

GRANT PARTICIPANT AGREEMENT

This Agreement is entered into by and between the Arizona State Parks Board (BOARD) and The City of Tucson and becomes effective on the date of signature by the authorized representative of Arizona State Parks.

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|--|-----------------------------------|---|---|-------|---|
| PROJECT TITLE: STABILIZATION OF MARIST COLLEGE BUILDING | | | PROJECT NUMBER: 640421 | | |
| THIRD PARTY PARTICIPANT'S NAME: Diocese of Tucson | | | FY OF REVENUE: 2004 | | |
| PROJECT PERIOD: From date of last authorized signature: development = 3 years, equip/acquisition = 2 years | | | | | |
| GRANT PROGRAM: Arizona State Parks Historic Preservation Heritage Fund | GRANT AMOUNT: \$ 58,721 | % | PARTICIPANT MATCH: \$ 40,000 | % | TOTAL PROJECT COST: \$ 98,721 |
| APPROVED SCOPE OF WORK AND SPECIAL CONDITIONS: | | Attachment A | | | |
| PRESERVATION SPECIAL CONDITIONS: | | Attachment B | | | |
| <input checked="" type="checkbox"/> Preservation Agreement <input type="checkbox"/> Preservation Covenant <input checked="" type="checkbox"/> Special Conditions/3 rd Party | | (Does not apply to RTP, LWCF, LRSP, TRAILS, OHV, LEBSF and GSLA.) | | | |
| AUTHORITIES TO ENTER INTO THIS AGREEMENT: (statute, resolution, minutes, etc.) | | | | | |
| STATUTE: A.R.S. §41-503A(1) | | | RESOLUTION: | | |
| AWARDING OFFICIAL ON BEHALF OF THE ARIZONA STATE PARKS BOARD: | | | | | |
| Signature Kenneth E. Travous Executive Director | | | Date | | |
| ACCEPTANCE OF ALL TERMS OF THIS AGREEMENT AND ITS ATTACHMENTS IS ACKNOWLEDGED BY THE PARTICIPANT'S SIGNATURE BELOW. | | | PARTICIPANT ATTORNEY APPROVAL AS TO FORM AND AS BEING WITHIN THE AUTHORITY OF THE PARTICIPANT. | | |
| Participant's Signature | | | Attorney's Signature | | |
| Name (Typed) | | | Name (Typed) | | |
| Title | | Date | | Title | |
| | | | | Date | |

General Provisions dated 9/25/03 are attached and are part of this Participant Agreement.

Arizona State Parks
GRANT PARTICIPANT AGREEMENT

Attachment A
Approved Project Scope and Special Conditions

PARTICIPANT: Tucson
PROJECT TITLE: Stabilization of Marist College Building
PROJECT NUMBER: 640421

APPROVED PROJECT SCOPE:

- Scuppers/Drainage
- Remove Tuff Tex
- Repair/rebuild corners of building
- Adobe and Lime Plaster Supplies
- Printing
- National Register Nomination
- Pre-agreement/Architecture & Engineering

SPECIAL CONDITIONS:

The administration of this grant Participant Agreement is also subject to the contents of the Administrative Guidelines for Awarded Grants published by Arizona State Parks.

Actual project work must begin within 6 months of the fully executed Participant Agreement; construction must begin within 18 months of the fully executed Participant Agreement.

Preliminary design plans, conceptual drawings, and/or construction documents must indicate the project complies with the Secretary of Interior's Standards for Preservation. Onsite work may not proceed until such documentation is submitted for review by the SHPO and subsequently accepted by the Grant Program Coordinator.

A final summary report and project "after" photos (if applicable) must be submitted with the required closure documentation

OTHER CONDITIONS:

**PARTICIPANT AGREEMENT GENERAL PROVISIONS
FOR LRSP AND TRAILS (NONFEDERAL) HERITAGE FUND PROJECTS**

PART I - DEFINITIONS

For purposes of this agreement,

- A. **Advisory Committee** means the Arizona State Committee on Trails.
- B. **AORCC** means the Arizona Outdoor Recreation Coordinating Commission.
- C. **BOARD** means the Arizona State Parks BOARD, which is the governing body of Arizona State Parks.
- D. **Conversion** means the replacement of grant-funded facilities with new facilities that are of reasonable equivalent usefulness and location as the original.
- E. **Eligible Costs** mean direct costs chargeable to the project grant program such as 1) compensation of hired employees for the time and efforts devoted specifically to the execution of the grant; 2) cost of materials acquired, consumed, or expended specifically for the purposes of the grant; 3) equipment and other capital expenditures; 4) other items of expense incurred specifically to carry out the participant agreement; 5) direct services furnished specifically for the grant program by other agencies.
- F. **Facilities** mean capital improvements.
- G. **Fund** means the Arizona State Parks BOARD Heritage Fund.
- H. **Guidelines** mean program directives adopted by the BOARD.
- I. **Ineligible Costs** are those costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objectives of the grant.
- J. **Match** means a specified percentage of the total eligible and direct project cost which may consist of either cash, in-kind contributions, or donations including volunteer time.
- K. **Obsolescence** means that an area or facility may be determined obsolete during the Term of Public Use if (1) reasonable maintenance and repairs are not sufficient to keep the facility or equipment operating; (2) changing needs dictate a change in the type of facilities or equipment provided; (3) operating practices dictate a change in the type of facilities or equipment required; or, (4) the facility or equipment is destroyed by fire, natural disaster, or vandalism. Declaring the facility obsolete means that the PARTICIPANT receives a waiver of the repayment or replacement requirements. No later than 90 days after a facility or equipment is taken out of public use, the PARTICIPANT may request a waiver of repayment or replacement requirements in writing.
- L. **PARTICIPANT** means an eligible applicant that has been awarded a grant.
- M. **Project** means an activity, or a series of related activities, which are described in the specific project scope of work and which result in a specific product(s).
- N. **Project Period** means the period of time during which all approved work and related expenditures associated with an approved project are to be completed by the PARTICIPANT.
- O. **Repayment** means returning grant money to the Heritage Fund in the event the PARTICIPANT fails to provide for operation and maintenance of the facilities or equipment during the Term of Public Use. The PARTICIPANT shall reimburse the Heritage Fund as follows: 100% of grant funds, 0-5th year; 80%, 6th-10th year; 60%, 11th-15th year; 40%, 16th-20th year; 20%, 21st-25th year. (Note:

As an example, the 6th-10th year shall mean from the first day of the sixth year through the last day of the tenth year, beginning with the certified date of completion.)

In lieu of repayment for a facility which is removed from public use prior to the end of the required Term of Public Use, the PARTICIPANT may apply for conversion or obsolescence.

- P. **Staff** means employees of Arizona State Parks.
- Q. **Sub-contract** means a direct contract between the PARTICIPANT and another contractor party whereby labor is supplied or work is performed in furtherance of the PARTICIPANT'S responsibilities under this agreement.
- R. **Term of Public Use** means the time required for public use. The term of public recreational use of the grant-assisted facilities shall be at least:
1. Equipment (personal property) grant investment of more than \$50,000 per item: 25 years
 2. Facilities (real property): 25 years
 3. Land: 99 years
- unless obsolescence applies. The Term of Public Use shall begin on the date of completion identified in the Completion Certification Letter.
- S. **Third Party PARTICIPANT** means an entity sponsored by an eligible project participant. More specifically, it includes governmental, private and non-profit units through the terms of a lease, permit, cooperative agreement, or an intergovernmental agreement (ARS § 11-952).

PART II - PERFORMANCE

A. ADMINISTRATION

1. **Conditions** - This agreement is subject to the availability of grant funds and appropriate approvals, and shall be subject to the Constitution of the State of Arizona, the Arizona Revised Statutes, other acts of the Arizona Legislature, executive orders of the Governor, and policies of the BOARD.
2. **Incorporation of Application** - The PARTICIPANT'S approved application for grant funds is incorporated by reference as part of this agreement; however, the terms of this agreement shall take precedence in the event of conflict or ambiguity.
3. **Use of Grant Funds** - Awarded grant funds shall be used solely for eligible purposes of the funding program as defined by statute and as approved by the BOARD.
4. **Transfer of Grant Funds** - Awarded grant funds shall be transferred to the PARTICIPANT through reimbursement of approved expenditures for matching grants and through advances, on a case by case basis.
5. **Grant Retention** - Ten percent (10%) of the grant amount will be retained from reimbursement until Staff notifies the PARTICIPANT in writing that the project is officially closed and completed.
6. **Grant Accountability** - Grant funds shall be managed separately within the PARTICIPANT'S accounting system which identifies the name and number of the project. The funds shall be expended only as authorized under the terms of this agreement.
7. **Accomplishment of Project** - The project shall be accomplished according to the terms of this agreement and applicable State laws.

