



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Department of Public Works



DATE: December 1, 2011
BOARD MEETING DATE: December 13, 2011
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors
FROM: James C. Porter, Director of Public Works
SUBJECT: California Department of Parks and Recreation Per Capita Grant Contract

RECOMMENDATION:

Adopt a Resolution authorizing the Director of Public Works or his designee to:

1. Execute a grant contract with the California Department of Parks and Recreation for construction projects within four County Parks in the amount of \$608,876; and
2. Execute any other documents associated with the acceptance of grant funding from the California Department of Parks and Recreation in the amount of \$608,876; and
3. Execute and record deed restrictions to ensure that the property improved with grant funds is used for the purpose for which the funds were provided.

BACKGROUND:

On November 9, 2004, your Board adopted Resolutions which approved filing for \$1,367,000 in grant funding from the California Clean Water, Clean Air, Neighborhood Parks, and Coastal Protection Act of 2002; and appointed the Director of Environmental Services Agency to act as the County's agent. As of June 30, 2011, \$758,124 of these funds have been used on specific park development projects at Junipero Serra, Memorial, and San Pedro Valley County Parks. In addition, these funds have been used for projects that rehabilitated picnic areas and restrooms and reduced vegetation to accomplish fuel reduction obligations at numerous parks.

Due to a nine-month Bond Act freeze and a variety of project delays, we were unable to complete all work before the grant contract expired. San Mateo County along with numerous other public agencies throughout the State of California worked with their legislators to extend the term of the grant contracts.

As part of the Budget Act of 2011, the State of California legislatively extended the grant contract from June 30, 2011 to June 30, 2015. In order to access the remaining \$608,876 in grant funds, a new grant contract must be certified by your Board's resolution and include deed restrictions on the four Parks to ensure that the property is used for a purpose consistent with the grant scope. The recordation of deed restrictions is a new term in California Department of Park and Recreation (State Parks) grant contracts. The deed restriction will apply to the property for 20 years. If the property's use is inconsistent with the grant scope, the State would have the right to take legal action to ensure that the property's use was consistent with the grant requirements. Each deed restriction will include an "Exhibit A" containing a legal description for the parcel of property to which grant funds will be allocated and to which the restriction applies. This "Exhibit A" must be signed by the representative authorized by this resolution and notarized and recorded with the County Recorder's Office.

DISCUSSION:

The Department of Public Works will use \$503,609 of the grant funds to partially underwrite the construction of the Fitzgerald Marine Reserve Coastal Trail and San Vicente Bridge. A \$250,000 grant from the California State Coastal Conservancy will fund the balance of the \$754,946 engineer's estimate.

The Memorial, San Bruno Mountain, and Wunderlich County Park projects have been completed. Site visits to the three Parks have been made by State Parks staff. Project completion forms and reimbursement requests have been accepted by State Parks and will be paid upon submittal of a signed Grant Contract with the County.

County Counsel has reviewed and approved the Resolution, Contract and Deed Restrictions as to form.

Approval of this Resolution contributes to the Shared Vision 2025 outcome of an Environmentally Conscious Community as execution of the Grant Agreement furthers the number and quality of natural experiences and recreational opportunities for County Park visitors. Each visitor gains a greater appreciation of the natural environment and the need for its preservation.

FISCAL IMPACT:

There are four park projects to be financed with these funds as follows:

Fitzgerald Marine Reserve Coastal Trail and San Vicente Bridge	\$503,609
Memorial County Park Restroom and Shower Buildings	\$41,302
San Bruno Mountain Gatehouse and Kiosk Roofs, West Peak	\$39,598
Roofs and Summit Loop Trail Bridges	
Wunderlich County Park Parking Lot	<u>\$24,367</u>
Total Grant:	\$608,876

There is no impact to the General Fund.

Attachments: Exhibit "A" Deed Restrictions
Exhibit "B" Grant Contract

Deed Restriction Overview

The enclosed Deed Restriction is required by the Office of Grants and Local Services (OGALS) to record a restriction on the title to the property. The restriction ensures that the property is used for a purpose consistent with the grant scope for the length of the contract performance period.

