

RESOLUTION NO. _____

216282

R. 76-2626

JUN 23 1976

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO APPROVING AND PROVIDING FOR THE EXECUTION OF A PROJECT AGREEMENT FOR LAND AND WATER CONSERVATION FUND PROJECT NO. 06-00451, SOUTHEAST SHORE DEVELOPMENT, BY AND BETWEEN THE CITY OF SAN DIEGO AND THE STATE OF CALIFORNIA, RESOURCES AGENCY, DEPARTMENT OF PARKS AND RECREATION.

The City Council of The City of San Diego resolves as follows:

Section 1. The Project Agreement attached hereto as Exhibit A between The City of San Diego and the State of California, the terms of which provision is made for federal reimbursement of an amount not to exceed \$150,000 under provisions of the Land and Water Conservation Fund Act of 1965 for the development of Project No. 06-00451, Southeast Shore Development, as described below:

Development of the Southern Shore area of Mission Bay Park involving 14 acres of land and including grading, contouring, landscaping, picnic facilities, a children's play area and a bicycle/pedestrian pathway,

is hereby approved in all respects.

Section 2. The City Manager of The City of San Diego is hereby authorized and directed to execute five copies of said Project Agreement.

Section 3. The City Clerk shall certify to the passage of this resolution by The City of San Diego and it shall thereupon take effect.

APPROVED: JOHN W. WITT, City Attorney

By



Robert W. MacCartee
Deputy City Attorney

RWM:lc:263.2
6/10/76
Or.Dept.:Pk.&Rec.

216282

STATE OF CALIFORNIA
Department of Parks and Recreation
PROJECT AGREEMENT
Land and Water Conservation Fund Program

EXHIBIT A

Project Title Southeast Shore Development

Participant City of San Diego Project Number 06-00451

Project Period 3-30-76 to 12-31-79

Project Scope:

This project is the development of Southern Shore, a portion of the continuing development of the 4,253 acre Mission Bay Park. Development will involve 14 acres of land and include grading, contouring, landscaping, picnic facilities, a children's play area and a bicycle/pedestrian pathway. This will bring the amount of developed public use land in the park to approximately 875 acres, but leaves 560 acres of land designated for public use yet to be developed.

Stage Covered by This Agreement Complete

Project Cost:

Total Estimated Direct Project Cost (as shown in Project Proposal)	\$ <u>300,000</u>	(1)
Surcharge--State Administrative Assessment <u>1.1</u> % of line 1 (subject to adjustment, see paragraph 2, page 2)	\$ <u>3,300</u>	(2)
Total Project Costs Eligible for Federal Funding	\$ <u>303,300</u>	(3)
Federal Participation--50% of line (3) or 50% of actual costs whichever is the lesser	\$ <u>151,650</u>	(4)

The attached contract terms consisting of 9 pages are made a part of and incorporated into this Agreement.

City of San Diego
PARTICIPANT

By _____

Title _____

Date _____

STATE DEPARTMENT OF PARKS AND RECREATION

By _____

By _____

Date _____

Title _____

Date _____

EXHIBIT A

CONTRACT TERMS

The State Liaison Officer for the Land and Water Conservation Fund and the City of San Diego, hereinafter referred to as the Participant, mutually agree to perform this agreement in accordance with the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964).

The State of California hereby promises, in consideration of the promises made by the Participant herein, to accept appropriated Federal Funds for the purposes of the Project and disburse the same to reimburse the Participant 50 percent of the eligible Project cost not to exceed 50 percent of the direct Project cost shown in this agreement; except for a surcharge for administrative costs to be applied to the total estimated direct Project costs as shown above. The surcharge is to be deducted from the reimbursements received from the Federal Government applicable to this Project and will be computed at the Federally approved surcharge rate in effect at the time the billing is submitted to the Federal Government but not to exceed 3%.

It is understood by the parties hereto that this agreement shall not obligate State of California funds for the Project costs described herein. The Participant hereby promises, in consideration of the promises made by the Liaison Officer herein, to execute the Project stage described herein, in accordance with the terms of this agreement. Any disbursement hereunder shall not be made unless and until funds therefor are received by the Liaison Officer from the Bureau of Outdoor Recreation.

