

**LOCAL GOVERNMENT GRANT PROGRAM  
LGPL-12-06 Rivercrest Park Restroom**

**THIS AGREEMENT** is made and entered into by and between the State of Oregon, acting by and through the Oregon Parks and Recreation Department, hereinafter referred to as the **OPRD**, and **City of Oregon City**, hereinafter referred to as the “Sponsor.”

**RECITALS**

**WHEREAS**, under ORS 390.180, the State and Sponsor may enter into an agreement concerning acquisition, development, and or rehabilitation of public outdoor recreation areas and facilities, hereinafter called “Project,” and the State may make grants of money to assist the Sponsor in such projects.

**WHEREAS**, under OAR Chapter 736, Division 6, the Sponsor agrees to comply with the Local Government Grant Program administrative rules.

**NOW, THEREFORE**, OPRD and the Sponsor agree to the following:

**AGREEMENT**

**1. Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, the Project shall be completed by **June 30, 2014 (“Project Completion Date”)**. This Agreement shall expire on the date final payment is made by OPRD.

**2. Agreement Documents.** This agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

Exhibit A:	<b>Sponsor’s Grant Application</b>
Exhibit B:	<b>Progress Report Form</b>
Exhibit C:	<b>Request for Grant Reimbursement Form</b>

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C.

**3. Grant.** In accordance with the terms and conditions of this Agreement, OPRD shall provide Sponsor **\$150,000 or 50 percent**, whichever is less, of the total project cost, for the purposes described in Section 5. OPRD shall pay the Grant from monies available through the Local Government Grant Program.

**4. Project Cost; Matching Funds.** Total Cost of the Project is **\$300,000**. The Sponsor Match is **\$150,000**. The Sponsor shall contribute matching funds or the equivalent in labor, materials, property, or services, which are shown as eligible match in the rules, policies and guidelines for the Local Government Grant Program.

**5. Project:** The purpose of this Project is to provide funding assistance to the City of Oregon City for park development at Rivercrest Park including the demolition of existing restroom and construction of an ADA accessible restroom building with separate changing rooms and storage. The Project is further described in the Sponsor’s Grant Application, which is Exhibit A attached hereto. Sponsor shall have six-months from the Effective Date of this Agreement to commence substantial work (i.e., for the Sponsor to award contracts for work or show at least 25% of work is complete). Projects not in compliance with this schedule may be cancelled unless OPRD determines, in its sole discretion, that Sponsor has provided to OPRD justification for an extension.

**6. Progress Reports.** Once work has begun, Sponsor shall report to ORPD on work completed on a quarterly basis as follows:

- Period beginning January 1, ending March 31, . . . . . report is due **April 30**.
- Period beginning April 1, ending June 30, . . . . . report is due **July 31**.
- Period beginning July 1, ending September 30, . . . . . report is due **October 31**.
- Period beginning October 1, ending December 31, . . . report is due **January 31**.

A progress report giving an accounting of the work accomplished is also required whenever Project reimbursements are requested. Reports must be in the form provided in Exhibit B.

Sponsor must submit a Final Report and final reimbursement request to ORPD within 45 days of the Project Completion Date using the form attached hereto as Exhibit B. The final report shall include a full and final accounting of all expenditures and a description of the work accomplished.

**7. Disbursement and Recovery of Grant.**

**a. Disbursement Generally.** ORPD shall disburse up to 75 percent of the Grant Funds to Sponsor on a cost reimbursement basis upon approval of invoices submitted to ORPD. Sponsor may send invoices to ORPD at any time but no more than once per calendar quarter. Invoices must be in the form provided in Exhibit C attached hereto and provide detail indicating the nature of costs to be reimbursed, and all such costs must be directly related to the Project and Project budget as shown in Exhibit A. Invoices must be signed by an authorized representative of Sponsor. Prior to approval of any invoice, all reports due under Section 6 hereof must be complete and provided to and approved by ORPD. ORPD will disburse the final 25 percent of the Grant Funds upon approval by ORPD of the Final Report and the completed Project. ORPD will not be obligated to make final payment to Sponsor until all documentation and reports due under Section 6 hereof are complete and provided to ORPD, including the ID number or vehicle identification number of any equipment purchased by Sponsor, and subject to a final inspection and approval of the Project by ORPD.