- If the Grantee owns the project site property, a deed restriction is required before any additional grant payments may be approved.
- **Acquisition-only projects**
The deed restriction is required after the acquisition is complete and the Grantee takes ownership of the property (grant payments may only be made for acquisition costs until the deed restriction is recorded).
- **Acquisition/Development projects**
The deed restriction is required after the acquisition is complete and prior to paying for development costs.

Deed Restriction Instructions

1. Fill in all the blank spaces of the Deed Restriction form as indicated below. Do not alter the Deed Restriction form.

Deed Restriction Form – Page 1

I. WHEREAS, _____ (hereinafter referred to as "Owner(s)"

Insert ownership information as it appears on the deed.

Deed Restriction Form – Page 3

5. SEVERABILITY.

Dated: _____, 20 ____

Insert the date the Deed Restriction is signed by the Grantee's Authorized Representative (the position identified on the Grant Contract face sheet) in the presence of a notary.

Business Name (if property is owned by a business): _____

Signed: _____

Signed: _____

PRINT/TYPE NAME & TITLE OF ABOVE
(GRANTEE'S AUTHORIZED REPRESENTATIVE)

PRINT/TYPE NAME & TITLE OF ABOVE
(ADDITIONAL SIGNATURE, AS REQUIRED)

The Grantee's Authorized Representative (the position identified on the Grant Contract face sheet) signs in the presence of a notary. Additional signature lines may be added if multiple signatures are required.

2. To the Deed Restriction form attach:
 - (1) A page entitled, "Exhibit A (Legal Description of Property)".
 - (2) Exhibit A: A formal legal description of every parcel of property to which grant funds will be allocated. This information can be obtained from the grant deed or title policy. (NOTE: The assessor's parcel number or a street address is NOT a valid legal description.), or,
Exhibit A (Alternative), Habitat Conservation Fund (HCF) Grant Program only:
A topographic map that clearly outlines the project boundaries
 - (3) Exhibit B: A complete copy of the Grant Contract signed by the Grantee and the State of California with Grant Contract provisions attached.
3. Notarize it: Take the unsigned Deed Restriction form, "Exhibit A", and "Exhibit B", to a notary. The Grantee's Authorized Representative (the position identified on the Grant Contract face sheet) signs the Deed Restriction form signature page in the presence of a notary. The notary then completes the "Notary Acknowledgement" section.
4. Record it: Take the notarized Deed Restriction form, "Exhibit A", and "Exhibit B", to the County Recorder's Office of the county in which the property is located and ask the County Clerk to "record the Deed Restriction form, Exhibit A, and Exhibit B, on the title to the property."
5. Send a copy of the notarized and recorded Deed Restriction form, "Exhibit A", and "Exhibit B" to OGALS Project Officer.

1 RECORDING REQUESTED BY:
2 California Department of Parks and Recreation
3 Office of Grants and Local Services

4 WHEN RECORDED MAIL TO:
5 Office of Grants and Local Services
6 PO Box 942896
7 Sacramento, CA 94296-0001
8 Attn: Lowell Landowski

9
10 **DEED RESTRICTION**
11

12 I. WHEREAS, County of Madera, Resources Management Agency (hereinafter referred to
13 as "Owner(s)" is/are recorded owner(s) of the real property described in Exhibit A,
14 attached and incorporated herein by reference

15 (hereinafter referred to as the "Property"); and

16 II. WHEREAS, County of Madera, Resources Management Agency (hereinafter referred to
17 as "Applicant(s)")

18 III. WHEREAS, the California Department of Parks and Recreation (hereinafter referred to
19 as "DPR") is a public agency created and existing under the authority of section 5001 of the California
20 Public Resources Code (hereinafter referred to as the "PRC"). And

21 IV. WHEREAS, Owner(s) (or Applicants) applied to DPR for grant funds available pursuant
22 to the 2002 Resources Bond Act, Per Capita, for Acquisition and development of a community center on
23 the Property; and