The following special Project terms and conditions were added to this agreement before it was signed by the parties hereto and any deviations from or changes in the Project shall be accomplished only through written consent of the parties concerned:

The Participant will permanently display in a conspicuous place a bronze plaque which acknowledges Land and Water Conservation Fund assistance. The plaque will be furnished by the State Department of Parks and Recreation subsequent to review and approval of plans and specifications. The plaque will be displayed in the area assisted by federal funds prior to final payment.

The Participant agrees to comply with the terms and intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970) and the applicable regulations and procedures of the Department of the Interior implementing such Act, and Chapter 16, of Div. 7, Title 1 of the Gov. Code, State of California.

Where applicable, the Participant agrees to comply with the terms and intent of the Flood Disaster Protection Act of 1973 (Public Law 93-234) and all applicable regulations and procedures implementing that Act.

A. DEFINITIONS

1. The term "BOR" as used herein means the Bureau of Outdoor Recreation, United States Department of the Interior.
2. The term "Director" as used herein means the Director of the Bureau of Outdoor Recreation, or any representative lawfully delegated the authority to act for such Director.
3. The term "Liaison Officer" as used herein means the California Director of Parks and Recreation, or other State officer as designated by the Governor from time to time and authorized by the State Legislature.
4. The term "Manual" as used herein means the Bureau of Outdoor Recreation Manual. (Outdoor Recreation Grants-In-Aid Manual)
5. The term "Guide" as used herein means "Procedural Guide, Part I--Application Procedures and Part II--Fiscal Procedures" issued by the Department of Parks and Recreation.
6. The term "Project" as used herein means the project or project segment which is the subject of this agreement as defined in the project proposal.
7. The term "Project Proposal" as used herein means the form and all supplemental attachments used to describe and estimate the cost of a planning, acquisition, or development project filed with the Liaison Officer in support of an application for federal financial assistance.
8. The term "State" as used herein means the State of California and/or its official representative, the Department of Parks and Recreation.
9. The term "Participant" as used herein shall mean the recipient of the federal funds to be disbursed in accordance with the terms of this agreement.
10. The term "Federal Funds" as used herein means those monies made available by the United States of America as matching money for projects under the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964).

B. PROJECT EXECUTION

1. The Participant shall at no cost to the State execute, complete, operate and maintain the approved Project in accordance with the Manual, the Guide, the Project Proposal, and the plans and specifications applicable, which documents are on file in the office of the Liaison Officer and made a part hereof. Failure to render satisfactory progress or to complete this or any other project which is the subject of Federal assistance under this program to the satisfaction of the Director or Liaison Officer may be cause for the suspension of all obligations of the United States and the State under this agreement.
2. The Participant shall indemnify the State of California and its officers, agents and employees against and hold the same free and harmless from any and all claims, demands, damages, losses, costs, and/or expenses of liability due to, or arising out of, either in whole or in part, whether directly or indirectly, the organization, development, construction, operation, or maintenance of the Project.

3. In the event of default by the Participant which default is not cured by the Participant within thirty (30) days after receipt of written notice from the Liaison Officer, the State may in addition to any other remedies take possession of the Project and construct, operate or maintain the Project as the State may deem necessary to fulfill requirements of the Federal Government, and the Participant agrees to reimburse the State for any costs or expenses incurred by the State thereby.

4. Construction contracted for by the Participant shall meet the following requirements:

(a) Contracts for construction in excess of \$10,000 shall be awarded through a process of competitive bidding. Copies of all bids and a copy of the contract shall be retained for inspection by the Director or Liaison Officer.

(b) The Participant shall inform all bidders on contracts for construction in excess of \$10,000 that Federal Funds are being used to assist in construction.

(c) Written change orders to contracts for construction in excess of \$10,000 shall be issued for all necessary changes in the facility. Such orders shall be made a part of the project file and shall be kept available for audit.

(d) The Participant agrees to comply with the Civil Rights Act of 1964 and Executive Order No. 11246 and shall incorporate, or cause to be incorporated, into all construction contracts the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, sex, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

(e) The Participant shall:

- (1) comply with the above provisions in construction work carried out by itself;
- (2) assist and cooperate actively with the BOR and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the above contract provisions and with the rules, regulations, and relevant orders of the Secretary of Labor;
- (3) obtain and furnish to the BOR and to the Secretary of Labor such information as they may require for the supervision of such compliance;
- (4) enforce the obligation of contractors and subcontractors under such provisions, rules, regulations and orders;
- (5) carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the BOR pursuant to Part 11, Subpart D, of Executive Order No. 11246 of September 24, 1965; and
- (6) refrain from entering into any contract with a contractor debarred from Government contracts under Part 11, Subpart D, of Executive Order No. 11246 of September 24, 1965.

