

Order 28-21/22

Motion to amend to authorize the City Manager to enter into the Land and Water Conservation Fund Project Agreement upon federal approval of the project: 8-0 (Thibodeau absent) on 8/23/2021

Motion to amend to change amount of grant to \$400,000: 8-0 (Thibodeau absent) on 8/23/2021

Passage as amended: 8-0 (Thibodeau absent) on 8/23/2021 Effective 9/2/2021

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE APPLICATION FOR A
OUTDOOR RECREATION LEGACY PARTNERSHIP \$400,000 GRANT FOR
OUTDOOR SPACE AND ATHLETIC FIELDS IN NORTH DEERING**

ORDERED, that the application for \$400,000, matched with \$400,000 in private donations, from a Outdoor Recreation Legacy Partnership Grant for open space and athletic fields in North Deering is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to enter into the Land and Water Conservation Fund Project Agreement with the State of Maine in substantially the form attached hereto upon federal approval of the Project;

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute the Grant Application and whatever other documents are necessary to effect the intent and purpose of this order.

Outdoor Recreation Legacy Partnership (ORLP) Program

North Deering Park Acquisition Project Narrative

(10-Page Limit, 12-point font)

Project Sponsor Name: City of Portland, Maine

Name of Park/Property: North Deering Park

Project Title: North Deering Park Project

Name of Property Title Holder: Daniel and Julie Anderson; Margaret Haverty

Project Property Address/Location: 1831 Washington Ave, Portland, ME 04103; Ballpark Drive, Portland, ME 04103

2010 Project Property Census Jurisdiction Population (must be over 50,000): 66,194

Name of Applicable Census Delineated Urban Area: Portland, ME

Select the Applicable Project Type:

Acquisition New Development Renovation Combination (Acquisition/Development)

Select the Applicable Project Result:

New Park Expanded Existing Park Neither Expanded nor New Park

Was the park or site previously protected through an LWCF or UPARR grant and/or obtained through the Federal Parks to Lands program? No Yes: LWCF UPARR FLP

Project Summary (250-word limit):

The City of Portland, working with The Trust for Public Land, proposes to create a new city park by acquiring a 16-acre forested area and baseball field in the North Deering neighborhood that is at threat of development. This will address an urgent community need for the significant low-income population in North Deering. The neighborhood currently has no access to public or outdoor recreational amenities within a 10-minute walk. Existing site features include 8 acres of forested area with well-loved informal trails and a fenced-off 8-acre baseball field and open space. The North Deering Park Project will serve 1,922 residents that live within a 10-minute walk, as well as the students and teachers of two nearby public schools, and residents of a new affordable housing development. Once acquisition is complete in December of 2022, this new park will be permanently conserved for outdoor recreation and open to the public. Once the site is open to the public, residents will be able to use the existing, well-loved trails for hiking, trail running, and mountain biking, and access all the benefits close-to-home nature provides.

In the second phase of this project, beyond the scope of the Outdoor Recreation Legacy Partnership Program application, the City will work with partners such as The Trust for Public Land and Portland Trails to develop an official 2-mile trail loop, outdoor learning areas, and a redeveloped baseball field. The development phase of the project is anticipated to be complete in June of 2024.

Project Overview (2-page word limit):

The City of Portland is a residential city with a population of almost 67,000, the largest in the State of Maine. Portland, also known as “The Forest City,” deeply values its unique natural resources and public spaces, such as parks and trails, which play a critical role in fostering “neighborhood vitality, sense of community, recreational opportunities, environmental health, arts and cultural programming, economic development, and local mobility.”¹ The North Deering neighborhood, where the site of this proposed project is located, is a growing, working-class community currently underserved in terms of public parks and recreational opportunities. This community one of the few places in Portland without a public park within a 10-minute walk of its residents.

The City is seeking to resolve this gap in public park access in the North Deering neighborhood through the North Deering Park Project. This project proposes to create a new public park through the acquisition of two neighboring properties to provide permanent close-to-home access to recreational opportunities for North Deering residents. Acquiring these properties now is essential because there are currently no public parks or open spaces that serve this community within a 10-minute walk, and there is intense pressure for new private housing development in the neighborhood. These 16 acres of open space make up one of the last large, undeveloped forested areas in Portland. Unless the North Deering Park Project is able to move forward now, there is high risk that these properties will be sold for development and turned into private housing. This community would also lose this unique opportunity to create a new public park that will provide outdoor recreational opportunities within a 10-minute walk of home.

The immediate service of the proposed North Deering Park Project includes 1,922 residents that live within a 10-minute walk. Many of these residents are considered vulnerable populations; 39% are low-income, 20% are children under 20, and 18% are seniors over 65. The proposed park is also a stone’s throw away from two public schools that hope to access and use the space for outdoor education. This 16-acre park will not only meet open space and recreation needs of North Deering residents, but will also provide a multitude of benefits to the local community, including hundreds of low income people and students.

