

City of Piedmont
COUNCIL AGENDA REPORT

DATE: June 5, 2023

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of a Deed Restriction on Piedmont Park to Meet Requirements of Receiving the Proposition 68 Grant for the Replacement of the Pedestrian Bridge

RECOMMENDATION

Authorize the Mayor to sign the attached Deed Restriction on Piedmont Park to meet the requirements of receiving the Proposition 68 Grant for the replacement of the pedestrian bridge

BACKGROUND

The City has received a \$177,952 grant from the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018 (Proposition 68). A portion of these funds estimated at \$130,000 will be used to replace a pedestrian bridge in Piedmont Park.

Grant regulations require that the receiving party (the City) secure a deed restriction on the property where monies are to be spent, safeguarding the property for purposes consistent with the Grant for the duration of the contract. A Deed Restriction must be recorded on the title to the property before the State will approve any grant payments.

DISCUSSION

In the last few months, a pedestrian bridge at the southwesterly portion of Piedmont Park partially failed. Protective railings collapsed due to rotten wood. As a safety measure, temporary railings have been constructed as shown in the picture on the following page:



The existing bridge is old and in need of replacement. Staff has estimated that the bridge replacement will cost up to \$130,000. Staff proposed and Council approved using Proposition 68 for replacement of the subject bridge.

Based on Proposition 68 guidelines and regulations associated, a deed restriction is required on the property where improvements are to be constructed in order to ensure that the funds are used for projects that will be utilized until 2048. In this case, a deed restrictions on the parcel encompassing Piedmont Park is involved.

State guidelines have provided the language associated with the deed restriction and require that the wording not be changed. Staff has attached the deed restriction form as required by the State. If authorized, the Mayor will sign the document, her signature shall be notarized and the deed shall be recorded. Once recorded, a copy of the notarized and recorded document will be sent to the State.

FISCAL CONSIDERATIONS

No fiscal impacts result from recording the deed restriction. By signing and recording the deed restriction, funds from the State can be used to replace the bridge.

CITY ATTORNEY REVIEW

The City Attorney has reviewed and approved the Agreement as to form.

ATTACHMENTS

- Deed Restriction
- Legal Description of Property
- Grant Contract

By: Daniel Gonzales, Public Works Director
John Wanger, City Engineer

RECORDING REQUESTED BY:

California Department of Parks and Recreation
Office of Grants and Local Services

WHEN RECORDED MAIL TO:

Office of Grants and Local Services
PO Box 942896
Sacramento, CA 94296-0001
Attn: Erin Spencer

DEED RESTRICTION

WHEREAS, the City of Piedmont (hereinafter referred to as “Owner”) is the recorded owner of the real property described in Exhibit A, attached and incorporated herein by reference (hereinafter referred to as the “Property”); and

WHEREAS, the California Department of Parks and Recreation (hereinafter referred to as “DPR”) is a public agency created and existing under the authority of section 5001 of the California Public Resources Code (hereinafter referred to as the “PRC”); and

WHEREAS, Owner received an allocation of grant funds pursuant to the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 Per Capita Program for improvements on the Property; and

WHEREAS, on February 15, 2022, DPR’s Office of Grants and Local Services conditionally approved Grant C9801133, (hereinafter referred to as “Grant”) for improvements on the Property, subject to, among other conditions, recordation of this Deed Restriction on the Property; and

WHEREAS, but for the imposition of the Deed Restriction condition of the Grant, the Grant would not be consistent with the public purposes of the Per Capita Program and the funds that are the subject of the Grant could therefore not have been allocated; and

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

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

1. **DURATION.** This Deed Restriction shall remain in full force and effect and shall bind Owner(s) and all his/her/their assigns or successors-in-interest for the period running from July 1, 2018, to June 30, 2048 (30 years).

2. **TAXES AND ASSESSMENTS.** It is intended that this Deed Restriction is irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the California Constitution; and b) section 402.1 of the California Revenue and Taxation Code or successor statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to the Property within the meaning of section 3712(d) of the California Revenue and Taxation Code, or successor statute, which survives a sale of tax-deeded property.
3. **RIGHT OF ENTRY.** DPR or its agent or employees may enter onto the Property at times reasonably acceptable to Owner(s) to ascertain whether the use restrictions set forth above are being observed.
4. **REMEDIES.** Any act, conveyance, contract, or authorization by Owner(s) whether written or oral which uses or would cause to be used or would permit use of the Property contrary to the terms of this Deed Restriction will be deemed a violation and a breach hereof. DPR may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction up to and including a lien sale of the property. In the event of a breach, any forbearance on the part of DPR to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding such breach, or any subsequent breach.

