

RESOLUTION NO. 4980

A RESOLUTION ACCEPTING A LOCAL GOVERNMENT GRANT FROM THE OREGON PARKS AND RECREATION DEPARTMENT FOR THE CONSTRUCTION OF A NEW AQUATIC FACILITY AT SWANSON PARK.

WHEREAS, at the City Council meeting on May 14, 2003, the Albany City Council approved the submittal of a grant application to the Oregon Parks and Recreation Department in the amount of \$250,000 for the construction of a new aquatic facility at Swanson Park; and

WHEREAS, conditions of obtaining this grant include a local match of 50 percent; and

WHEREAS, receipt of these funds will allow the City to construct a new aquatic facility at Swanson Park. This project includes the construction of an open swimming area, a river channel, water slides, water play equipment with beach entry, a new bath house, and parking lots; and

NOW, THEREFORE, BE IT RESOLVED that the City of Albany accepts this Local Government Grant from the Oregon Parks and Recreation Department in the amount of \$250,000 for the construction of a new aquatic facility Swanson Park, approves the City of Albany local match of \$250,000, and authorizes the City Manager to execute the agreements and conditions for acceptance.

BE IT FURTHER RESOLVED that the following account numbers shall be applied to the grant:

	<u>Debit</u>	<u>Credit</u>
Resources		
Oregon Parks and Recreation Department	\$250,000	
Gifts and Donations	\$250,000	
Requirements		
Swanson Aquatic Facility		\$500,000

DATED AND EFFECTIVE THIS 9TH DAY OF JUNE, 2004.

  
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Mayor

ATTEST:

  
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City Clerk

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**STATE/LOCAL AGREEMENT  
LOCAL GOVERNMENT GRANT PROGRAM**

**THIS AGREEMENT** is made and entered into on the date of final signature of this agreement by and between the State of Oregon, acting by and through the Oregon Parks and Recreation Department, hereinafter referred to as the "State," and Albany Parks and Recreation Department, or designated representative, hereinafter referred to as the "Sponsor."

The parties agree to the following:

**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.

The purpose of this agreement is to set forth the obligation of both parties in the acquisition, development and/or rehabilitation of public outdoor recreation areas and facilities. The State and the Sponsor desire to achieve improvements in park and recreation areas and facilities as hereinafter described in the project application and to that end, the Sponsor proposes to perform work and/or acquire land as set out and described in the Description/Scope of Work section of this agreement and the Sponsor's application.

The State has sufficient Local Government Grant Program funds available within its current biennial budget and has authorized the expenditure on the Sponsor's project as defined below.

The Project has been reviewed and based on the Sponsor's application and representations is found to be feasible and appropriate for funding.

Project Title: Swanson Family Aquatic Facility

Project Number: LGP0103

**PROJECT FUNDING**

The total cost of the project covered by this Agreement is \$2,322,500.00.

The value of the Sponsor contributions for this project is \$2,072,500.00, which is the difference between the total cost and the State grant.

The State agrees to pay \$250,000.00 or 11 percent of the total project costs, whichever amount is less, from monies available through the Local Government Grant Program.

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

Upon approval by the Oregon Parks and Recreation Commission, the State shall provide Local Government Grant Program funds to the Sponsor to supplement the funding of the authorized Project.

Sponsor may begin work upon receipt of signed Agreements and a Notice to Proceed from the State. Any expenses incurred prior to the agreement date will not be eligible for reimbursement.

53 **PROJECT INFORMATION**

54  
55 Description/Scope of Work: Develop aquatic facility

56  
57 Project Sponsor Contact: Shaun Cooper, Park Development Coordinator  
58 Albany Parks and Recreation Department  
59 333 Broadalbin SW  
60 Albany, OR 97321  
61 541-917-7774 (phone), 541-917-7776 (fax)

62  
63 The Sponsor's project and boundary map information is more particularly described in the project grant application  
64 and by this reference made a part of this agreement.

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66 **PROJECT TERM AND AMENDMENTS:**

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68 Project Term: The Sponsor shall have one year from the date of authorization of this agreement to commence  
69 substantial work (i.e., for sponsor to award contracts for work or show at least 25% of work is complete if the  
70 work is performed by force account). Projects not in compliance with this schedule may be cancelled unless  
71 substantial justification for an extension is warranted.

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73 This Agreement shall become effective after both parties have signed this Agreement and shall become effective  
74 on the final date of signature of this agreement. Unless otherwise terminated or extended this Project shall be  
75 completed and this Agreement shall expire on June 30, 2005.