In close partnership with community groups and partners, the City of Portland is requesting funding from the LWCF FY21 Outdoor Recreation Legacy Partnership (ORLP) Program to acquire these properties, with the ultimate goal of creating a new park space for this high-need community. The project will be owned by the City of Portland Parks and Recreation Department and will be protected for outdoor recreational use as a public park in perpetuity. This new park is anticipated to be immediately open to the public post-acquisition in December of 2022.

The first of the two properties that will be acquired through the North Deering Park Project is located at 1831 Washington Ave, between Washington Avenue and Auburn Street, and between Parsons Pond Drive and Ballpark Drive. It is currently privately owned by Daniel and Julie Anderson. The property consists of an 8-acre forested area with well-loved informal trails that currently serves as an unofficial outdoor space known to local children as the “Forbidden Forest” since permanent, public access to it is not guaranteed. It is threatened to be developed into private housing if the North Deering Park Project doesn’t move forward, as the demand for open space for commercial real estate is rapidly increasing. Should ORLP funding be

¹ <https://www.portlandmaine.gov/DocumentCenter/View/18271/Portlands-Plan-2030>

North Deering Park Project

awarded, there are no non-public uses on this property that would have to be discontinued, and there are no other known or foreseen constraints of the property.

The second, adjacent property is currently privately owned by Margaret Haverty, and is located at Ballpark Drive, also between Washington Avenue and Auburn Street, and between Parsons Pond Drive and Ballpark Drive. This 8-acre property borders the 'Forbidden Forest' property and it contains the only privately owned, fenced-in ballfield in Portland and a parking lot. This ballfield, established by the late Mr. Haverty in the 1960's due to his deep love for baseball, has been used by community baseball leagues and residents for half a century. However, it is also currently threatened to be developed into private housing if this project doesn't move forward, as the demand for open space for commercial real estate is rapidly increasing. Should ORLP funding be awarded, there are no non-public uses on this property that will have to be discontinued, and there are no other known or foreseen constraints of the property.

In 2020, the landowner of the "Forbidden Forest" property, Mr. Anderson, approached the Portland Land Bank Commission, a governing entity created by the City Council, with the intention of conserving the 8-acre wooded property as a public park and open space for the community to enjoy. The Land Bank Commission requested the help of The Trust for Public Land (TPL) to discuss purchase of the property, and also introduced TPL to Mrs. Haverty, who is the owner of the ballfield property. TPL is working with both landowners to negotiate and facilitate the sale of the properties, which will be purchased by the City of Portland and protected as public, open space in perpetuity. The project is at the negotiation phase, as TPL is negotiating option agreements with the landowners. TPL commissioned an appraisal, which indicated the properties are... This is informing the discussions with the landowners and pending option agreements. TPL anticipates having option agreements completed with both landowners by the fall of 2021.

Concurrently with the North Deering Park Project, the City will partner with organizations such as TPL, Portland Trails and the Parent-Teacher Associations of the nearby public schools to engage with the community and students to determine what amenities the community wants to be included in the future development phase at North Deering Park. The initial plans and ideas for the second phase of this project, beyond the scope of the ORLP application, include building an official 2-mile trail loop for hiking, trail running, and mountain biking, seating improvements, an outdoor learning space for school use, installation of bike racks, a public art installation, a redeveloped baseball field with a concession stand and parking improvements. Once the first phase of the North Deering Park Project is complete in December of 2022, the second phase of this project, focused on development and construction at the new park, is anticipated to start in January of 2023 with completion planned for June of 2024.

Criterion 1 – Extent of Outdoor Recreation and Economic Needs (20-points)

Response:

The new North Deering Park will address a documented parkland deficit in one of Portland's most populated neighborhoods that is considered high-need, underserved and economically disadvantaged. In general, most communities in Portland have access to public spaces within 10 minutes of where they live. However, North Deering is a dead zone in Portland's park system — an area without a public park in a city where most neighborhoods have access to parks.

This project will bring a close-to-home park to a neighborhood that has a significant low-income population, compared to the rest of the city. According to TPL's ParkEvaluator® tool, more than 38% of the population in

North Deering Park Project

North Deering is considered low-income, earning less than \$35,000 per year. The two neighborhood schools are also classified as mid-level low poverty and high-level low poverty schools based on how many students qualify for free and reduced lunch. Over 32% of students at Lyseth Elementary School and over 55% of students at Lyman Moore Middle School are eligible for free or reduced lunch.

The lack of a public park in the North Deering neighborhood follows the national trend that low-income neighborhoods have inequitable access to open space; parks serving majority low-income households are, on average, a quarter the size of parks in high-income neighborhoods². This has great impact on communities' wellbeing and outcomes.³ The North Deering Park Project will ensure that that this low-income community, especially its young people, have access to a public park for learning and playing.

The only existing recreational amenity within a half-mile radius of the North Deering Park Project is a trailhead for the Oak Nuts Park Trail. Though this is a welcome recreational amenity, it is only easily accessible within a 10-minute walk of the North Deering Park Project on the Auburn Street side of the site. It is over a one mile walk from the Washington Avenue side of the project site. The Haverly ballfield property also appears to be an existing public recreational amenity on Google Maps, called "Haverly Park," but it is privately owned, fenced off and not fully accessible to the public, and at threat of private development. Within a 1-mile radius of the North Deering Park Project the only other recreational amenities are the Presumpscot River Preserve, the Sebago to the Sea Trailhead, and the Riverside Golf Course. Though these recreational amenities serve their critical purposes for recreational access in the city, they still do not fill the need of the North Deering community to have a public park within a half mile of home that they can easily access before and after work and school, and to have an open space to gather, play, exercise and learn.