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

AUTHORIZED REPRESENTATIVE Signature

Date

Print Name and Title

CITY OF PIEDMONT

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

 Attachment B
LIST 1
DETAIL

 1 Property Address: MAGNOLIA AVE PIEDMONT CA 94611

Ownership

County: **ALAMEDA, CA**
 Assessor: **PHONG LA, ASSESSOR**
 Parcel # (APN): **051 -4680-001-04**
 Parcel Status:
 Owner Name: **CITY OF PIEDMONT**
 Mailing Address: **760 MAGNOLIA AVE PIEDMONT CA 94611-4047**
 Legal Description:

Assessment

Total Value:	Use Code: 0300	Use Type: TAX EXEMPTS
Land Value:	Tax Rate Area: 018-000	County Zoning Code:
Impr Value:	Year Assd: 2022	Census Tract:
Other Value:	Property Tax:	Price/SqFt:
% Improved: 0%	Delinquent Yr:	
Exempt Amt:	HO Exempt: N	

Sale History

	Sale 1	Sale 2	Sale 3	Transfer
Document Date:				03/01/1995
Document Number:				TRAN065825
Document Type:				
Transfer Amount:				
Seller (Grantor):				

Property Characteristics

Bedrooms:	Fireplace:	Units:
Baths (Full):	A/C:	Stories:
Baths (Half):	Heating:	Quality:
Total Rooms:	Pool:	Building Class:
Bldg/Liv Area:	Park Type:	Condition:
Lot Acres: 26.258	Spaces:	Site Influence:
Lot SqFt: 1,143,819	Garage SqFt:	Timber Preserve:
Year Built:		Ag Preserve:
Effective Year:		

