, religious or political beliefs, sex, national origin or place of primary residence.
15. **Compliance with Workers Compensation Law:** All employers, including the Project Sponsor that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017, which requires subject employers to provide compensation coverage for all subject workers, unless such employers are exempt under ORS 656.126.
16. **Record Maintenance, Audits:** The Project Sponsor acknowledges and agrees that OPRD and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of the Project Sponsor that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. The Project Sponsor shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) fiscal years after the completion of the Project, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
17. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OPRD (and/or any other agency or department of the State of Oregon) and Project Sponsor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. PROJECT SPONSOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE CIRCUIT COURT OF MARION COUNTY.
18. **Remedies:** The OPRD shall have any and all rights and remedies available by law or in equity and provisions of state law applicable to this Agreement are hereby incorporated.
19. Project Sponsor shall comply with and is 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.

20. **Hold Harmless; Indemnity:** The Project 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 Project Sponsor or the Project Sponsor's officers, employees, sub-contractors, or agents under this Agreement.
21. **Participation in Similar Activities:** This Agreement in no way restricts the Project Sponsor or the OPRD from participating in similar activities with other public or private agencies, organizations or individuals.
22. **Duplicate Payment:** The Project Sponsor shall not be compensated for or receive any form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual. All Project Sponsor matching contributions to this Agreement must be used and expended for this project only and within the project period.
23. **No Third Party Beneficiaries:** The OPRD and the Project Sponsor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.
24. **Public Records:** Any information furnished under this Agreement is subject to the Public Records Law, ORS 192.410 to 192.505.
25. **Non-Discrimination:** The parties agree not to discriminate on the basis of race, religion, sex, color, national origin, family status, marital status, sexual orientation, age, and source of income or mental or physical disability in the performance of this Agreement.
26. **Notices:** All written communications, which are to be given to the OPRD under this Agreement, will be mailed and addressed as follows:

OPRD

Oregon Parks and Recreation Department
LWCF Grants Program Coordinator
725 Summer Street NE, Suite C
Salem, Oregon 97301

PROJECT SPONSOR

City of Dayton
Sue Hollis, City Manager
PO Box 339
Dayton, OR 97114
(503) 864-2221

27. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE OPRD AND THE PROJECT 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 OPRD TO ENFORCE ANY PROVISIONS OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY THE OPRD 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.

City of Dayton
PROJECT SPONSOR

Assistant Attorney General – Legal Sufficiency
(for grant allocations over \$100,000)

Authorized Representative Signature

Date

Print Name and Title

Date

STATE OF OREGON, BY AND THROUGH ITS
PARKS AND RECREATION DEPARTMENT

Tim Wood, Director

Date

Grants Division Manager

Date

LWCF Grant Program Coordinator

Date

2.3

**LAND AND WATER CONSERVATION FUND
GRANT APPLICATION**

1. PROJECT SPONSOR INFORMATION	
Project Name: Courthouse Square Park Project	Project Sponsor: City of Dayton
Contact Person Name: Sue Hollis, City Manager / <i>suehollis@ci.dayton.or.us</i>	
Address: PO Box 339 Dayton, Oregon 97114-0339	
Telephone No.: 503-864-2221	Fax No.: 503-864-2956
2. PROJECT TYPE: Acquisition <input type="checkbox"/> Development <input type="checkbox"/> Rehabilitation <input checked="" type="checkbox"/>	
3. PROJECT DESCRIPTION: The project will rehabilitate the main park in the City of Dayton and bring the facility up-to-date by addressing several key concerns. Significantly, the project addresses the primary goal of Dayton's Parks and Recreation Master Plan. The principal objectives are to improve the accessibility of the park and make it fully ADA accessible. The project will also address safety concerns.	
4. COST ESTIMATE OF WORK TO BE COMPLETED	
Design and engineering work done prior to project approval	\$
Design, engineering, inspection work done after project approval	\$
Work Elements	
<i>Site Prep Playground</i>	<i>3300.00</i>
Installation of new playground equipment/site preparation/removal of old	\$ 30,000 <i>59,000.00</i>
Demolition of existing restrooms/construction of new ADA restrooms	\$120,000 <i>#115,500</i>
Widening of sidewalks	\$ 42,500 <i>#18,000</i>
Internal path	\$ 7,100
Other landscaping	\$ 2,500 <i>#2,000</i>
Lighting around perimeter & central path	\$ 33,900 <i>#34,200</i>
TOTAL COSTS <i>Bonches</i>	<i>#4,000</i> \$236,000
5. Source of Funds	
Land & Water Conservation Fund Grant (50% match, \$12,500 minimum)	\$118,000
Other state sources (identify)	\$
Local budget (cash purchases, contracts, etc.)	\$118,000
Local Force Account (agency forces, equipment, etc.)	\$
Donations (identify)	\$
TOTAL COSTS	\$236,000