Educators from the nearby Lyseth Elementary School and Lyman Moore Middle School have long lamented that the lack of a public park has limited their ability to offer outdoor learning to their young students. This park is an immediate response to those outdoor recreation and learning needs exacerbated by the pandemic. As Portland Public Schools moved to outdoor learning as a result of the COVID-19 pandemic, the need for new outdoor learning spaces became critical. This new ⁴ to have easy access to open space for outdoor learning and recreation in perpetuity.

Criterion 2 – Appropriateness of Project to Meet Community Outdoor Recreation and Economic Needs (20-Points)

Response:

The North Deering Park Project will significantly improve access to close-to-home park and recreation opportunities – in a neighborhood where there currently is none – and will stimulate economic benefits for the community. In addition to providing key outdoor amenities for residents, utilizing parks and recreation projects to positively address pressing community needs is a priority – with two key needs of focus being economic development and health. This is a key focus of Maine's State Comprehensive Outdoor Recreation Plan (SCORP), which notes: "there is a strong link between the special character of Maine's places and its economic, environmental, and community values. This report recognizes that 'quality of place' is a driver for our recreation economy and a source of health and well-being."

² <https://www.tpl.org/blog/hazards-park-disparities-during-heat-waves>

³ https://www.pressherald.com/interactive/search_maine_school_database_free_and_reduced_meals/

⁴ <https://www.mainebiz.biz/article/proposed-portland-co-op-development-addresses-housing-missing-middle>

North Deering Park Project

This is particularly true for the City of Portland. For instance, tourism in Maine – and particularly within the City of Portland – is driven by access to the area’s natural beauty and the wide range of available recreational opportunities. Over 37.3 million tourists visited Maine in 2019, a 0.7 percent increase over 2018. As the SCORP notes too, “Here in Maine, it is estimated that outdoor recreation adds \$3 billion to Maine’s GDP and creates 41,000 jobs.” Although the number of tourists to visit Maine decreased in 2020, largely due to the COVID-19 pandemic and resulting pause in tourism, there is also evidence that more Americans participated in outdoor recreation than ever before with 7.1 million more Americans participating in outdoor recreation in 2020 than in 2019. This is the highest outdoor recreation participation rate on record.⁵

[ADD project specific employment oppty / cmtty-wide economics benefit estimates IF AVAILABLE]

In order to support this important economic driver, acquiring land to create new parks – such as the one proposed in this project – is essential. The SCORP notes, “land protection in New England has led to modest yet statistically significant increases in employment and labor force — boosting, not depressing local economies. Outdoor recreation facilities and opportunities help create desirable, valuable communities where people want to live and work.” The North Deering Park Project, a land protection project, will create a new public park that spans 16 acres, including 8 acres of forested area and an 8-acre ballfield and open space. This public open space will allow for structured play through the baseball field and free exploration through the well-loved wooded trails that currently exist on-site. Over 1,922 residents that live within a 10-minute walk of the North Deering Park Project, including hundreds of low-income people, students of the two public schools, and residents of a new affordable housing development, will be able to participate in both active and passive recreation such as walking, hiking, biking, and trail running, playing baseball, and accessing all the benefits that close-to-home nature can provide. This new public space will help meet the outdoor recreational needs of this growing working-class neighborhood.

Criterion 3 – Community Involvement in, and Support of, Proposed Project (20-points)

Response:

The City of Portland will continue to work with partners, such as TPL, to engage the community around this project. TPL has a long history of working in the Northeast, with the City of Portland and other small cities, on parks and open space planning, design, and protection projects. In 2014, the Portland City Manager’s office approached TPL with the idea of developing a comprehensive vision plan for Portland’s open spaces. Portland’s park plan, known as Portland’s Green Spaces and Blue Edges Plan, had last been updated in 2001, and this new visioning plan gave the city, community, and other local organizations (such as Portland Trails) the chance to explore the current conditions, access, challenges, and opportunities to improve the city through interventions in the public realm, namely around parks and trails.

In addition to extensive GIS analysis, TPL hosted workshops, conducted surveys, and conducted direct observation data collection at each of Portland’s public parks to help create a complete picture of Portland’s parks and open space system. Portland Trails also led early conversations and led a series of community workshops in the fall of 2014 to collect information about the perceptions of the open space system from a diversity of residents.