5. The Participant shall secure completion of the work in accordance with the approved construction plans and specifications, and shall secure compliance with all applicable Federal, State and local laws and regulations.

6. The Participant shall permit periodic site visits by the Liaison Officer and/or Director to ensure work progress in accordance with the approved Project, including a final inspection upon Project completion.

7. In the event funds should not be available for future stages of the Project, the Participant shall bring the Project to a point of usefulness agreed upon by the State and BOR.

8. All significant deviations from the Project proposal shall be submitted to the Liaison Officer prior to approval.

9. The acquisition cost of real property shall be based upon the appraisal of a competent appraiser. The reports of such appraisers shall be available for inspection by the Liaison Officer upon request.

10. Development plans and specifications shall be available for review by the Liaison Officer upon request.

11. If any tract or parcel of, or interest in, real property subject to being purchased under the provisions of this agreement, but not identified herein, is found by the Director for any reason not to be suitable for Federal assistance, all obligations of the United States hereunder shall cease as to such parcel, tract or interest.

C. PROJECT COSTS

Disallowances. The Participant agrees to make immediate monetary restitution for any disallowances of costs or expenditures on unauthorized activities which are disclosed through audit or inspection by representatives of the Liaison Officer or the Bureau of Outdoor Recreation.

Project costs eligible for assistance shall be determined upon the basis of the criteria set forth in the Manual and Guide.

D. PROJECT ADMINISTRATION

1. The Participant shall promptly submit such reports and in such form as the Liaison Officer may request.
2. Property and facilities acquired or developed pursuant to this agreement shall be available for inspection by the Director and the Liaison Officer.
3. Interest earned on funds granted pursuant to this agreement shall not be available for expenditure by the Participant but shall be disposed of according to instructions issued by the Director.

E. PROJECT TERMINATION

1. The Participant may upon written notice to the Liaison Officer unilaterally rescind this agreement at any time prior to the commencement of the Project. After Project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Participant makes any expenditure or incurs any obligation with respect to the Project.
2. Failure by the Participant to comply with the terms of this agreement or any similar agreement may be cause for the suspension of all obligations of the United States or the State hereunder.
3. Failure by the Participant to comply with the terms of this agreement shall not be cause for the suspension of all obligations of the United States or State hereunder if, in the judgment of the Director, such failure was due to no fault of the Participant. In such case, any amount required to settle at minimum costs any irrevocable obligations properly incurred shall be eligible for assistance under this agreement.
4. Because the benefit to be derived by the United States from the full compliance by the Participant with the terms of this agreement is the preservation, protection, and the net increase in the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and because 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 Participant agrees that payment by the Participant 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 Participant of this agreement. The Participant further agrees, therefore, that the appropriate remedy in the event of a breach by the Participant of this agreement shall be the specific performance of this agreement.

F. CONFLICT OF INTEREST

1. No official or employee of the State or Participant who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in such decisions regarding a contract or subcontract in connection with this Project shall have any financial or other personal interest in any such contract or subcontract.

2. No person performing services for the Participant in connection with this Project shall have a financial or other personal interest other than his employment or retention by the Participant, in any contract or subcontract in connection with this Project. No officer or employee of such person retained by the Participant shall have any financial or other personal interest in any real property acquired for this Project unless such interest is openly disclosed upon the public records of the Participant, and such officer, employee or person has not participated in the acquisition for or on behalf of the Participant.

3. No member of or delegate to Congress shall be admitted to any share or part of this agreement, or to any benefit to arise hereupon, unless such benefit shall be in the form of an agreement made with a corporation for its general benefit.

4. The Participant shall be responsible for enforcing the above conflict of interest provisions.

G. HATCH ACT

No officer or employee of the Participant whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the political activity proscribed in the Hatch Political Activity Act, 5 U.S.C. 118 k, with the exceptions therein enumerated.

H. FINANCIAL RECORDS

1. The Participant shall maintain satisfactory financial accounts, documents, and records, and shall make them available to the State and/or BOR for auditing at reasonable times. Such accounts, documents, and records shall be retained by the Participant for three years following project termination.

2. The Participant may use any generally accepted accounting system, provided such system meets the minimum requirements set forth in the Manual and the Guide.