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77 Amendments:

78 This Agreement may only be amended if requested in writing, approved by the State, and signed by the parties.  
79 Extensions for a six-month period may be granted for the project agreement if requested in writing at least 30 days  
80 prior to expiration date of this agreement, allowing enough time to prevent a lapse in the agreement. The request  
81 for extension must show a compelling need for the extension. No further extensions will be allowed.

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83 **PROGRESS REPORTS AND PAYMENTS**

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85 Progress Reports: Once work has begun, Sponsor shall report to the State on work completed on a quarterly basis  
86 as follows:

- 87 By April 30 for the quarter beginning January 1 and ending March 31;  
88 By July 31 for the quarter beginning April 1 and ending June 30;  
89 By October 31 for the quarter beginning July 1 and ending September 30;  
90 By January 31 for the quarter beginning October 1 and ending December 31.

91  
92 A progress report giving an accounting of the work accomplished is also required whenever project  
93 reimbursements are requested. A copy of the progress report form to be used is attached.

94  
95 Sponsor must submit a final report and final reimbursement within 90 days of the project completion date or the  
96 expiration date of the agreement. The final report shall include full and final accounting of all expenditures and  
97 description of the work accomplished.

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99 **PROJECT BILLING AND REIMBURSEMENT**

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101 Sponsor may bill for reimbursable expenditures quarterly or at anytime during the agreement period with proper  
102 documentation. To request a reimbursement, Sponsor will complete Agency Billing Form, along with the progress  
103 report form, and send both to:

105 Oregon Parks and Recreation Department  
106 ATTN: Marilyn Lippincott, Senior Grants Project Officer  
107 1115 Commercial St. NE Suite 1  
108 Salem, Oregon 97301-1002.  
109

110 The Agency Billing Form is attached with this agreement.  
111

112 Partial reimbursements up to 90% of the grant amount may be billed to the state during the project period for work  
113 completed. In all partial reimbursements, State will retain 10% of total grant allocation amount until final  
114 approval and acceptance by the State. The final 10% will be reimbursed after the project is completed, full  
115 documentation is received, and there is final approval and acceptance by State.  
116

117 Partial reimbursements and quarterly reports shall contain a reasonable and accountable request. At no time will  
118 the State reimburse Sponsor for more than the maximum percentage allowed under this agreement.  
119

120 The State shall not be obligated to make a final payment to the Sponsor until all documentation and required  
121 reports are received. Projects may be inspected by the State prior to final acceptance and final reimbursement of  
122 the work completed.  
123

#### 124 SPONSOR COVENANTS

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126 Match: The sponsor shall contribute matching funds or the equivalent in labor, materials or services, which are  
127 shown as eligible match in the rules, policies and guidelines for the Local Government Grant Program.  
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129 Publicity: Sponsors shall make every effort to publicize the Local Government Grant Program and OPRD's  
130 participation. Upon completion of the project, State may require that signs acknowledging Local Government  
131 Grant Program assistance be installed at the site.  
132

133 Public Access to the Project: The Sponsor shall allow open and unencumbered public access to the Project to all  
134 persons without regard to race, color, religious or political beliefs, sex, national origin or place of primary  
135 residence.  
136

137 Compliance with Workers Compensation Law: The Sponsor shall require that its contractors or any  
138 subcontractors and all employers performing work on the Project be subject employers under the Oregon Workers  
139 Compensation Law and shall comply with ORS 656.017, which requires subject employers to provide  
140 compensation coverage for all subject workers.  
141

142 Record Maintenance: The Sponsor shall retain a project file including accounting records for three (3) fiscal years  
143 after the completion of the project and allow the State, or its authorized representative, to inspect and review all  
144 fund related records, to the level of detail prescribed by the reviewing entity, whenever so requested by the State or  
145 its authorized representative.  
146

147 Inspection and Audit: The Sponsor shall permit all fund-assisted sites to be inspected by the State and/or its  
148 authorized representative(s) at reasonable times. Projects may be inspected by the State prior to final acceptance.  
149

150 Liability: The Sponsor shall be liable for injury or loss of property, personal injury, or death caused by the  
151 negligent or wrongful act or omission of any employee of the sponsor, while acting within the scope of his office  
152 or employment as permitted under the Oregon Tort Claims Act, where the State of Oregon, if a private person,  
153 would be liable to the claimant in accordance with the law of the State where the act or omission occurred.  
154

155 Indemnity: Subject to the limits and conditions for the State of Oregon Tort Claims Act, the Sponsor shall defend,  
156 save, hold harmless, and indemnify the State of Oregon and the Department and their agencies, subdivisions,

157 officers, directors, agents, employees, and members from any and all claims, suits, actions, losses, liabilities, costs,  
158 expenses, and damages of whatsoever nature resulting from, arising out of, or relating to the activities of Sponsor  
159 or its officers, employees, contractors, or agents under this agreement.