⁵ <https://outdoorindustry.org/wp-content/uploads/2015/03/2021-Outdoor-Participation-Trends-Report.pdf>

North Deering Park Project

As part of the effort to complete the 2016 Portland Open Space Vision and Implementation Plan, an online community survey of Portland residents was conducted to identify priorities for the open space and parks system. The survey generated 1,167 responses, with the most responses from residents of North Deering (15%).⁶ Key takeaways included:⁷

- 60% of people would like more trails biking, walking, or hiking trails or walkways.
- 43% of people would like more open space and natural areas.
- More sports and recreational spaces are needed. 37% of people report participating in field sports (i.e. soccer, baseball, softball, football, Ultimate Frisbee, rugby, kickball, field hockey and disc golf), but about 30% are dissatisfied with facilities or services.
- More places for both programmed and unprogrammed activities, events, and gatherings are desired. People report wanting to see more performing arts events and venues, food trucks and other vendors, and picnic facilities.

The 2016 Portland Open Space Vision and Implementation Plan also identified closing the ‘park gap’ as one of the top priorities to provide public parks and open space for the 11% of Portland residents that currently do not have access to a park within a 10-minute walk of home. The Portland Plan 2030 also specifically identified the service area of the North Deering Park Project, which are the portions of North Deering bounded by Washington Avenue and Auburn Street and bounded by Washington Avenue and the railroad, as one of the areas that could benefit from park access improvements.

The North Deering Park Project was initiated by the landowner of the “Forbidden Forest” property, Mr. Anderson, when he approached the Portland Land Bank Commission, a governing entity created by the City Council, with the intention of conserving the property as a public park and open space for the community to enjoy.

Recently, the City and TPL have begun conversations about development of the North Deering Park Project, and the importance of the park and open space to the community. This project aims to continue both partners’ work to collaboratively and creatively engage the community. Community engagement will continue concurrently with acquisition efforts. This engagement will include community outreach such as presentations at the two neighborhood public schools and community design workshops where residents can get updates on the project, provide feedback on the project design decisions, and ensure the community and partners are involved in the vision of the park. The community design workshops will be cohosted in close partnership with TPL. Once acquisition is complete, TPL will engage the community on the property through activation activities such as a public art installation. TPL will engage students and teachers in the design and development of outdoor learning spaces, which will support Portland Public School’s goal of continuing outdoor learning. Partnering with the existing outdoor science program and Portland Public schools will create outdoor learning opportunities on the park that have been shown to foster an appreciation for nature in young students and lead to physical movement.

As mentioned in the letters of support attached to this application, matching funding will be provided by TPL and the Portland Land Bank Commission. TPL is committed to providing \$350,000 in matching funding by applying for State funding through the Land for Maine’s Future program, and raising any necessary

⁶ <https://www.portlandmaine.gov/DocumentCenter/View/8479/Portland-Open-Space-Community-Survey-Results?bidId=>

⁷ <https://www.portlandmaine.gov/DocumentCenter/View/8742/Portland-Parks-Steering-Presentation-April-1-2015?bidId=>

North Deering Park Project

private funding. The Portland Land Bank Commission is also committed to providing matching funding totaling \$50,000.

Partnerships between public and private organizations are essential to the success of the North Deering Park Project. Community organizations such as TPL, Portland Trails, Lyseth Elementary School, and Lyman Moore Middle School have all expressed their support for this project, as evidenced by the Letters of Support included in this application package. Partners for this project include:

- **The Trust for Public Land (TPL):** TPL is a national non-profit organization founded in 1972 that creates parks and protects land for people, ensuring healthy, livable communities. TPL has helped generate more than \$80 billion in state and local parks and conservation funding, completed more than 5,000 parks and recreation projects, and protected more than three million acres nationwide. TPL's Maine Office is facilitating the land transaction for the first phase of this project, and will lead the community engagement for the second phase of this project. TPL has provided a letter of support, which is part of the application package.
- **Portland Trails:** Portland Trails is a nonprofit urban land trust that transforms Greater Portland into a healthier and better-connected community through a 70+ mile trail network. This nonprofit will be primarily involved in the second phase of this project helping with designing and building trails. Portland Trails has provided a letter of support, which is part of the application package.
- **The Portland Land Bank Commission:** **ADD**

Criterion 4 – Embracing New Parks and Innovative Project Attributes (10-points)

Response:

There are many innovative characteristics and park creation best practices employed in this project, which have significant transformative impacts on the community. Some of these elements are described below:

Participatory design/community-driven visioning and sensitive acquisition within an economically disadvantaged and under-resourced neighborhood: Project partners will continue community engagement including a series of community meetings, presentations and design workshops with local community members providing them with the opportunity to set priorities for the second phase of the North Deering Park Project. The amenities featured in the second phase of this new park will be designed in collaboration with local residents and community groups. Through this process, these groups have been empowered to take ownership of their space, and will continue to take care of it – and use it – through new community groups and partnerships.

Multi-Benefit Approach: As noted, the impact of this project will reach well beyond significant improvements to public access and the City's urban fabric, to provide vital health, environmental-related and social benefits. For instance, according to a 2015 community survey around parks, 66% of park users report that they exercise while in the City's parks and open spaces.⁸ Parks are a primary place of leisure-time physical activity, and empirical research shows that close-to-home access to parks and recreational amenities can encourage higher levels of physical activity. In addition to offering opportunities for active recreation, parks provide space for social connection, respite from everyday stresses, and pollution abatement.⁹

⁸ <https://www.portlandmaine.gov/DocumentCenter/View/8742/Portland-Parks-Steering-Presentation-April-1-2015?bidId=>

⁹ <https://www.aia.org/resources/8376-if-you-build-it-park-design-to-promote-physic:31>

North Deering Park Project

The North Deering Park Project will also exhibit environmental benefits for the community. Parks and conserved lands protect water and air quality, sustain biodiversity, and can offset the effects of climate change. Conserving this new park will realize some stormwater management and flood control benefits for the community, as parts of the properties have wetlands.