8. **Amendments** - This agreement may be amended in writing by the parties of the agreement upon written request of the PARTICIPANT and good cause shown, to adjust the project period, project costs, specific project scope items, or other specified adjustments to the agreement.
9. **Use of Project** - Project accomplishments shall be open or available to the public as specified in the Term of Public Use.
10. **Special Conditions** - Special conditions to this agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties to this agreement. Breach of any condition shall be enforceable by specific performance or shall justify the BOARD to seek recovery of all funds granted.
11. **Operation and Maintenance** - The PARTICIPANT shall operate and maintain, or cause to be maintained for public use or enjoyment, grant funded capital improvements for at least the period of time specified in the Term of Public Use. Should the grant funded capital improvements be unavailable for public use or enjoyment during the Term of Public Use, Staff shall pursue appropriate remedies. Remedies may include a declaration of obsolete facilities, a conversion, or repayment of the fund.
12. **Conversion** - No land or facilities acquired or developed with Heritage Fund assistance shall, without the approval of the BOARD, be converted to other than public use during the Term of Public Use. The BOARD shall approve such conversion only if it finds the replacement property to be in accord with the current Heritage Fund statute. Conversions shall require the substitution of other properties of at least equal fair market value and of reasonably equivalent usefulness and location. The replacement property shall then become subject to this agreement. In lieu of conversion, the PARTICIPANT may repay the Heritage Fund or apply for a declaration of obsolescence.

In the event the BOARD provides grant assistance for the acquisition and/or development of real property subject to reversionary interests, with full knowledge of those reversionary interests and with written notice of those reversionary interests, conversion of said property to other than public uses as a result of such reversionary uses being exercised is approved. The PARTICIPANT shall notify the BOARD of the conversion as soon as possible and shall seek approval of replacement property in accord with the conditions set forth in this agreement. The PARTICIPANT further agrees to accomplish such replacement within a reasonable time, acceptable to the BOARD, after the conversion of the property occurs. This paragraph also applies to (1) leased properties acquired and/or developed with Heritage Fund assistance, where such lease is terminated prior to its full term pursuant to lease provisions known and agreed to by the BOARD, and (2) properties subject to other outstanding rights and interests known to and agreed to by the BOARD.

B. RESPONSIBILITY FOR THIRD PARTY AGREEMENTS

The PARTICIPANT sponsoring a third party to this agreement shall be responsible for compliance with provisions of this agreement in the event of third party default for the remainder of the term, or shall reimburse the Fund, apply for obsolescence, or apply for a conversion.

C. RELATIONSHIP OF PROJECT COSTS TO THE PROJECT PERIOD

Except for pre-agreement costs approved by the BOARD, only those costs associated with approved project work incurred during the project period shall be eligible for reimbursement according to the terms of this agreement. Combined pre-agreement and design & engineering costs shall not exceed 10% of the approved grant award.

D. ACQUISITION

Values of property purchased with grant assistance shall be appraised by a State Certified Appraiser according to the Uniform Standards of Professional Appraisal Practice. This appraisal shall be prepared within one year prior to the acquisition. Grant participation shall be according to the grant award amount, the approved market value, or the purchase price, whichever is less.

E. PROCUREMENT AND DEVELOPMENT

If the PARTICIPANT is a governmental entity, procurement transactions, including those involving professional services, materials, and construction, shall be accomplished according to the PARTICIPANT'S procurement standards. State procurement standards shall apply to all non-governmental entities to the fullest extent possible.