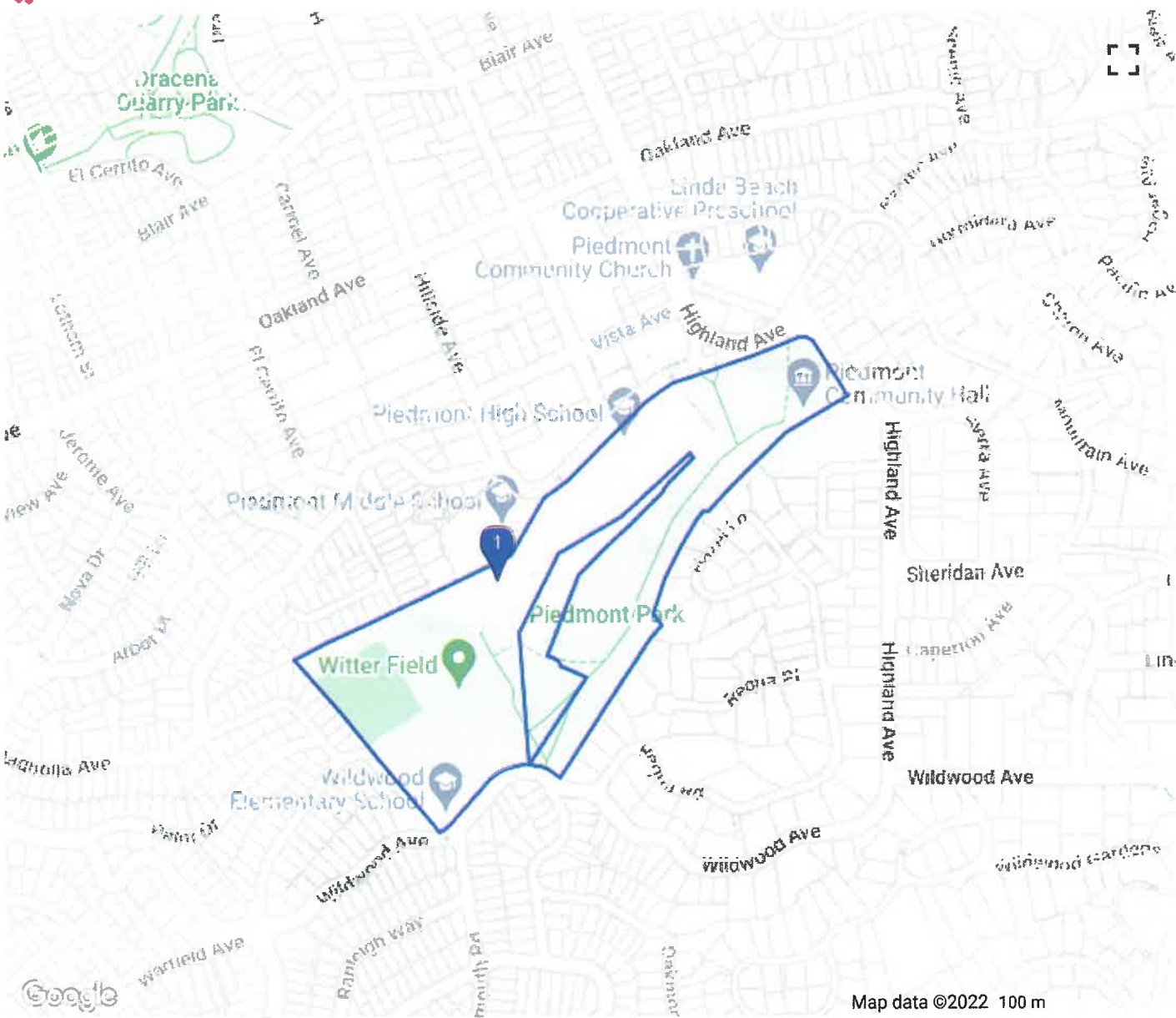


**EXHIBIT B
GRANT CONTRACT**

DocuSign Envelope ID: 90D24026-62EE-4C7E-9967-9C428C13DEC0

State of California - Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

**GRANT CONTRACT
2018 Parks Bond Act
Per Capita Grant Program**

GRANTEE City of Piedmont

THE PROJECT PERFORMANCE PERIOD is from July 01, 2018 through June 30, 2024

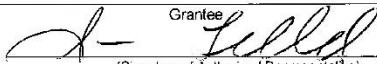
CONTRACT PERFORMANCE PERIOD is from July 01, 2018 through June 30, 2048

The GRANTEE agrees to the terms and conditions of this Contract, and the State of California, acting through its Director of the Department of Parks and Recreation, pursuant to the State of California, agrees to fund the total State grant amount indicated below.

The GRANTEE agrees to complete the GRANT SCOPE(s) as defined in the GRANT SCOPE/Cost Estimate Form or acquisition documentation for the application(s) filed with the State of California.

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

City of Piedmont

By  ^{Grantee}
(Signature of Authorized Representative)

Title City Administrator

Date 3/4/2022

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By 

Date 3/15/2022

**CERTIFICATION OF FUNDING
(For State Use Only)**

CONTRACT NO. C9801133	AMENDMENT NO.	FISCAL SUPPLIER I.D. 0000013544	PROJECT NO. 18-01-031
AMOUNT ENCUMBERED BY THIS DOCUMENT \$177,952.00	FUND. Drought, Water, Cln Air, Cstl Prot, Outdoor Fund		
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT	ITEM 3790-101-6088	CHAPTER 29	STATUTE 18
TOTAL AMOUNT ENCUMBERED TO DATE \$177,952.00	Reporting Structured. 37900091	Account/Alt Account. 5432000-5432000000	ACTIVITY CODE 69801
			PROJECT / WORK PHASE

**EXHIBIT B
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I. RECITALS

This CONTRACT is entered into between the California Department of Parks and Recreation (hereinafter referred to as "GRANTOR," "DEPARTMENT" or "STATE") and City of Piedmont (hereinafter referred to as "GRANTEE").

The DEPARTMENT hereby grants to GRANTEE a sum (also referred to as "GRANT MONIES") not to exceed \$177,952, subject to the terms and conditions of this AGREEMENT and the 2018/19 California State Budget, Chapter 29, statutes of 2018, Item number – 3790-101-6088 (appropriation chapter and budget item number hereinafter referred to as "PER CAPITA GRANT"). These funds shall be used for completion of the GRANT SCOPE(S).

The Grant Performance Period is from July 01, 2018 to June 30, 2024.

II. GENERAL PROVISIONS**A. Definitions**

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

1. The term "ACT" means the California Drought, Water, Parks Climate, Coastal Protection, and Outdoor Access for All Act of 2018, as referred to in section I of this CONTRACT.
2. The term "APPLICATION" means the individual project APPLICATION packet for a project pursuant to the enabling legislation and/or grant program process guide requirements.
3. The term "DEPARTMENT" or "STATE" means the California Department of Parks and Recreation.
4. The term "DEVELOPMENT" means capital improvements to real property by means of, but not limited to, construction, expansion, and/or renovation, of permanent or fixed features of the property.
5. The term "GRANTEE" means the party described as the GRANTEE in Section I of this CONTRACT.
6. The term "GRANT SCOPE" means the items listed in the GRANT SCOPE/Cost Estimate Form or acquisition documentation found in each of the APPLICATIONS submitted pursuant to this grant.
7. The term "PROCEDURAL GUIDE" means the document identified as the "Procedural Guide for California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 Per Capita Program." The

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PROCEDURAL GUIDE provides the procedures and policies controlling the administration of the grant.