I. USE OF FACILITIES

1. The Participant shall not at any time convert any property or facility acquired or developed pursuant to this agreement to other than a public outdoor recreation use without the prior approval of the Liaison Officer and the Director.

2. The Participant shall maintain all property so as to appear attractive and inviting to the public. Sanitation and sanitary facilities shall be maintained in accordance with applicable State and local public health standards. Properties shall be kept reasonably safe for public use. Fire prevention,

lifeguard and similar activities shall be maintained at levels reasonable to prevent loss of the lives of users. Buildings, roads, trails and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime so as to prevent undue deterioration. All maintenance and operations shall be in accordance with the standards set forth in the Manual and the Guide.

3. The Participant shall not discriminate against any person on the basis of race, color, or national origin in the use of any property or facility acquired or developed pursuant to this agreement, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-352 (1964), and of the regulations promulgated pursuant to such Act by the Secretary of the Interior and contained in 43 CFR 17.

4. The Participant shall not discriminate against any person on the basis of residence.

J. MANUAL

The Participant shall comply with the policies and procedures set forth in the Bureau of Outdoor Recreation Manual and the Guide. Said Manuals are hereby incorporated into and made a part of this agreement, and are on file with the parties hereto.

SPECIAL CLAUSE RELATED TO THE CLEAN AIR ACT, AS AMENDED (42 U.S.C. 1857 ET SEQ., AS AMENDED BY PUBLIC LAW 91-604) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251 ET SEQ., AS AMENDED BY PUBLIC LAW 92-500)

a. For the purpose of this clause:

(1) The term 'Air Act' means the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.* as amended by Public Law 11-604).

(2) The term 'air pollution control agency' means any agency which is defined in Section 302(b) and Section 302(c) of the Air Act.

(3) The term 'clean air standards' means any rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Air Act, an approved implementation procedure or plan under Section 111(c) and Section 111(d), respectively, of the Air Act, or an approved implementation procedure under Section 112(d) of the Air Act.

(4) The term 'clean water standards' means any limitation, control, condition, prohibition, or other requirement which is set by the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency, or by a State under an approved program as authorized by Section 402 of the Water Act, or by a local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act, including any provisions with respect to inspections, monitoring, and entry, as authorized by Section 308 of the Water Act.

(5) The term 'compliance' means compliance with clean air or water standards, or a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency (EPA), or an air or water pollution control agency, in accordance with the requirements of the Air or Water Act and regulations issued pursuant thereto.

(6) The term 'facility' means a non-Federal building, plant, installation, structure, mine, area, location, or site of operations, to be utilized in the performance of a contract or loan. Where an area, location, or site of operations contains or includes more than one building, plant, installation or structure, the entire area, location, or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(7) The term 'Water Act' means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.* as amended by Public Law 92-500).

(8) The term 'water pollution control agency' means any agency which is defined in Section 502(1) or Section 502(2) of the Water Act.

b. The grantee agrees that any facility to be utilized in the performance of this grant is not listed on the EPA list of Violating Facilities pursuant to 40 CFR, Part 15.20.

c. In the event the grantee fails to comply with clean air or water standards at such facilities, the grant may be canceled, terminated for default or suspended for such failure, in whole or in part, and the Government may refrain from further granting with the grantee.

d. The grantee agrees to comply with all the requirements of Section 114 of the Air Act and Section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308, respectively, and all regulations and guidelines issued thereunder.

e. The grantee agrees to promptly notify the awarding official of the receipt of any notice from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility utilized or to be utilized under the grant is under consideration for listing on the EPA List of Violating Facilities.

f. The grantee further agrees to insert, in any subgrant, contract or subcontract hereunder, unless otherwise exempted pursuant to the EPA regulations implementing the Air or Water Act (40 CFR, part 15.5) provisions which shall include the criteria and requirements set forth in this clause, including this paragraph (f). The grantee shall take such action as the Government may direct as a means of enforcing such provisions.

Passed and adopted by the Council of The City of San Diego on JUN 23 1976,
 by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lee Hubbard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Gade	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jess D. Haro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON
 Mayor of The City of San Diego, California.

EDWARD NIELSEN
 City Clerk of The City of San Diego, California.

By *Attilio Martinez*, Deputy.

RECEIVED
 CITY CLERK'S OFFICE
 1976 JUN 15 AM 9:12
 SAN DIEGO, CALIF.

Office of the City Clerk, San Diego, California

Resolution Number 216282 Adopted JUN 23 1976