**b. Allowable Costs.** The Grant is for the Project and shall not be used for any other purpose. No Grant funds will be disbursed for any changes to the Project unless such changes are approved by ORPD by Amendment pursuant to section 13.b hereof. Sponsor shall not use any Grant Funds for administration, overhead or indirect costs, whether or not related to this Agreement.

**c. Conditions Precedent to Disbursement.** ORPD’s obligation to disburse Grant moneys to Sponsor under this Agreement is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i.** ORPD has received sufficient funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ORPD, in the exercise of its reasonable administrative discretion, to make the disbursement.
- ii.** No default as described in section 11 has occurred.
- iii.** Sponsor’s representations and warranties set forth in section 8 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv.** Sponsor shall provide ORPD a copy of all necessary federal, state and local permits required for the Project.

**d. Recovery of Grant Moneys.** Any Grant moneys disbursed to Sponsor under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement (“Misexpended Funds”) or that remain unexpended on the earlier of termination or

expiration of this Agreement must be returned to OPRD. Sponsor shall return all Misexpended Funds to OPRD promptly after OPRD's written demand and no later than 15 days after OPRD's written demand. Sponsor shall return all Unexpended Funds to OPRD within 14 days after the earlier of expiration or termination of this Agreement.

**8. Representations and Warranties of Sponsor.** Sponsor represents and warrants to OPRD as follows:

**a. Organization and Authority.** Sponsor is a:

Municipal agency

Other Governmental Entity (regional governments, port districts, special districts, etc)

duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant. Sponsor has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Sponsor of this Agreement (1) have been duly authorized by all necessary action of Sponsor and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Sponsor's Articles of Incorporation or Bylaws (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Sponsor is a party or by which Sponsor or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Sponsor of this Agreement.

**b. Binding Obligation.** This Agreement has been duly executed and delivered by Sponsor and constitutes a legal, valid and binding obligation of Sponsor, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

**c. Use of Project property:** Sponsor further warrants that the land within the project boundary described in Exhibit A shall be dedicated and used for a period of no less than 25 years from the completion of the Project. Sponsor agrees to not change the use of, sell, or otherwise dispose of the land within the Project boundary, except upon written approval by OPRD. Leases for projects placed on federally owned property must be at least 25 years.

If the Sponsor converts lands within the Project boundary to a use other than as described in the grant application or disposes of such land by sale or any other means, the Sponsor must provide replacement property acceptable to OPRD within 24 months of either the conversion or the discovery of the conversion.

If replacement property cannot be obtained within the 24 months, the Sponsor will provide payment of the grant program's prorated share of the current fair market value to the State. The prorated share is that percentage of the original grant (plus any amendments) as compared to the original project cost(s). The replacement property must be equal to the current fair market value of the converted property, as determined by an appraisal. The recreation utility of the replacement property must also be equal to that of the lands converted or disposed.

If conversion should occur through processes outside of the Sponsor's control such as condemnation or road replacement or realignment, the Sponsor will be required to pass through to the State that prorated share of whatever consideration is provided to the Sponsor by the entity that caused the conversion. The monetary value of whatever consideration provided by the taking will normally consist of the fair market value of the property established by an appraisal.