24 V. WHEREAS, DPR's Office of Grants and Local Services approved Grant 02-20-011,
25 (hereinafter referred to as "Grant") on the Property, subject to, among other conditions, recordation of this
26 Deed Restriction on the Property; and
27

1 VI. WHEREAS, but for the imposition of the Deed Restriction condition of the Grant, the
2 Grant would not be consistent with the public purposes of the 2002 Resources Bond Act, Per Capita and
3 the funds that are the subject of the Grant could therefore not have been granted; and

4 VII. WHEREAS, Owner(s) has/ve elected to comply with the Deed Restriction of the Grant,
5 so as to enable Owner(s), to receive the Grant funds and perform the work described in the Grant;

6 NOW, THEREFORE, in consideration of the issuance of the Grant funds by DPR, the
7 undersigned Owner(s) for himself/herself/themselves and for his/her/their heirs, assigns, and successors-
8 in-interest, hereby irrevocably covenant(s) with DPR that the condition of the grant (set forth at
9 paragraph(s) 1 through 5 and in Exhibit B hereto) shall at all times on and after the date on which this
10 Deed Restriction is recorded constitute for all purposes covenants, conditions and restrictions on the use
11 and enjoyment of the Property that are hereby attached to the deed to the Property as fully effective
12 components thereof.

13 1. DURATION. (a) This Deed Restriction shall remain in full force and effect and shall
14 bind Owner(s) and all his/her/their assigns or successors-in-interest for the period running from 7/1/2011
15 through 6/30/2031.

16 2. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable
17 and shall constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the
18 California Constitution; and b) section 402.I of the California Revenue and Taxation Code or successor
19 statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to
20 the Property within the meaning of section 3712(d) of the California Revenue and Taxation Code, or
21 successor statute, which survives a sale of tax-deeded property.

22 3. RIGHT OF ENTRY. DPR or its agent or employees may enter onto the Property at times
23 reasonably acceptable to Owner(s) to ascertain whether the use restrictions set forth above are being
24 observed.

25 4. REMEDIES. Any act, conveyance, contract, or authorization by Owner(s) whether
26 written or oral which uses or would cause to be used or would permit use of the Property contrary to the
27

1 terms of this Deed Restriction will be deemed a violation and a breach hereof. DPR may pursue any and
2 all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction.
3 In the event of a breach, any forbearance on the part of DPR to enforce the terms and provisions hereof
4 shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

5 5. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any
6 reason becomes unenforceable, no other provision shall be affected or impaired.

7
8 Dated: _____, 20 ____

9
10
11 Signed: _____ Signed: _____

12
13 _____
14 PRINT/TYPE NAME & TITLE OF ABOVE
(GRANTEE'S AUTHORIZED REPRESENTATIVE)

15
16 _____
17 PRINT/TYPE NAME & TITLE OF ABOVE
(ADDITIONAL SIGNATURE, AS REQUIRED)

18
19
20
21
22
23 ****NOTARY ACKNOWLEDGEMENT ON THE NEXT PAGE****
24
25
26
27

1 State of California

2 County of _____

3 On _____ before me, _____, a Notary Public,
4 personally appeared _____, who proved to me on the basis of
5 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
6 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
7 by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
8 person(s) acted, executed the instrument.

9 I certify under PENALTY OF PERJURY under the laws of the State of California that the
10 foregoing paragraph is true and correct.

11
12 WITNESS my hand and official seal.

13 Signature _____ (Seal)

**State of California – Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION**

GRANT CONTRACT

2002 Resources Bond Act
Per Capita

GRANTEE County of San Mateo

THE PROJECT PERFORMANCE PERIOD IS FROM July 01, 2011 through June 30, 2015

CONTRACT PERFORMANCE PERIOD IS FROM July 01, 2011 through June 30, 2031

The Grantee agrees to the terms and conditions of this Contract, and the State of California, acting through its Director of Parks and Recreation pursuant to the Per Capita in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, agrees to fund the total Project Grant Amount indicated.

