

GRANT AGREEMENT

PROJECT:

Name: Bradford/Olson Addition to Bohn Park
Project Completion Date: 12/31/96
Great Outdoors Colorado
Contract No: 6261

PARTIES TO AGREEMENT:

Board: The State Board of the Great Outdoors Colorado Trust Fund
Address: 303 East 17th Avenue
Denver, CO 80203
Telephone: (303) 863-7522

Grantee: Town of Lyons
Address: P.O.Box 49
Lyons, CO 80540
Telephone: 303-823-6640
Contact name: Kurt A. Carlson
Contact title: Parks and Recreation Director, Town of Lyons

Date: April 2, 1996

CONTEXT OF AGREEMENT:

A. The Board is a political subdivision of the State of Colorado, created by Article XXVII of the Colorado Constitution, adopted at the November, 1992 General Election. The Constitution appropriates a portion of the net proceeds of the Colorado Lottery to the Board and directs the Board to invest those proceeds in the State's parks, wildlife, open space and recreational resources.

B. In 1994, the Board created a statewide grant program, pursuant to which eligible entities could apply for grants for Local Government Parks and Outdoor Recreation to which Grantee responded with a detailed application (the "Project Application").

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C. Grantee submitted a Project Application to the Board which contemplates the execution of the project entitled and described above (the "Project"), a copy of which is incorporated by reference and attached as Appendix A.

D. The Board approved Grantee's Project Application on February 21, 1996, subject to the execution of a detailed Grant Agreement, the conditions of which are set forth herein.

E. Grantee anticipates that the Project described in the Project Application will be substantially completed on 12/31/96.

F. Grantee has undertaken responsibility for obtaining the match (funds and in-kind contributions) described in the project application.

G. The parties intend this document to be the detailed Grant Agreement required by the Board. The Grantee shall carry out the project in accordance with this agreement and a work program to be approved by the Executive Director of the Board pursuant to this agreement.

AGREEMENT

The parties agree as follows:

1. Grant and Project. The Board hereby grants to Grantee the sum not to exceed \$100,000 subject to the terms of this Agreement. These funds shall be used by Grantee solely to complete the project described in Grantee's Project Application as approved by the Board. Grantee hereby agrees to use its best efforts to complete the project.

2. Project scope. The Project, Bradford/Olson Addition to Bohn Park, as described in the Project Application, will not be materially modified by the Grantee without the written approval of the Executive Director of the Board. In multi-phase projects this Agreement only pertains to the identified phase of the project, and not the project as a whole.

3. Information to be provided upon execution of this Agreement. NO FUNDS WILL BE DISBURSED BY THE BOARD UNLESS AND UNTIL THE GRANTEE FURNISHES THE BOARD WITH THE INFORMATION REQUIRED BY THIS AGREEMENT. Prior to Board execution of this Agreement, Grantee will submit the following information to the Board's staff:

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a. A resolution adopted by the governing body of the Grantee authorizing the execution of this agreement and approving its terms and conditions (which will be attached to this agreement as Appendix B);

b. A detailed Work Plan and Budget for this Project. Grantee hereby agrees to promptly submit all material revisions to their Work Plan and Budget. As provided further below, the Board reserves the right at any stage of the Project to withhold funding if (i) modifications to the Project are so substantial as to make it, in the Board's reasonable judgment, substantially different in quality or kind from that approved by the Board, or (ii) there have been delays in the implementation of the Project which, in the Board's reasonable judgment, make the Project impracticable;

c. If applicable, written evidence that all permits and approvals necessary to the completion of the project under applicable local, state and federal laws and regulations have been obtained; and

d. Plans for the erection of signs and placards for the Project, as provided in Paragraph 10 (d) below.

4. Disbursement of Funds. Prior to the final payment by the Board the Grantee must provide certified written assurance to the Board that the following conditions have been satisfied:

a. The Project has been substantially completed according to the work plan and budget, along with Project Expenditure documentation and reports as noted above to support this claim;

b. No material modifications or delays have been made or experienced (or the Board has been advised of the modifications or delays and has elected to continue to participate in the funding of the Project);

c. Matching funding has been received (or the status of efforts to secure matching funding has been disclosed to Board staff and it has been found to be satisfactory);

d. The representations made to the Board in the grant application continue to be true (or, if there have been any material changes, the Board has been advised of such changes and has assented to them); and

e. Disbursement shall be made on the basis of costs incurred. A reduction in total project cost or grantee's matching funding may cause a proportional reduction in the grant award.