The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

**9. Certain Covenants of Sponsor.** Sponsor shall:

- a. Grant Funds.** Vigilantly safeguard the Grant moneys received hereunder and maintain financial controls sufficient to protect such moneys and ensure that the Grant moneys are used solely for purposes of the Project;
- b. Completion.** Complete the Project on or before the expiration date of this Agreement and submit a final report for the Project to OPRD in accordance with Section 6 hereof.
- c. Publicity.** Sponsor shall make every effort to acknowledge and publicize OPRD's participation and assistance with the project. Sponsor agrees to place signs at the Project location acknowledging OPRD's grant program support. Sponsor also agrees to maintain the signs throughout the life of the project. State may withhold final reimbursement payment until signage has been placed.
- d. Public Access to Project:** The Sponsor shall allow open and unencumbered public access to the completed Project to all persons without regard to race, color, religious or political beliefs, sex, national origin, or place of primary residence.

**10. Records Maintenance and Access.**

- a. Access to Records and Facilities.** OPRD, the Secretary of State of the State of Oregon (Secretary) and their duly authorized representatives shall have access to the books, documents, papers and records of Sponsor that are directly related to this Agreement, the Grant moneys provided hereunder, or the Project for the purpose of making audits and examinations. In addition, OPRD, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Sponsor shall permit authorized representatives of OPRD and the Secretary to perform site reviews of all services delivered as part of the Project.
- b. Retention of Records.** Sponsor shall retain and keep accessible all books, documents, papers, and records, that are directly related to this Agreement, the Grant moneys or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the expiration date. If there are unresolved audit questions at the end of the three-year period, Sponsor shall retain the records until the questions are resolved.
- c. Expenditure Records.** Sponsor shall document the expenditure of all Grant moneys disbursed by OPRD under this Agreement. Sponsor shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit OPRD to verify how the Grant moneys were expended.

**11. Default.** Sponsor shall be in default under this Agreement upon the occurrence of any of the following events:

- a.** Sponsor fails to perform, observe, or discharge any of its covenants, agreements, or obligations set forth herein.
- b.** Any representation, warranty or statement made by Sponsor herein or in any documents or reports relied upon by OPRD to monitor implementation of the Project, the expenditure of Grant moneys or the performance by Sponsor is untrue in any material respect when made;
- c.** Sponsor (i) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated as bankrupt or insolvent, (v) commences a

voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or

**d.** A proceeding or case is commenced, without the application or consent of Sponsor, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Sponsor, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Sponsor or of all or any substantial part of its assets, or (iii) similar relief in respect to Sponsor under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Sponsor is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

**e. Remedies upon Default.** If Sponsor's default is not cured within 30 calendar days of written notice thereof to Sponsor from OPRD or such longer period as OPRD may authorize in its sole discretion, OPRD may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant moneys, payment of interest earned on the Grant moneys, and declaration of ineligibility for the receipt of future grant awards from OPRD. If, as a result of Sponsor's default, OPRD demands return of all or a portion of the Grant moneys or payment of interest earned on the Grant moneys, Sponsor shall pay the amount upon OPRD's demand.

## 12. TERMINATION

**a. Termination for Convenience.** Either party may terminate this Agreement at any time prior to the expiration date of this Agreement upon 15 days notice to the other party. Neither party shall incur any new obligations for the terminated portion of this Agreement and shall cancel as many obligations as possible immediately upon receipt of notification from the other party. Payment in full shall be allowed for the non-cancelable obligations properly incurred up to the effective date of the termination. All Unexpended Funds shall be returned to OPRD within 14 days of termination.

**b. OPRD Termination.** OPRD may terminate this Agreement:

**i.** Immediately upon written notice to Sponsor, if OPRD does not obtain sufficient funding and expenditure authorizations to allow OPRD to meet its payment obligations under this Agreement.

**ii.** Immediately upon written notice to Sponsor if state or federal laws, regulations, or guidelines are modified, changed or interpreted in such a way that OPRD does not have the authority to provide Grant moneys for the Project or no longer has the authority to provide the Grant moneys from the funding source it had planned to use.

**iii.** Upon 30 calendar days advance written notice to Sponsor, if Sponsor is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as OPRD may specify in the notice.