B. Project Execution

1. Subject to the availability of GRANT MONIES, the STATE hereby grants to the GRANTEE a sum of money not to exceed the amount stated in Section I of this CONTRACT, in consideration of, and on condition that, the sum be expended in carrying out the purposes as set forth in the scope described in the enabling legislation and referenced in the APPLICATION, Section I of this CONTRACT, and under the terms and conditions set forth in this CONTRACT.

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

The GRANTEE agrees to submit any change or alteration from the original GRANT SCOPE(S) in writing to the STATE for prior approval. This applies to any and all changes that occur after STATE has approved the APPLICATION. Changes in the GRANT SCOPE(S) must be approved in writing by the STATE.

2. The GRANTEE shall complete the GRANT SCOPE(S) in accordance with the time of the Performance Period set forth in Section I of this CONTRACT, and under the terms and conditions of this CONTRACT.
3. The GRANTEE shall comply with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq., Title 14, California Code of Regulations, Section 15000 et seq.).
4. The GRANTEE shall comply with all applicable current laws and regulations affecting DEVELOPMENT projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and the California Unruh Act (California Civil Code §51 et seq.).

C. Project Costs

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

D. Project Administration

1. If GRANT MONIES are advanced for DEVELOPMENT projects, the advanced funds shall be placed in an interest bearing account until expended. Interest earned on the advanced funds shall be used on the project as approved by the STATE. If grant monies are advanced and not expended, the unused portion of the

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grant and any interest earned shall be returned to the STATE within 60 days after project completion or end of the Grant Performance Period, whichever is earlier.

2. The GRANTEE shall submit written project status reports within 30 calendar days after the STATE has made such a request. In any event, the GRANTEE shall provide the STATE a report showing total final project expenditures within 60 days of project completion or the end of the grant performance period, whichever is earlier. The Grant Performance Period is identified in Section I of this CONTRACT.
3. The GRANTEE shall make property or facilities acquired and/or developed pursuant to this contract available for inspection upon request by the STATE.

E. Project Termination

1. Project Termination refers to the non-completion of a GRANT SCOPE. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.
2. The GRANTEE may unilaterally rescind this CONTRACT at any time prior to the commencement of the project. The commencement of the project means the date of the letter notifying GRANTEE of the award or when the funds are appropriated, whichever is later. After project commencement, this CONTRACT may be rescinded, modified or amended only by mutual agreement in writing between the GRANTEE and the STATE, unless the provisions of this CONTRACT provide that mutual agreement is not required.
3. Failure by the GRANTEE to comply with the terms of the (a) PROCEDURAL GUIDE, (b) any legislation applicable to the ACT, (c) this CONTRACT as well as any other grant contracts, specified or general, that GRANTEE has entered into with STATE, may be cause for suspension of all obligations of the STATE unless the STATE determines that such failure was due to no fault of the GRANTEE. In such case, STATE may reimburse GRANTEE for eligible costs properly incurred in performance of this CONTRACT despite non-performance of the GRANTEE. To qualify for such reimbursement, GRANTEE agrees to mitigate its losses to the best of its ability.
4. Any breach of any term, provision, obligation or requirement of this CONTRACT by the GRANTEE shall be a default of this CONTRACT. In the case of any default by GRANTEE, STATE shall be entitled to all remedies available under law and equity, including but not limited to: a) Specific Performance; b) Return of all GRANT MONIES; c) Payment to the STATE of the fair market value of the project property or the actual sales price, whichever is higher; and d) Payment to the STATE of the costs of enforcement of this CONTRACT, including but not limited to court and arbitration costs, fees, expenses of litigation, and reasonable attorney fees.
5. The GRANTEE and the STATE agree that if the GRANT SCOPE includes DEVELOPMENT, final payment may not be made until the work described in the GRANT SCOPE is complete and the GRANT PROJECT is open to the public.