Outcome-driven approach and evaluation: Continuous learning and improvement are also hallmarks of partners, and in particular TPL’s park development partnerships, which will help to track outcomes of this project. Evaluation will help to provide important lessons learned and inform future park projects.

Criterion 5 – Project Alignment with SCORP and Other Applicable Plans (10-points)

Response:

This project supports many of the goals and priorities identified in state and local plans.

As The State of Maine’s Statewide Comprehensive Outdoor Recreation Plan (SCORP) ¹⁰ notes, “Outdoor recreation is central to this way of life” in communities throughout Maine. This park project addresses needs identified in the SCORP, particularly as it is seeking to acquire land for a new park in a city that has significant need for expanded and improved park sites. Project partners also strive to establish parks within a 10-minute walk of every resident, and highly prioritize this project. For example, this project, as described throughout this proposal, helps to advance these goals and key themes for implementation:

- Theme 1: Support Active, Engaged Communities
 - 1.4. Continue to strengthen and expand partnerships, coalitions, and collaborations between public and private sectors; between agencies; between state, federal, and local entities; and across sectors including but not limited to health, economic development, community development, education, and outdoor recreation. As part of collaborations, coordinate messaging, outreach, planning, and funding strategies to reach outcome-based goals.
- Theme 2: Address Workforce Attraction through Outdoor Recreation
- Theme 3: Sustain and Grow Tourism
- Theme 4: Promote Ecological and Environmental Resilience

In addition, as noted throughout the proposal narrative, this project fully supports local plans and initiatives, such as

This site was identified as a priority area that could benefit from park access improvements.

Portland Plan 2030:

“We will enable meaningful access to the natural world and recreational opportunities as a central component of community health.” Portland goals: “Identify and protect Portland’s critical natural resources.” “Support agricultural, forest, and scenic resources appropriate to our urban context.” “Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation.”

“Sustain and build our system of parks, trails, and open spaces to enhance our quality of life, protect our environment, and promote the economic well-being of our remarkable city by the sea.” “Provide high-

¹⁰ https://www.maine.gov/dacf/parks/publications_maps/docs/final_SCORP_rev_10_15_plan_only.pdf

North Deering Park Project

quality, well-designed, well-maintained, safe, and integrated parks, trails, public open spaces, and recreational opportunities accessible to all residents.”

“Pursue opportunities, in consultation with partners, to create new open spaces in areas that are currently underserved.”

Outdoor Recreation Legacy Partnership (ORLP) Program North Deering Park Project Budget Narrative (5-Page limit)

| Cost Categories | Unit of Measure & # of Units | Cost Per Unit | Federal Share | Match Share | Total Cost | If Pre-Agreement Cost - Dates Incurred | Amt subject to 25% budget cost limitations (Enter \$ figure) |
|--|------------------------------|---------------|---------------|-------------|------------|--|--|
| 1. Administration and Legal expenses | | | | | | | |
| 2. Land, Structures, Rights-of-Way, Appraisals | 1 | \$800,000 | \$400,000 | \$400,000 | \$800,000 | | |
| 3. Relocation Expenses and Payments | | | | | | | |
| 4. Architectural and Engineering Fees | | | | | | | |
| 5. Other Architectural and Engineering Fees | | | | | | | |
| 6. Project Inspection Fees | | | | | | | |
| 7. Site Work | | | | | | | |
| 8. Demolition and Removal | | | | | | | |
| 9. Construction | | | | | | | |
| 10. Equipment | | | | | | | |
| 11. Miscellaneous | | | | | | | |
| 12. Contingencies | | | | | | | |
| 13. Indirect Costs | | | | | | | |
| GRAND TOTAL | | | | | | | |

| Matching Share Contributors (Name and funding source): | Match Amount/Value | Type (cash, donated land, etc.) | Is Match Secure or firmly committed. If committed, list date expected to be secured. |
|--|-----------------------------------|---------------------------------|--|
| Portland Land Bank Commission | \$50,000 | Cash | Committed, December 2022 |
| The Trust for Public Land | \$350,000 | Cash | Committed, December 2022 |
| City of Portland | Any costs beyond capital expenses | | |
| | | | |
| GRAND TOTAL | \$-Sum of column | | |

On remaining pages provide the information required within the Budget Narrative under **Criterion 6 – Project Feasibility and Likelihood of Success (20 points)**

BUDGET NARRATIVE

\$XX is requested from the Land and Water Conservation Fund FY 2021 Outdoor Recreation Legacy Partnership Program. This funding will include work to complete acquisition of the two properties, as well as expenses for grant administration and legal expenses (not to exceed 25%).