## 13. GENERAL PROVISIONS

**a. Indemnification.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Sponsor shall indemnify, defend (subject to ORS chapter 180), and hold harmless the State of

Oregon and OPRD and their officers, employees, and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature, resulting from, arising out of or relating to the activities of the Sponsor or Sponsor's officers, employees, sub-contractors, or agents under this Agreement.

**b. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both parties. A request for an extension of the Project Completion Date for a six month period may be granted if requested by Sponsor in writing at least 30 days prior to the Project Completion Date and the request includes a compelling need, as determined in OPRD's sole discretion, for the extension.

**c. Participation in Similar Activities.** This Agreement in no way restricts Sponsor or OPRD from participating in similar activities with other public or private agencies, organizations, or individuals.

**d. Duplicate Payment.** Sponsor is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual. All sponsor matching contributions must be used and expended for this project only and within the Project period.

**e. No Third Party Beneficiaries.** OPRD and Sponsor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.

**f. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Sponsor or OPRD to the applicable Principal Contact at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the Sponsor, or on the next business day, if transmission was outside normal business hours of the Sponsor. Any communication or notice given by personal delivery shall be effective when actually delivered.

**OPRD:**

Oregon Parks and Recreation Department  
Local Government Grant Program Coordinator  
725 Summer Street NE, Suite C  
Salem, OR 97301  
Phone: 503-986-0708  
Fax: 503-986-0794

**Sponsor:**

City of Oregon City  
Denise Kai  
625 Center Street  
Oregon City, OR 97045  
Phone: (503) 496-1565  
Fax: (503) 657-7026  
Email: [dkai@orc.org](mailto:dkai@orc.org)

**g. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OPRD (or any other agency or

department of the State of Oregon) and Sponsor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. **EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.**

**h. Compliance with Law.** Sponsor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, Sponsor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations, (b) Titles VI and VII of the Civil Rights Act of 1964, as amended, (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142, (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) all regulations and administrative rules established pursuant to the foregoing laws, and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement or the Project and required by law to be so incorporated. Sponsor shall not discriminate against any individual, who receives or applies for services as part of the Project, on the basis of actual or perceived age, race, creed, religion, color, national origin, gender, disability, marital status, sexual orientation, alienage or citizenship. All employers, including Sponsor, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.

**i. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

**j. Assignment of Agreement, Successors in Interest.** Sponsor shall not assign or transfer any interest in this Agreement, enter into any subcontracts, or subgrant any Grant moneys, without the prior written approval of OPRD. Any such assignment, transfer, subcontract, or subgrant, if approved, is subject to such conditions and provisions, as OPRD may deem necessary, including without limitation that, for any portion of the Project awarded by Sponsor to a contractor, Sponsor shall provide to OPRD a copy of the contractor's performance bond in the amount of the contract issued by a surety company authorized to do business in Oregon. No approval by OPRD of any assignment, transfer, subcontract or subgrant shall be deemed to create any obligation of OPRD in addition to those set forth in this Agreement nor will OPRD's approval of an assignment, transfer, subcontract or subgrant relieve Sponsor of any of its duties or obligations under this Agreement.

**k. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 6, 8, 10, 13.a, 13.e, 13.g, 13.k and 13.l.

**l. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Sponsor, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**IN WITNESS THEREOF:** the parties hereto have caused this agreement to be properly executed by their authorized representatives as of the day and year hereinafter written.

**Sponsor:**

**ORPD Grant Program:**

By: \_\_\_\_\_  
Printed Name & Title

By: \_\_\_\_\_  
Local Government Grants Program Coordinator

\_\_\_\_\_  
Sponsor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Grants Division Manager

\_\_\_\_\_  
Date

**State of Oregon, acting by and through its  
State Parks and Recreation Department**

By: \_\_\_\_\_  
Roger Roper, Assistant Director

\_\_\_\_\_  
Date

**Approved for legal sufficiency (when Grant amount exceeds \$150,000)  
Oregon Department of Justice**

By: Approved for legal sufficiency by Assistant Attorney General  
Keith L. Kutler by email dated September 6, 2012