6. PROJECT SITE/LOCATION:	
Site Name: Courthouse Square Park	Size of Property: One city block – 1.79 acres
Owner: City of Dayton	Congressional District: 1 st
Location Information: USGS Quad <u>Dayton</u> ; Township <u>4S</u> ; Range <u>3W</u> ; Section <u>9</u>	
Site Description: The park is fully developed with a fountain, pavilion, covered picnic structure, basketball court, playground, picnic tables, and other amenities.	
City/Town: Dayton	County: Yamhill
DRIVING INSTRUCTIONS: From Salem, go west on Highway 22 for approximately 10 miles and turn north (right) onto Highway 99W. Travel approximately 19 miles through Amity and turn northeast (right) onto 223 (Amity-Dayton Highway); travel approximately 10 miles. Courthouse Square Park is on this highway, which turns into Ferry Street, on the north (left) side in the heart of downtown. Highway 223 ends at a "T" in downtown Dayton, and the park is located at the "T."	

- Do you own the site in fee? Yes No
 Attach a copy of deed(s), lease or other legal documents.
- Has there been a previous federal LWCF project on this site? Yes No
 If yes, give program name and project number(s).
- Is the project located in a "flood plain"? Yes No
- Does the project affect a "wetland"? Yes No
- Is there an LCDC or locally approved Comprehensive Land Use Plan? If so, explain in the Program Narrative how this project fits into the plan. Attach a letter from the local planning department acknowledging that the project is in compliance with the plan. Yes No
- Is your share of the project costs included in an **APPROVED BUDGET**? If not, explain. Yes No
- Has your agency completed a Self Evaluation and ADA Transition Plan for accessibility of your outdoor recreation sites and facilities? Submit letter certifying existence of Self Evaluation and ADA Transition Plan. Yes No



 Signature of Authorized Official

503-864-2221
 Telephone No.

BUDGET SUMMARY
COURTHOUSE SQUARE PARK REHABILITATION PROJECT
 City of Dayton, Oregon

<u>Element/Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Description Needed</u>	<u>Description</u>
Demolition Old restroom	Each	1	\$2,500	\$2,500	Describe	Demolish concrete block building
Remove existing entry path	Ft	150	\$1,000	\$1,000	Describe	Remove existing narrow entry pathway from Ferry
Restrooms Build restrooms	Each	1	\$113,000	\$113,000	Describe	Construct new ADA accessible restrooms
Site Preparation Trenching for lighting	Linear Ft	2000	\$3,000	\$3,000	Optional	
Erosion control	Lump Sum		\$ 500	\$ 500	Describe	Best management practices (Straw, mulch, etc.)
Playground Site preparation	Lump Sum		\$3,300	\$3,300	Describe	Prepare site for new playground equipment and
Purchase & installation	Lump Sum		\$59,000	\$59,000	Describe	Purchase & install new playground equipment & related fall protection

BUDGET SUMMARY
COURTHOUSE SQUARE PARK REHABILITATION PROJECT
 City of Dayton, Oregon

<u>Element/Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>	<u>Description Needed</u>	<u>Description</u>
Sidewalks Form & pour new entry pathway	Linear ft	150	\$5,000	\$5,000	Describe	Frame and pour widened concrete main entry
Internal ADA Paths	Linear ft	1000	\$12,000	\$12,000	Describe	Install ADA accessible pathways per plan
Lighting Perimeter	Each	16	\$17,500	\$17,500	Describe	Install historic replica lighting inside park boundaries near existing sidewalks
Pathways	Each	60	\$13,200	\$13,200	Describe	Install low voltage path lighting along pathways
Landscaping Playground	Lump sum		\$2,000	\$2,000	Describe	Plant safety hedges defining playground area material benches
Park Furniture Benches	Each	4	\$4,000	\$4,000	Describe	Install park benches near play equipment
TOTAL			\$236,000	\$236,000		

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.