***THESE FUNDS ARE FOR THE ACQUISITION AND DEVELOPMENT OF
NEIGHBORHOOD, COMMUNITY, AND REGIONAL PARKS AND RECREATION
LANDS AND FACILITIES.***

County of San Mateo
Grantee

The General and Special Provisions attached are made a part of and incorporated into the Contract.

By: _____
(Signature of Authorized Representative)

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

Title: Director - Department of Parks

By: _____

Date: _____

Date: _____

CERTIFICATION OF FUNDING

CONTRACT NO C0231125	AMENDMENT NO	CALSTRS VENDOR NO 000000304100	PROJECT NO		
AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 608,876	FUND Clean Water, Cln Air, Cstl Protc Fd, CA				
PRIOR AMOUNT ENCUMBERED BY THIS CONTRACT 0	ITEM 3790-103-6029(1)	CHAPTER 33/11	STATUTE 11	FISCAL YEAR 2011/12	
TOTAL AMOUNT ENCUMBERED TO DATE \$ 608,876	INDEX 1091	OBJ. EXPEND 702	PCA	PROJECT/WORK PHASE	
T.B.A. NO	I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.				
B.R. NO	SIGNATURE OF ACCOUNTING OFFICER			DATE	

GRANT CONTRACT

This AGREEMENT is hereby made and agreed upon by the State of California, acting through the California Department of Parks and Recreation (hereinafter referred to as "STATE") and County of San Mateo (hereinafter referred to as "GRANTEE") pursuant to the Per Capita in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002.

RECITALS

1. On or about 12/22/2004 the STATE and GRANTEE entered into Grant Contract #C0207617 (hereinafter referred to as "PREVIOUS CONTRACT") for an amount not to exceed \$1,367,000. This grant was funded in accordance with the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, also known as Proposition 40.
2. The completion date set forth in the PREVIOUS CONTRACT was 6/30/2011. The GRANTEE did not complete the grant project(s) or spend its entire allocation prior to the contract liquidation date and, therefore, is not discharged from its obligations under the PREVIOUS CONTRACT.
3. Pursuant to the PREVIOUS CONTRACT, STATE disbursed grant funds to GRANTEE in the total amount of \$1,367,000, leaving a balance in the amount of \$ 608,876 for use by GRANTEE.
10. On or about June 30, 2011, Chapter 33 of the Statutes of 2011 (hereinafter "Budget Bill of 2011/12") was enacted. Item 3790-401 stated that all grant funds previously appropriated from Proposition 40 that have not been expended by grant recipients prior to June 30, 2011 shall revert to the funds from which the appropriations were made. This provisions effectively terminated STATE's authority to pay out further grant funds under the PREVIOUS CONTRACT.

Pursuant to section 3790-103-6029 of the Budget Bill of 2011/12, the Legislature appropriated an amount equivalent to the balance remaining on June 30, 2011 in the 2002 California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Bond Fund. The Legislature made these funds available for grants previously appropriated from Proposition 40 funds which are deemed to have the highest priority statewide consistent with Section 5096.633 of the Public Resources Code. These funds are available for encumbrance on or before June 30, 2013. Per Government Code section 16304, the liquidation period of these funds is extended to on or before June 30, 2015.

5. Pursuant to the Budget Bill of 2011/12, item number 3790-103-6029 and 3790-401, STATE and GRANTEE agree to enter into this Agreement (hereinafter referred to as "CONTRACT"), which establishes terms and conditions that allow the expenditure of the newly appropriated grant funds established by Senate Bill 87 to complete the project(s) set forth in the CONTRACT. STATE and GRANTEE agree to cancel the PREVIOUS CONTRACT and agree to be bound by the terms and conditions of this CONTRACT.

TERMS AND CONDITIONS

The STATE, pursuant to the Per Capita in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, and through authority granted by section 3790-103-6029 of the Budget Bill of 2011/12, hereby grants to GRANTEE a sum (hereinafter referred to as "GRANT MONIES") not to exceed \$ 608,876 subject to the terms and conditions of this CONTRACT, the GUIDES, any legislation applicable to the ACT, and the APPLICATION.