The total project budget, including the \$XX proposed request, is \$XX. Match for this project, totaling \$XX, has been secured through the Portland Land Bank Commission, The Trust for Public Land, and the City of Portland.

This requested Outdoor Recreation Legacy Partnership Program funding will allow for the park to be fully renovated, opened and operational to the public, thus expanding and significantly enhancing the outdoor recreational opportunities that this park will provide.

APPLICANT CAPACITY

The City of Portland’s Parks, Recreation and Facilities Department conducts dozens of capital improvement projects on an annual basis, ranging from ADA walkways, ballfield construction, stadium renovations, playground installations, irrigation projects, trail construction. The Department employs professional Landscape Architects and Project Managers and manages over 1,300 acres of parks, cemeteries, open spaces, and golf courses. Successfully completed previous projects reflect the City’s capacity to responsibly and effectively complete future park acquisition and revitalization efforts. In addition, the City also has experience successfully managing grants of similar size and scope. The City has received numerous grants for a variety of projects including from the Land and Water Conservation Fund (LWCF), Land for Maine’s Future program, and various other sources. The City of Portland has multiple LWCF project sites. The City has one 6f3 conversion that is in progress, and the State of Maine has determined that Portland is now eligible to re-apply for LWCF and ORLP funds due to the good faith efforts and progress on resolving the conversion issues.

Successfully completed numerous land acquisition, park development and renovation projects include:

- Project – Funding amount, Source

The County has also received a grant from LWCF including for the following projects:

- Insert examples

Key staff involved with this project have extensive experience working on parks projects, and include:

- Ethan Hipple – Director of Parks, Recreation and Facilities
- Alex Marshall – Parks Division Director
- Economic Development Director [Hiring process underway]

PROJECT READINESS

There is strong community and city government support for this project. In addition, the landowners are enthusiastic to have this parcels be spaces for outdoor recreation. Our negotiations with the landowners have been smooth and friendly – this will enable TPL to fast track the finalization of the option agreement. TPL has strong relationships with surveyors, appraisers, environmental consultants, and other real estate consultants. This will allow for the transaction due diligence process to move quickly. Relatedly, TPL has worked with Land for Maine Future – the source of the match funding – and is well prepared to successfully navigate that process.

Below is the timeline for the North Deering Park Project:

| Date | Activity |
|-------------------------|---|
| Summer-Fall 2021 | Negotiation with Landowners |
| Summer-Fall 2021 | Preliminary Appraisals completed |
| Fall 2021 | Option Agreements signed |
| Fall 2021 | Community Engagement Process Begins |
| Winter 2021-Winter 2022 | Federal Environmental and Cultural Resource compliance processes as required under the National Environmental Policy Act and National Historic Preservation Act |
| Winter 2021-Spring 2022 | UASFLA Appraisal Process and Other Due Diligence (Environmental Site Assessment, Survey) |
| Winter 2021-Winter 2022 | State Historic Preservation Office and Tribal Historic Preservation Office review |
| Winter 2022 | Committed funds secured by the Portland Land Bank Commission and The Trust for Public Land |
| December 2022 | Land transactions and project complete. Site open to the public. |

There are no anticipated issues with the site that would prevent North Deering Park from being open and available to the public within the 2-3 year ORLP grant timeline.

North Deering Park Project Timeline

Indicate which steps have been completed within the timeline as well as noting a timeline for actions that need to be completed.

Acquisition

- Proposal and Planning Process
- Appraisals (UASFLA Standards)
- Negotiations/Purchase Offer with landowners if necessary

All Projects

- Include time for complete federal Environmental and Cultural Resource compliance processes (State Historic Preservation Office and Tribal Historic Preservation Office review), as required under the National Environmental Policy Act and National Historic Preservation Act (*Minimum of one year if no compliance supporting activities have been completed as of the date of application.*)
- Indicate when committed funds will be secured
- Time to complete/resolve any easement/lease/ownership etc. issues

| Date | Activity | Status |
|-------------------------|---|---------------|
| Summer-Fall 2021 | Negotiation with Landowners | Ongoing |
| Summer-Fall 2021 | Preliminary Appraisals completed | Complete |
| Fall 2021 | Option Agreements signed | |
| Fall 2021 | Community Engagement Process Begins | |
| Winter 2021-Winter 2022 | Federal Environmental and Cultural Resource compliance processes as required under the National Environmental Policy Act and National Historic Preservation Act | |
| Winter 2021-Spring 2022 | UASFLA Appraisal Process + Other Due Diligence (Environmental Site Assessment, Survey) | |
| Winter 2021-Winter 2022 | State Historic Preservation Office and Tribal Historic Preservation Office review | |
| Winter 2022 | Committed funds secured by the Portland Land Bank Commission and The Trust for Public Land | |
| December 2022 | Land transactions and project complete. Site open to the public. | |

APPENDIX C – Sample Project Agreement (PA)

**STATE OF MAINE
DEPARTMENT OF CONSERVATION
BUREAU OF PARKS AND LANDS
LAND & WATER CONSERVATION FUND
PROJECT AGREEMENT**

Political Subdivision: _____ Town of _____

Project Title: _____

Project Period: _____

Project Number: 23-00

Project Scope:

Project Costs: Total \$ 0.00 **Federal:** \$ 0.00 **Local:** \$ 0.00

THIS AGREEMENT is hereby made between the STATE OF MAINE, by and through the BUREAU OF PARKS & LANDS, hereinafter called the State, and the **Town of** _____, hereinafter called the Recipient.