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f. Full payment of the contract amount for personal property will be made upon substantial completion of the project. The information required in paragraph 3 and an executed contract, along with periodic progress reports and the submission and approval of a final written report are required. A listing of Project Expenditure documentation is also required prior to final payment, (attached as Appendix C).

g. Payment for real property may be made at the time of closing. In this case GOCO will transfer funds directly to the title company with their release contingent upon satisfaction of all the conditions for land acquisition.

g. Funding may only be used for fixed assets, including land acquisition, construction of new facilities, and enlargement or renovation of existing facilities. Funding may not be used to pay for maintenance costs, administrative costs (such as office supplies, telephone, or travel expenses), non-fixed assets (such as athletic equipment), or any other costs deemed to be ineligible by the Board.

5. Waiver. The Executive Director may waive one or more of the obligations in paragraphs 3 and 4 of the Agreement, or may require performance of one or more of these obligations subsequent to disbursement.

6. Project operation and maintenance. Grantee agrees:

a. Grantee or its successor will operate and maintain the Project facilities in a reasonable state of repair for the purposes specified in the Project Application for at least 25 years, in accordance with generally accepted standards in the parks/recreation/wildlife community. The parties understand and agree that the Board shall not be liable for any cost of such maintenance, management or operation.

b. Grantee will, upon request, provide the Board with the operating and maintenance costs of the Project, and give the Board appropriate information concerning the use of the Project by the public and the impact of the Project.

7. Compliance with applicable federal and state laws, rules and regulations. At all times during the performance of this contract, the Grantee shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established, including but not limited to worker safety, local labor preferences, preferred vendor programs, use of competitive bidding, and other similar requirements, that directly apply to the Project described in this grant agreement. To the extent permitted by law, the Grantee will indemnify the Board from any liability for any failure to comply with any such applicable requirements.

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8. Public access. Grantee agrees, for itself and its successors in interest, to allow reasonable access to the members of the public to the Project.
9. Nondiscrimination. The Grantee agrees to comply with the letter and the spirit of the Colorado Anti-discrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (CRS §24-34-402), as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975. In the event of the Grantee's non-compliance with the non-discrimination 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.
10. Publicity and Project Information. Grantee agrees:
 - a. Grantee shall acknowledge Board funding in all publicity issued by it concerning the Project.
 - b. Grantee shall cooperate with the Board in preparing public information pieces.
 - c. Grantee shall give timely notice of the Project, its inauguration and significance to the local members of the Colorado General Assembly, members of the board of county commissioners of the county or counties in which the Project is located, as well as to other appropriate public officials.
 - d. Grantee shall erect signs visible from the nearest public roadway directing the public to the Project. Such signs shall acknowledge the assistance of Great Outdoors Colorado (by incorporating the GOCO logo), and the Colorado Lottery, if applicable. In addition, Grantee is encouraged to erect additional signs and placards that acknowledge the Board. The Board will provide reproducible samples of its logo to the Grantee for this purpose. Plans describing the number, design, placement, and wording of signs and placards shall be submitted to the Board for review and written approval prior to completion of the Project. Final payment may be withheld by the Board pending placement of the signs and placards in the manner approved by the Board.
 - e. Grantee shall give the Board 30-day notice of and opportunity to participate in Project dedications.
 - f. Grantee shall give timely notice of the Project, its inauguration, completion and significance to local members of the Colorado General Assembly, members of the board of county commissioners of the county or counties where the project is located, as well as to other appropriate public officials.

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11. Audits and Accounting. Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. The accounts, documents, and records related to the Project shall be retained by the Grantee for five (5) years following the date of disbursement of funds under this Agreement. The Board, or its designated agent, shall have the right, upon reasonable notice to the Grantee, to audit the books and records of Grantee which pertain to the Project and to the use and disposition of Board funds. The Grantee may use any accounting system which follows the guidelines of "Generally Accepted Accounting Practices" published by the American Institute of Certified Public Accountants.
12. Withdrawal of Board funding. The Board may withdraw its approval of funding to the Grantee and cease funding of the Project if, in its sole discretion, it determines conditions have occurred which fundamentally change the expectations of the parties or which make the grant infeasible or impractical.
13. Inspection. Throughout the term of this Agreement, the Board shall have the right to inspect the Project area to ascertain compliance with this Agreement.
14. Grantee's inability to complete Project. If the Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Project Application the Grantee will promptly so advise the Board, and cooperate in good faith with respect to alternative solutions to the problem before any further funds are advanced.
15. Governmental Immunity. The following provision applies to the Board. This provision may apply to the grantee if the grantee qualifies for protection under the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq. The Parties by entering into the instant agreement, do not waive or intend to waive by any provision of this agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as it is from time to time amended, or otherwise available to the Grantee, its successor, employees, officers or agents.
16. Liability. To the extent permitted by law, the Grantee shall be responsible for, indemnify and hold harmless the Board, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to this Agreement, except for the gross negligence of willful and wanton conduct of the Board its officers, agents, or employees. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the State of Colorado, the Board, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement.