In consideration thereof GRANTEE agrees to abide by the terms and conditions of this CONTRACT as well as the provisions of the ACT. GRANTEE acknowledges that the GRANT MONIES are not a gift or a donation.

In addition to the terms and conditions of this CONTRACT, the parties agree that the terms and conditions contained in the documents set forth below are hereby incorporated into and made part of this CONTRACT.

- m. The PROCEDURAL GUIDE;
- n. The submitted APPLICATION(S).

I. GENERAL PROVISIONS

A. Definitions

As used in this CONTRACT, the following words shall have the following meanings:

- 73. The term "ACQUISITION" means to obtain fee title of real property or a permanent easement which provides the recipient permanent rights to use the property for the purposes of the project. Leases or rentals do not constitute ACQUISITION.
- 74. The term "ACT" means the statutory basis for these grant programs.
- 75. The term "APPLICATION" means the individual project application packet(s) for a grant(s) pursuant to the enabling legislation and/or grant program process guide requirements.
- 76. The term "COMPETITIVE GRANT PROGRAM" means the Urban Park Act of 2001, the Murray Hayden Urban Youth Services Program, the State Urban Parks and Healthy Communities Act, the Roberti-Z'berg-Harris Nonurban Needs Basis, Roberti-Z'berg-Harris Urban Needs Basis or California Youth Soccer and Recreation Development program.
- 77. The term "CONTRACT PERFORMANCE PERIOD" means the period of time described in Section 1 of this CONTRACT. The "CONTRACT PERFORMANCE PERIOD" means the period of time during which the GRANTEE must use the property acquired or developed with the grant for purposes consistent with the grant.

78. The term "DEVELOPMENT" means capital improvements to real property by means of construction of permanent or fixed features of the property.
79. The term "GRANT PERFORMANCE PERIOD" means the period of time described in the Section I of this contract during which eligible costs can be charged to the grant and which begins on the date of appropriation and ends on the fund liquidation date.
80. The term "GRANT SCOPE" means the items listed in the GRANT SCOPE/Cost Estimate Form(s) found in the APPLICATION(s).
81. The term "PROCEDURAL GUIDE" means the document identified as the "Procedural Guide for the 2002 Resources Bond Act [subprogram name]. The GUIDE provides the procedures and policies controlling the administration of the grant.
82. The term "PROJECT TERMINATION" refers to the non-completion of a GRANT SCOPE.
83. The term "REASONABLE HOURS OF OPERATION" means that the facility is available to the public during days and times consistent with the type of property, the amount of the STATE GRANT MONIES invested in the project, the time of year, and the operating hours of similar facilities in nearby communities.
84. The term "STATE" refers to the State of California acting by and through the California Department of Parks and Recreation.

B. Project Execution

43. Subject to the availability of GRANT MONIES in the ACT, the STATE hereby grants to the GRANTEE a sum of money not to exceed the amount stated in Section I of this CONTRACT, in consideration of, and on condition that, the sum be expended in carrying out the purposes set forth in the GRANT SCOPE(S), and under the terms and conditions set forth in this CONTRACT.

The GRANTEE shall assume the obligation to furnish any additional funds that may be necessary to complete the GRANT SCOPE(S).

44. All changes and alterations to the GRANT SCOPE must be approved in writing by the STATE. GRANTEE'S failure to comply with this provision may be construed as a breach of the terms of the CONTRACT and result in the enforcement of the Project Termination provision section E. found in this CONTRACT.

If the contract was funded under a COMPETITIVE GRANT PROGRAM, the GRANTEE agrees that any other project changes or alterations which deviate from the project selection criteria responses provided by the GRANTEE in the original competitive APPLICATION must be submitted in writing to the STATE for prior approval. This requirement is necessary to maintain the integrity of the competitive grant process.