WITNESS:

WHEREAS, the United States of America, represented by the Director, National Park Service, United States Department of the Interior, and the State of Maine have entered into an agreement (which, with its attachments and all regulations and provisions incorporated therein, is hereinafter referred to as the Project Agreement) pursuant to the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964) providing for the acquisition and/or construction of the above described project (hereinafter referred to as the Project), for the benefit of the Recipient, and,

WHEREAS, the Project Agreement between the United States of America and the State imposes responsibilities upon the State which the State has assured the United States of America will apply to the Recipient and which the Recipient agrees to perform;

NOW, THEREFORE, for valuable considerations, the State and the Recipient agree as follows:

1. The Project Agreement is hereby attached and made a part of the Agreement, and the Recipient hereby agrees to discharge, perform, and fully satisfy all provisions of the Project Agreement directly or indirectly applicable to the Recipient, and the Recipient further agrees that it shall not, through any act or omission, violate any provision of the Project Agreement.

2. In connection with all phases of the Project, including all work to be performed in the development thereof, the Recipient agrees as follows:

A. The Recipient shall comply with the provisions of the Uniform Relocation and Real Property Acquisition Policies act of 1970 (P.L. 910646 84 Stat. 1894) including amendments thereto and regulations thereunder, as provided in 1 M.R.S.A 901 et seq.

B. The Recipient agrees to execute and complete the Project in strict accordance with the above referenced Project Scope and the other terms and conditions hereof. Subsequent to this Agreement, any change in the use or any substantial change in the design or arrangement of the Project must have the prior written approval of the State and the National Park Service of the U.S. Department of the Interior.

C. The Recipient shall not advertise any work on the Project for bidding, enter into any contract for work to be performed, or undertake any work on the Project unless and until the Recipient shall have submitted reasonably detailed plans and specifications for the Project to the State for approval and shall have received written approval of the State.

D. All contracts for work on the Project shall be awarded through competitive bidding and shall be subject to prior approval of the state.

E. The Recipient shall establish a separate account for all funds received and expended in connection with the Project and shall preserve (and permit inspection of) such financial records until an audit is made by the United States Government, but in no case for less than three (3) years following the completion of the Project.

F. The eligibility for reimbursement by the State of any cost incurred or proposed to be incurred in connection with the Project shall be determined by the State Liaison Officer in accordance with the criteria set forth in the National Park Service Manual and any replacements or amendments thereto.

G. The Recipient agrees to repay any funds received for costs determined to be non-allowable by a post audit of the Project account.

3. The Recipient agrees that it shall, at its sole cost and expense, retain title to and management over all land acquired and improvements thereon developed in connection with the Project (such land and improvements hereinafter referred to as the Facilities) and operate the Facilities in a first-class manner for the use of the general public for the lifetime of the Facilities. Without limitation of the foregoing, the Recipient shall, at its sole cost and expense, comply with the following particular requirements:

A. The Recipient shall own and operate the Facilities and shall not sell, assign, transfer, lease, encumber or create or suffer any lien upon, the Facilities or any part thereof. The Facilities shall at all times be used exclusively for public outdoor recreation in accordance with the terms of this Agreement, unless prior written approval of any change of use is obtained from the State and the National Park Service. The Facilities shall be kept open to the public at reasonable hours and times of the year consistent with the types of recreational opportunities offered therein, and shall be open to use and entry by all members of the public, regardless of race, color, creed, national origin, sex or place of residence, who are eligible according to reasonable rules and regulations for the use of the facilities adopted by the Recipient in accordance with the Project Agreement.

B. The Facilities shall be operated and maintained to present an attractive and inviting appearance to the public to the satisfaction of the State Liaison Officer. The Recipient shall provide and maintain adequate sanitation and sanitary facilities and all the Facilities shall be maintained and operated in accordance with the applicable Federal, State and Local laws, ordinances, codes, rules, regulations, and standards. The Recipient shall keep the facilities safe for public use in good, operable condition and repair.

4. Upon request of the State, the Recipient shall, at its own cost and expense, keep any building, improvements or equipment, as designated by the State, forming part of the Facilities, insured against loss or damage by fire, lightning, vandalism, malicious mischief, theft, and such other risks as may be included in the broadest form of extended coverage available in an amount determined from time to time by the State to the full insurable value thereof.

5. Upon request of the State, the Recipient shall, at its own cost and expense, provide and keep in force comprehensive general public liability insurance against claims for personal injury, death or property damage occurring on, in or about the Facilities, or respecting the use of any vehicle or equipment used by

the Recipient in connection with the Project or the Facilities, such insurance to be in form and amount determined from time to time by the State.

6. All insurance provided by the Recipient pursuant to this Agreement shall be carried by responsible companies satisfactory to the State. Certificates evidencing such policies shall be furnished to the State and shall require thirty (30) days prior written notice to the State of any cancellation or modification thereof.