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17. Assignment. Grantee may not assign its rights under this Agreement without the consent of the Board.
18. Good faith. There is an obligation of good faith on the part of both parties, including the obligation to make timely communication of information which may reasonably be believed to be of interest to the other party.
19. Applicable Law. Colorado law applies to the interpretation and enforcement of this Agreement.
20. Independent Contractor. Grantee is an independent contractor acting in its separate capacity and not as an officer, employee or agent of the Board.
21. Survival. The terms and provisions of this Agreement shall survive the funding of the grant and the acquisition of the real property interest by Grantee. Subsequent to the funding of the Grant, there are a number of ongoing obligations of the Grantee.
22. Severability. If any provision of the Grant Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Grant Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be effected thereby.
23. Entire Agreement. Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid unless made as an amendment to this contract, approved by the Board, and signed by the parties in this Agreement.
24. Land Acquisition. THE GRANTEE SHALL NOT ACQUIRE THE REAL PROPERTY OR THE REAL PROPERTY INTEREST (the "Property") DESCRIBED IN THE PROJECT APPLICATION AND THE BOARD SHALL NOT BE OBLIGATED TO DISBURSE ANY FUNDS UNDER THIS AGREEMENT UNLESS AND UNTIL THE FOLLOWING CONDITIONS PRECEDENT HAVE BEEN MET: The Board or a duly appointed agent must review and approve:
 - a. All title and acquisition documents pertaining to the acquisition or encumbrance of the real property interest, including appraisals, title commitments, agreements for purchase and sale, use restrictions, escrow or closing instructions, and instruments of conveyance;

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b. All other documents required by the Due Diligence Checklist attached as Appendix D.

25. Title Insurance. Grantee will furnish the Board with a commitment for a title insurance policy issued by a reputable commercial title insurance company acceptable to the Board (herein called the "Title Company"), in the amount of the grant award utilized for the real property acquisition (as determined in the settlement statement), being in form and content reasonably acceptable to the Board, together with all affidavits, certificates, and indemnity agreements executed by Grantee as required by the Title Company. Grantee shall provide the Board with a title policy dated as of the date on which the property closes which shall show that Grantee owns the Property subject only to the Permitted Exceptions.

26. Purchase Price. The purchase price of any interest in land purchased utilizing the Grant may not exceed the fair market value as established by a market comparison appraisal.

27. No Encumbrances. Grantee agrees that it will not create or suffer any liens, encumbrances or security interests in and to the Property.

28. Use Restriction. All property acquired with Board funds shall be held and managed in a manner to protect the property's value as public park land, to prevent any development that would adversely affect such use and to ensure appropriate public access

29. Extinguishment of Use Restriction by Eminent Domain or Other Legal Proceeding. If the use restriction contained in this contract is extinguished, in whole or in part, by eminent domain or other legal proceeding, Grantee shall pay to the Board the amount of the grant award used for land acquisition, as described in the settlement statement, in proportion to the percentage of the property no longer encumbered by the restriction, plus accumulated interest as defined in paragraph 30 (d)(1).

30. Remedy for modification of Land Use.

a. The Board allocates approximately, \$100,000, for the purchase of the real property, a specific description of which is incorporated by reference as Appendix E.

b. The Board intends the Property to remain in use as a public park for as long practicable, but in no event less than twenty-five years.

c. In consultation with the grantee the Board will consider the following factors when determining the appropriate remedy, including but not limited to: proposed new land use, reason for the modification, proposed use of sale proceeds, length of time property was available as a public park, and existing recreational opportunities.

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d. Grantee agrees that if any part of the property acquired with Board funds ceases to be available for use as a public park, for any length of time before twenty-five years from the date of the real property acquisition, it shall immediately notify the Board of the changed use. After consultation with the grantee, the Board may, in its sole discretion, determine no remedy is necessary or thereafter demand that the Grantee pay the Board either:

(1) the amount of the grant award used by Grantee to acquire real property, plus accumulated interest from the date of the original closing at an annual interest rate of six percent (6%) or the Consumer Price Index for the Denver Metropolitan Area, as published from time to time in the Denver Post, whichever is greater; or (2) the net proceeds of the sale price of the property, in proportion to the grant award's initial contribution to the purchase price, as determined by the settlement statement; or (3) the net proceeds of the sale price of the property acquired with Board funds, less the amount reinvested for similar purposes within one year of the sale, as approved by the Board. Modifications which affect less than one-hundred percent of the property will be reduced in amount in proportion to their affect on the use of the Property as a public park.

31. Documentation of Financial Transaction for Purchase of Land. Within sixty days after closing, Grantee shall submit a final project statement, including an accounting for all direct and indirect costs associated with the land purchase and any other documentation reasonably requested by the Board.

Dated: _____

Grantor
STATE BOARD OF THE GREAT
OUTDOORS COLORADO TRUST FUND

By _____
For Executive Director

Grantee
Town of Lyons
By Blenn Klepail
Title Mayor