45. The GRANTEE shall complete the GRANT SCOPE in accordance with the time of the GRANT PERFORMANCE PERIOD set forth on page one of this CONTRACT, and under the terms and conditions of this CONTRACT.
46. The GRANTEE shall comply with the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq., Title 14, California Code of Regulations, Section 15000 et. seq.).
47. The GRANTEE shall at all times comply with all applicable current laws and regulations affecting ACQUISITION and 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, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et.seq.) and the California Unruh Act (California Civil Code §51 et seq.)
48. If the GRANT SCOPE includes ACQUISITION of real property, the GRANTEE agrees to comply at all times with all applicable State and local laws or ordinances affecting relocation and real property ACQUISITION.
49. GRANTEE agrees that lands acquired with GRANT MONIES shall not be acquired through the use of eminent domain.

C. Project Costs

13. GRANTEE agrees to abide by the GUIDES.
14. GRANTEE acknowledges that the STATE may make reasonable changes to its procedures as set forth in the GUIDES. If the STATE makes any changes to its procedures and guidelines, STATE agrees to notify GRANTEE within a reasonable time.

D. Project Administration

37. If GRANT MONIES are advanced for ACQUISITION projects, the GRANT MONIES shall be placed in an escrow account by GRANTEE. If GRANT MONIES are advanced and not expended, GRANTEE shall return the unused portion of the advanced funds to the STATE within 60 days after the close of escrow.
38. If GRANT MONIES are advanced for DEVELOPMENT projects, the advanced funds shall be placed in an interest bearing account by GRANTEE until expended. Advanced funds must be spent within six months from the date of receipt, unless the STATE provides GRANTEE with a written waiver of this requirement. Interest earned on the advanced funds 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 and any interest earned shall be returned to the STATE within 60 days after project completion or the end of the GRANT PERFORMANCE PERIOD whichever is earlier.
39. The GRANTEE shall submit written project status reports within 30 calendar days after the STATE has made such a request. In any event, the GRANTEE shall provide the

STATE a report showing total final project expenditures within 60 days of project completion or the end of the GRANT PERFORMANCE PERIOD, whichever is earlier. The GRANT PERFORMANCE PERIOD is identified on page one of this CONTRACT.

40. The STATE shall have the right to inspect all property or facilities acquired and/or developed pursuant to this CONTRACT and the GRANTEE shall make such property or facilities available for inspection upon 24 hours notice from the STATE.
41. The GRANTEE and the STATE agree that if the GRANT SCOPE includes DEVELOPMENT, final payment may not be made until the work described in the GRANT SCOPE is complete.
42. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.

E. Deed Restriction

7. **In order to ensure that property improved or acquired with GRANT MONIES are used for purposes consistent with the grant, if the property acquired or developed with GRANT MONIES is owned by the GRANTEE, the GRANTEE must record a deed restriction on the title to property prior to receiving payments for any purpose other than acquisition. The Deed Restriction shall include the following elements:**
 - y. **DURATION.** (a) This Deed Restriction shall remain in full force and effect and shall bind Owner(s) and all his/her/their assigns or successors-in-interest during the CONTRACT PERFORMANCE PERIOD.
 - z. **TAXES AND ASSESSMENTS.** The Deed Restriction shall be irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the California Constitution; and b) section 402.1 of the California Revenue and Taxation Code or successor statute. Furthermore, the Deed Restriction shall be deemed to constitute a servitude upon and burden to the Property within the meaning of section 3712(d) of the California Revenue and Taxation Code, or successor statute, which survives a sale of tax-deeded property.
 - aa. **RIGHT OF ENTRY.** STATE or its agent or employees may enter onto the Property at times reasonably acceptable to Owner(s) to ascertain whether the use restrictions set forth above are being observed.
 - bb. **REMEDIES.** Any act, conveyance, contract, or authorization by Owner(s) whether written or oral which uses or would cause to be used or would permit use of the Property contrary to the terms of the Deed Restriction will be deemed a violation and a breach hereof. STATE may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of the Deed Restriction. In the event of a breach, any forbearance on the part of STATE to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