7. The Recipient understands and agrees that by executing this Agreement and receiving the benefits hereof, it is irrevocably binding itself to operate, maintain, and care for the Facilities, all at its sole cost and expense, and in accordance with the Provisions of this Agreement. If the Recipient fails to fulfill any of its obligation hereunder, including without limitation of those relating to the operation, insurance, maintenance, and repair of the Facilities, the State may, at its election, in addition to other rights it may have hereunder or at law or in equity, operate and insure the Facilities, provide such maintenance and repairs and/or otherwise perform the obligations of the Recipient for and on account of the Recipient, in which event any amounts so expended by the State shall become an amount due and payable by the Recipient to the State and the Recipient shall promptly reimburse the State for all such amounts. If the Recipient fails to make such payment promptly upon request, the State may withhold all or any part of any other monies which may be payable to the Recipient under other State programs, by invoking the provisions of 5 M.R.S.A. #113 or otherwise.

8. The Recipient shall post in a prominent place on the Facilities, and shall maintain in good condition, a sign, approved by the State, giving public acknowledgment of assistance from the Land and Water Conservation Fund.

9. The Project and the Facilities, and all records pertaining thereto, shall at all reasonable times be open and available for inspection by the State, its agents and designees.

10. The Recipient shall indemnify, defend, and save the State harmless from and against any and all claims, expenses, damages, injuries, liabilities and costs (including reasonable attorneys' fees and court costs) arising out of or in any way in connection with the construction, operation, use, or maintenance of the Project and the Facilities or any accident or occurrences therein or thereon.

11. The provisions of 5 M.R.S.A #784(2), regarding nondiscrimination in employment, are hereby incorporated into this Agreement by reference as if the same were set out in full herein.

12. The following terms and conditions are made a part of this Agreement:

a. The conversion restrictions of Sec. 6.f. of the Land and Water Conservation Fund Act apply to that area shown on the attached Project Area Map. Specifically, the LWCF Act states in Section 6(f)(3), as amended, "no property acquired or developed with assistance under this section, shall, without the approval of the Secretary (of the Interior), be converted to other than public outdoor recreation uses."

b. The project site shall be adequately signed to indicate that it is a public recreation facility.

c. The State will turn over to the **Town of** all funds granted hereunder upon submission of approved reimbursement request(s).

d. The **Town of** will post and maintain on site all signs required under the Land and Water Conservation Fund Act, including but not limited to, acknowledgement of LWCF assistance and Title VI of the Civil Rights Act.

e. The **Town of** will submit Project Inspection Reports every five (5) years commencing five (5) years from the date of project close-out (final project reimbursement).

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized agents, executed this Agreement as of the date entered below.

Date: _____

STATE OF MAINE

By: _____

Title: State Liaison Officer

RECIPIENT

Sponsor: Town of

By: _____

Typed/Printed Name

Title: _____

**UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
LAND AND WATER CONSERVATION FUND PROJECT AGREEMENT**

State:
Maine

Project Number:
23-

Project Title:

Period:

Project Stage Covered by this Agreement:

Scope (Description of Project):

Project Cost:

Total Cost \$ 0.00

(Fund amt. not to exceed 50% of total)
attachments

Fund (LWCF) Amount \$ 0.00

Cost of this Stage \$ 0.00

The following are hereby
incorporated into this
agreement:

1. General Provisions
2. LWCF Grants Manual (NPS-34)
3. Project Application and
4. OMB Circular A-102
5. Title 43, Code of Federal
Regulations
- 6.

The United States of America, represented by the Director, National Park Service, United States Department of the Interior, and the State named above (hereinafter referred to as the State), mutually agree to perform this agreement in accordance with the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), the provisions and conditions of the Land and Water Conservation Fund Grants Manual, and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, assurances, and certifications attached hereto or retained by the State and hereby made a part hereof.

The United States hereby promises, in consideration of the promises made by the State herein, to obligate to the State the amount of money referred to above, and to tender to the State that portion of the obligation which is required to pay the United States' share of the costs of the above project stage, based upon the above percentage of assistance. The State hereby promises, in consideration of the promises made by the United States herein, to execute the project described above in accordance with the terms of this agreement.

The following special project terms and conditions were added to this agreement before it was signed by the parties hereto:

1. All federal, state and/or local permits will be required prior to renovation/construction.

In witness whereof, the parties hereto have executed this agreement as of the date entered below.

THE UNITED STATES OF AMERICA

STATE

By _____
(Signature)

_____ Maine

National Park Service
United States Department
of the Interior

By
(Signature)

(Name)

Date _____

_____ Alt. State Liaison Officer
(Title)

**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 Cost Principles for Assistance Programs, Department of the Interior), A-87 (Cost Principles for State and Local Governments), and A-133 (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 11288, relating to the prevention, control, and abatement of water pollution, and Executive Order 11990 relating to the protection of wetlands.

10. The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been 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.

2. 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:

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;

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

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

I. Civil Rights Assurance

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

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

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

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

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

J. Debarment and Suspension

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

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

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

(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.