160

### 161 CONVERSION

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163 Sponsor further warrants that the land within the project boundary shall be dedicated and used for park or  
164 recreation purposes. Sponsor must control or will have control of the land, and Sponsor shall not change the use  
165 of, sell, or otherwise dispose of the land within the project boundary except upon approval and consent of the  
166 State.

167

168 If the Sponsor converts lands within the project boundary to a use other than park and recreation purposes, or  
169 disposes of such land by sale or any other means, the Sponsor must provide replacement property of equal or  
170 greater fair market value to that of the converted project land as measured on the date of their conversion or  
171 disposal. This will require appraisals for both the converted and the replacement property. Replacement property  
172 will not be approved by the State unless the replacement property has park and recreation utility equivalent to the  
173 lands converted or disposed.

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### 175 TERMINATION

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177 Either party, in writing may terminate this agreement in whole or in part, at any time prior to the expiration date of  
178 this agreement. Neither party shall incur any new obligations for the terminated portion of this agreement and  
179 shall cancel as many obligations as possible. Full credit shall be allowed for the non-cancelable obligations  
180 properly incurred up to the effective date of the termination. The State reserves the right to cancel this agreement  
181 if no progress on the Project is made within one year of the effective date of this agreement.

182

183 The State, upon thirty (30) days written notice to the Sponsor, may modify or terminate this agreement if the State  
184 fails to receive funding or appropriations, limitations, or other expenditure authority at levels sufficient to pay the  
185 allowable costs of the Project to be funded hereunder, or should state law, regulation or guidelines be modified,  
186 changed or interpreted in such a way that the Project, or any portion of the Project is no longer eligible for Local  
187 Government Grant Program funding.

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### 189 REMEDIES

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191 THE State shall have any and all rights and remedies available by law or in equity.

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### 193 GENERAL PROVISIONS

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195 Participation in Similar Activities: This agreement in no way restricts the Sponsor or the State from participating  
196 in similar activities with other public or private agencies, organizations or individuals.

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198 Duplicate Payment: The Sponsor shall not be compensated for or receive any form of duplicate, overlapping or  
199 multiple payments for the same work performed under this agreement from any agency of the State of Oregon or  
200 the United States of America or any other party, organization or individual. All Sponsor matching contributions to  
201 this agreement must be used and expended for this project only and within the project period.

202

203 No Third Party Beneficiaries: The State and the Sponsor are the only parties to this agreement and are the only  
204 parties entitled to enforce its terms. Nothing in this agreement gives, is intended to give, or shall be construed to  
205 give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is  
206 individually identified by name herein and expressly described as intended beneficiary of the terms of this  
207 agreement.

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209 Freedom of Information Act: Any information furnished under this agreement is subject to the Freedom of  
210 Information Act (5 U. S. C. 552).

211  
212 Non-Discrimination: The parties agree not to discriminate on the basis of race, religion, sex, color, national origin,  
213 family status, marital status, sexual orientation, age, and source of income or mental or physical disability in the  
214 performance of this contract.

215  
216 Notices - All written communications, which are to be given to the State under this Agreement, will be mailed and  
217 addressed as follows:

218  
219 Oregon Parks and Recreation Department  
220 Marilyn Lippincott, Senior Grants Project Officer  
221 1115 Commercial St NE Suite 1  
222 Salem, Oregon 97301-1002  
223

224 **WAIVER CLAUSE**

225  
226 THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO  
227 WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND  
228 EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT,  
229 MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE  
230 AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR  
231 REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS  
232 AGREEMENT. SPONSOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE,  
233 HEREBY ACKNOWLEDGES THAT SPONSOR HAS READ THIS AGREEMENT, UNDERSTANDS IT  
234 AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

City Manager  
Sponsor Title

8/22/03  
Date

[Signature]  
Sponsor Signature

**STATE OF OREGON, by and through Oregon  
Parks and Recreation Department**

July 9, '04  
Date

\_\_\_\_\_  
Michael Carrier, Director

Recommended by

Marilyn Lippincott  
Local Government Grant Coordinator or  
Representative  
Oregon Parks and Recreation Department

\_\_\_\_\_  
Date