F. Project Termination

25. In the event of non-completion of a GRANT SCOPE, the GRANTEE shall return all GRANT MONIES to the STATE.

26. This CONTRACT may be rescinded, modified or amended only by mutual written CONTRACT between the GRANTEE and the STATE, unless the provisions of this CONTRACT provide that mutual CONTRACT is not required for a rescission, modification or CONTRACT.
27. Failure by the GRANTEE to comply with the terms of this CONTRACT, as well as any other grant contracts or other CONTRACTs that GRANTEE has entered into with STATE, may be cause for suspension of all obligations of the STATE under this CONTRACT unless the STATE determines that such failure was due to no fault of the GRANTEE. In such case, STATE may reimburse GRANTEE for eligible costs properly incurred in performance of this CONTRACT despite non-performance of the GRANTEE. To qualify for such reimbursement, GRANTEE agrees to mitigate its losses to the best of its ability.
28. The GRANTEE agrees that in the event of a breach of this CONTRACT, the STATE may seek, in addition to all remedies provided by law, specific performance of the CONTRACT in accordance with the purpose of the CONTRACT to preserve, protect and increase the quantity and quality of parks, public recreation facilities, opportunities and/or historic resources available to the people of the State of California.

G. Budget Contingency Clause

For purposes of this program, if funding for any fiscal year is reduced or deleted by the budget act, executive order, the legislature, or by any other provision of statute, the STATE shall have the option to either cancel this contract with no liability occurring to the STATE, or offer a CONTRACT to GRANTEE to reflect a reduced grant amount. This paragraph shall not require the mutual CONTRACT as addressed in Paragraph E, subsection 2, of this CONTRACT.

H. Indemnity

31. 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 valid legal claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.
32. To the fullest extent of the law, 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 California 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.
33. The GRANTEE agrees that in the event the STATE is named as codefendant under the provisions of California 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.

34. 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.
35. 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.

I. Financial Records

13. The GRANTEE shall maintain satisfactory financial accounts, documents and records for the project and make them available to the STATE for auditing at reasonable times. The GRANTEE also agrees to retain such financial accounts, documents and records for five years following project termination or final payment, whichever is later.
14. The GRANTEE shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of GRANT MONIES, (b) the total cost of the project; (c) the amount and nature of project funds provided by other sources, and (d) any other records that will facilitate an effective audit of use of the GRANT MONIES.
3. The GRANTEE agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this CONTRACT or matters related thereto during regular office hours. 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. Such accounts, documents, and records shall be retained by the GRANTEE for 5 years following final payment of GRANT MONIES.
4. The GRANTEE shall use a generally accepted accounting system.

J. Use of Facilities

49. The GRANTEE agrees to operate and maintain any property acquired or developed with the GRANT MONIES for the duration of the CONTRACT PERFORMANCE PERIOD.
50. The GRANTEE agrees that during the CONTRACT PERFORMANCE PERIOD, any income earned by the GRANTEE from a STATE approved non-recreational use of

the project shall be used for recreational purposes at the project, or, if approved by the STATE, for recreational purposes within the GRANTEE'S jurisdiction.

51. If the APPLICATION does not specify the days and hours of operation, the facility will have REASONABLE OPERATING HOURS. The GRANTEE shall request the STATE'S approval before making any changes to the hours of operation.
52. If the APPLICATION specifies the hours of operation, the facility shall have operating hours consistent with the times proposed in the APPLICATION and be open to members of the public in accordance with the project selection criteria in the APPLICATION, unless otherwise granted permission by the STATE and except as noted under the special provisions of this CONTRACT or under provisions of the enabling legislation and/or grant program.
53. The GRANTEE agrees that for the duration of the CONTRACT PERFORMANCE PERIOD, any property acquired or developed with GRANT MONIES under this CONTRACT shall be used only for the purposes of the grant and consistent with the GRANT SCOPE referenced in the APPLICATION unless prior written approval is given by the STATE.
54. The GRANTEE agrees to use any property acquired or developed with GRANT MONIES under this CONTRACT only for the purposes of the grant and no other use, sale, or other disposition shall be permitted except as authorized by a specific act of the legislature in which event the property shall be replaced by the GRANTEE with property of equivalent value and usefulness as determined by STATE.
55. The property acquired or developed with GRANT MONIES may be transferred to another eligible entity only if the successor entity assumes the obligations imposed under this CONTRACT and with written approval of the STATE.
56. Any real property acquired or developed with GRANT MONIES (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the STATE provided that such approval shall not be unreasonably withheld as long as the purposes for which the GRANT MONIES were awarded are maintained. Any such permission that is granted does not make the STATE a guarantor or a surety for any debt or mitigation, nor does it waive the STATE'S rights to enforce performance under this CONTRACT.
8. All real property, or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants required and approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse the STATE an amount at least equal to the amount of GRANT MONIES received from the STATE or the pro rated full market value of the real property, including improvements, at the time of sale, whichever is higher.
9. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