In the event the NPS provides Land and Water Conservation Fund assistance for the acquisition and/or development of property subject to reversionary interests with full knowledge of those reversionary interests, conversion of said property to other than public outdoor recreation uses as a result of such reversionary interest being exercised is approved. In receipt of this approval, the State agrees to notify the Service of the conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions. The State further agrees to effectuate such replacement within a reasonable period of time, acceptable to the Service, after the conversion of property takes place. The provisions of this paragraph are also applicable to: leased properties acquired and/or developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the Service; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the Service.

- C. The State agrees that the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement. The State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement. The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement.
- D. The State agrees to comply with the policies and procedures set forth in the Land and Water Conservation Fund Manual. Provisions of said Manual are incorporated into and made a part of the project agreement.
- E. The State agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by Manual requirements.
- F. The State agrees that a permanent record shall be kept in the participant's public property records and available for public inspection to the effect that the property described in the scope of the project agreement, and the signed and dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.
- G. Nondiscrimination
 1. By signing the LWCF agreement, the State certifies that it will comply with all Federal laws relating to nondiscrimination as outlined in the Civil Rights Assurance appearing at Part III-I herein.
 2. The State 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 as set forth in the Manual.

Part III - Project Assurances

A. Applicable Federal Circulars

The State shall comply with applicable regulations, policies, guidelines and requirements including OMB Circular A-102 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), 43 CFR Part 12 Administrative and Audit Requirements and Best Principles for Assistance Programs, Department of the Interior), A-87 (Cost Principles for State and Local Governments), and A-128 (Audits of State and Local Government) as they relate to the application, acceptance and use of Federal funds for this federally assisted project.

B. Project Application

1. The Application for Federal Assistance bearing the same project number as the agreement and associated documents is by this reference made a part of the agreement.

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 11283, 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

identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. The State will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities, pursuant to 40 CFR, Part 15.20 and that it will notify the NPS of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA. The State agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. The State further agrees to insert this clause into any contract or subcontract in excess of \$100,000.
12. The State will assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
13. The State will comply with Executive Order 12432, "Minority Business Enterprise Development as follows:
 - (1) Place minority business firms on bidder's mailing lists.
 - (2) Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services.
 - (3) Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms.
 - (4) For any project involving \$500,000 or more in grant assistance (except for projects involving acquisition only) the State or recipient shall submit, prior to the commencement of construction and every fiscal year quarter thereafter until project completion, reports documenting the efforts to hire minority business firms. These reports, SF 334, will be submitted one month following the end of each fiscal quarter (i.e., January 31, April 30, July 31, and October 31) to the appropriate National Park Service Regional Office.
 - (5) The Department of the Interior is committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

The National Park Service Regional Offices will work closely with the States to ensure full compliance and that grant recipients take affirmative action in placing a fair share of purchases with minority business firms.

14. The State will comply with the intergovernmental review requirements of Executive Order 12372.

D. Construction Contracted for by the State Shall Meet the Following Requirements:

1. Contracts for construction shall comply with the provisions of 43 CFR Part 12 (Administrative and Audit Requirements and Cost Principles for Assistance Programs, Department of the Interior).
2. No grant or contract may be awarded by any grantee, subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549. By signing the LWCF agreement, the State certifies that it will comply with debarment and suspension provisions appearing at Part III-J herein.
3. In accordance with the "Stevens Amendment" (to Section 623 of the Treasury, Postal Service and General

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:

EXHIBIT A

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

H. Provision of a Drug-Free Workplace

In compliance with the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D), the State certifies, as follows:

The grantee certifies that it will or continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of a grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(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;

(3) 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;

EXHIBIT A

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The State further agrees that it will include the clause "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" appearing below in any agreement entered into with lower tier participants in the implementation of this grant. Department of Interior Form 1954 (DI-1954) may be used for this purpose.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this application that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.