F. Budget Contingency Clause

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

G. Hold Harmless

1. The GRANTEE shall waive all claims and recourse against the STATE including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this CONTRACT except claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.
2. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the ACQUISITION, DEVELOPMENT, construction, operation or maintenance of the property described as the project which claims, demands or causes of action arise under California Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of the STATE, its officers, agents, or employees.
3. The GRANTEE agrees that in the event the STATE is named as codefendant under the provisions of California Government Code Section 895 et seq., the GRANTEE shall notify the STATE of such fact and shall represent the STATE in the legal action unless the STATE undertakes to represent itself as codefendant in such legal action in which event the GRANTEE agrees to pay the STATE's litigation costs, expenses, and reasonable attorney fees.
4. The GRANTEE and the STATE agree that in the event of judgment entered against the STATE and the GRANTEE because of the concurrent negligence of the STATE and the GRANTEE, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
5. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the GRANTEE has certified. The GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

H. Financial Records

1. The GRANTEE shall maintain satisfactory financial accounts, documents, including loan documents, and all other records for the project and to make them available to the STATE for auditing at reasonable times. The GRANTEE also agrees to retain such financial accounts, documents and records for five years following project

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termination or issuance of final payment, whichever is later.

2. The GRANTEE shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of STATE funding assistance, (b) the total cost of the project in connection with such assistance that is given or used, (c) the amount and nature of that portion of the project cost supplied by other sources, and (d) any other such records that will facilitate an effective audit.
3. The GRANTEE agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this contract or matters related thereto during regular office hours. The GRANTEE shall maintain and make available for inspection by the STATE accurate records of all of its costs, disbursements and receipts with respect to its activities under this contract. Such accounts, documents, and records shall be retained by the GRANTEE for at least five years following project termination or issuance of final payment, whichever is later.
4. The GRANTEE shall use a generally accepted accounting system.

I. Use of Facilities

1. The GRANTEE agrees that the GRANTEE shall operate and maintain the property acquired or developed with the GRANT MONIES, for the duration of the Contract Performance Period.
2. The GRANTEE agrees that, during the Contract Performance Period, the GRANTEE shall use the property acquired or developed with GRANT MONIES under this contract only for the purposes of this grant and no other use, sale, or other disposition or change of the use of the property to one not consistent with its purpose shall be permitted except as authorized by the STATE and the property shall be replaced with property of equivalent value and usefulness as determined by the STATE.
3. The property acquired or developed may be transferred to another entity if the successor entity assumes the obligations imposed under this CONTRACT and with the approval of STATE.
4. Any real Property (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the STATE provided that such approval shall not be unreasonably withheld as long as the purposes for which the Grant was awarded are maintained. Any such permission that is granted does not make the STATE a guarantor or a surety for any debt or mitigation, nor does it waive the STATE'S rights to enforce performance under the Grant CONTRACT.

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5. All real property, or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse STATE an amount at least equal to the amount of GRANT MONIES received from STATE or the pro-rated full market value of the real property, including improvements, at the time of sale, whichever is higher.
6. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

J. Nondiscrimination

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of any property or facility developed pursuant to this contract.
2. The GRANTEE 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 and pursuant to law.
3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this project contract or under provisions of the enabling legislation and/or grant program.

K. Severability

If any provision of this CONTRACT or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the CONTRACT which can be given effect without the invalid provision or application, and to this end the provisions of this CONTRACT are severable.

L. Liability

1. STATE assumes no responsibility for assuring the safety or standards of construction, site improvements or programs related to the GRANT SCOPE. The STATE'S rights under this CONTRACT to review, inspect and approve the GRANT SCOPE and any final plans of implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.
2. GRANTEE will secure adequate liability insurance, performance bond, and/or other security necessary to protect the GRANTEE's and STATE'S interest against poor workmanship, fraud, or other potential loss associated with completion of the grant project.

M. Assignability

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

N. Use of Grant Monies

GRANTEE shall not use any grant funds (including any portion thereof) for the purpose of making any leverage loan, pledge, promissory note or similar financial device or transaction, without: 1) the prior written approval of the STATE; and 2) any financial or legal interests created by any such leverage loan, pledge, promissory note or similar financial device or transaction in the project property shall be completely subordinated to this CONTRACT through a Subordination Agreement provided and approved by the STATE, signed by all parties involved in the transaction, and recorded in the County Records against the fee title of the project property.

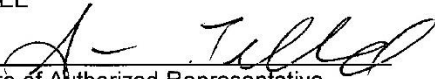
O. Section Headings

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

P. Waiver

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

City of Piedmont
GRANTEE

By: 
Signature of Authorized Representative

Title: City Administrator

Date: 3/4/2022

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By: 

Date: 3/15/2022