K. Nondiscrimination

13. The GRANTEE shall not discriminate against any person on the basis of sex, race, creed, color, national origin, age, religion, ancestry, sexual orientation, disability, medical condition, or marital status in the use of property or a specific facility included in the GRANT SCOPE(S).
14. The GRANTEE shall not discriminate against any person on the basis of residence, and shall not apply differences in admission or other fees on the basis of residence. Fees shall be reasonable and not unduly prevent use by economically disadvantaged members of the public.

L. 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.

M. Liability

STATE assumes no responsibility for assuring the safety of construction, site improvements or programs related to the GRANT SCOPE. The STATE'S rights under this CONTRACT to review, inspect and approve the GRANT SCOPE and any final plans of implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.

N. Assignability

Without the written consent of the STATE, the GRANTEE'S interest in and responsibilities under this CONTRACT shall not be assignable by the GRANTEE either in whole or in part.

O. Section Headings

The headings and captions of the various sections of this CONTRACT have been inserted only for the purpose of convenience and are not a part of this CONTRACT and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this CONTRACT.

P. Waiver

Any failure by a party to enforce its rights under this CONTRACT, in the event of a breach, shall *not* be construed as a waiver of said rights; and the waiver of any breach under this CONTRACT shall *not* be construed as a waiver of any subsequent breach.

County of San Mateo
Grantee

By: _____
Signature of Authorized Representative (Position Authorized in the Resolution)

Title: Director - Department of Parks

Date: _____

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

RESOLUTION

AUTHORIZING THE DIRECTOR OF PUBLIC WORKS, OR HIS DESIGNEE TO:

- 1. EXECUTE A GRANT CONTRACT WITH THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION FOR CONSTRUCTION PROJECTS WITHIN FOUR COUNTY PARKS IN THE AMOUNT OF \$608,766; AND**
- 2. EXECUTE ANY OTHER DOCUMENTS ASSOCIATED WITH THE ACCEPTANCE OF GRANT FUNDING FROM THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION IN THE AMOUNT OF \$608,876; AND**
- 3. EXECUTE AND RECORD DEED RESTRICTIONS TO ENSURE THAT THE PROPERTY IMPROVED WITH GRANT FUNDS IS USED FOR THE PURPOSE FOR WHICH THE FUNDS WERE PROVIDED**

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, the County of San Mateo desires to implement the Fitzgerald Marine Reserve Coastal Trail and San Vicente Bridge Project, Memorial County Park Restroom and Shower Building Project, San Bruno Mountain Gatehouse and Kiosk Roofs Project, West Peak Roofs and Summit Loop Trail Bridges Project and Wunderlich County Park Parking Lot Project; and

WHEREAS, the California Department of Parks and Recreation has approved extending the Proposition 40 Per Capita Grant Contract C0207617 for \$608,876 until June 30, 2015; and

WHEREAS, said procedures established by the California Department of Parks and Recreation require a grantee to certify by resolution the acceptance of such grant

contract and its terms before submission of said contract to the State; and

WHEREAS, the County will comply with the assurances contained in the grant contract; and

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Director of Public Works or his designee, is authorized to execute a contract with the California Department of Parks and Recreation in the amount of \$608,876 and any other documents associated with the acceptance of grant funding from the California Department of Parks and Recreation in the amount of \$608,876.

BE IT FURTHER RESOLVED that the Director of Public Works or his designee, is authorized to execute and record deed restrictions to ensure that the property improved with grant funds provided under this grant contract are used for the purpose for which funds are provided.

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