F. SUB-CONTRACTS

1. Sub-contracts awarded to accomplish approved project work shall incorporate, by reference, in each sub-contract the provisions of this agreement. The PARTICIPANT shall bear full responsibility for acceptable performance under each sub-contract.
2. The PARTICIPANT shall pay any claim of a sub-contractor or other employed individual performing work on this project for services pursuant to this agreement when due. If the PARTICIPANT is subject to A.R.S §34-221, payment is due when required pursuant to A.R.S. §34-221.
3. Unless the PARTICIPANT is a State agency, the PARTICIPANT shall indemnify and hold the State of Arizona and the BOARD harmless from any claim for services pursuant to this agreement, or damages relating thereto, of a sub-contractor or other employed individual performing work on this project.
4. Any sub-contract for employment by the PARTICIPANT shall be in writing and shall contain a provision whereby a person so employed or with whom a sub-contract has been entered, acknowledges that the State of Arizona and the BOARD shall not be liable for any costs, claims, damages, reimbursement, or payment of any kind relating to such sub-contract.

G. PROJECT REPORTING, REVIEWS, AND ON-SITE INSPECTIONS

1. The PARTICIPANT agrees to submit a project status report not less than quarterly. The status report will include at a minimum the following: (a) progress in completing the approved scope of work; and (b) any problems encountered and solutions to problems regarding completion of the project. Failure to submit the reports will result in delays in grant reimbursement or advance processing. The PARTICIPANT further agrees to consult with Staff, as needed, to review progress. The Staff reserves the right to review the progress of the project and to conduct on-site inspections, as applicable and as needed, at any reasonable time during the project period or required Term of Public Use to assure compliance with the terms of this agreement.
2. The PARTICIPANT shall certify compliance with the Participant Agreement every five years, until the end of the Term of Public Use, on a form to be provided by the BOARD. In addition, on-site inspections shall be conducted periodically at the discretion of the BOARD. The following points shall be taken into consideration during the inspection of properties that have been acquired or developed with grant assistance: retention and use, appearance, maintenance, management, availability, environment, signing, and interim use.

H. PROJECT INCOME AND EARNED INTEREST

Income and/or interest generated from funds transferred to the PARTICIPANT during the project period shall be used to further the purposes of the approved project. Funds advanced, but not spent

to complete the project, shall be returned to the BOARD at the completion of the project. Pursuant to Part II, Paragraph I of this agreement, the PARTICIPANT shall own all rights in the materials produced with project funds.

I. PRODUCT OR PUBLISHABLE MATTER OWNERSHIP

The PARTICIPANT shall have ownership of products or publishable matter produced with grant assistance with the understanding that the BOARD reserves nonexclusive license to use and reproduce, without payment, such materials. This paragraph is not applicable to architectural or engineering plans produced with grant assistance.

J. FUND SOURCE RECOGNITION

The PARTICIPANT agrees to permanently and publicly acknowledge grant program(s) that assisted project accomplishments (including, but not limited to, final documents, audio-visual recordings, photographs, plans, drawings, publications, advertisements and project plaques). At a minimum, this acknowledgment shall include the following: "This project was financed in part by a grant from the (name of grant program: Local, Regional and State Parks Heritage Fund; Trails Heritage Fund), which is funded by the Arizona Lottery and administered by the Arizona State Parks Board."

K. PROJECT COST VERIFICATION

The PARTICIPANT agrees to submit project expenditure documents to Staff for verification or audit purposes upon request.

L. TRANSFER OF CONTRACTUAL RESPONSIBILITY

The PARTICIPANT may transfer contracted responsibilities under the terms of this agreement to another eligible participant provided that approval has been granted by the BOARD prior to the transfer.

PART III - COMPLIANCE

A. ANTI-TRUST

Vendor and purchaser recognize that, in actual economic practice, overcharges from anti-trust violations are borne by purchaser. Therefore, the PARTICIPANT hereby assigns to BOARD any and all claims for such overcharges.

B. ARBITRATION

To the extent required pursuant to A.R.S. § 12-1518 and any successor statute, the parties agree to use arbitration, after exhausting all applicable administrative remedies, to resolve disputes arising out of this Agreement.

C. INDEMNIFICATIONS AND CLAIMS AGAINST THE STATE

PARTICIPANT shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and its employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property cost, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of PARTICIPANT or any of its owners, officers, directors, agents, employees, or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Worker's

Compensation Law or arising out of the failure of such PARTICIPANT to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the indemnity shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by PARTICIPANT from and against any and all claims. It is agreed that the PARTICIPANT will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of award of the contract, the PARTICIPANT agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the PARTICIPANT for the state of Arizona.

D. NON-DISCRIMINATION -- EMPLOYMENT

The PARTICIPANT agrees to comply with the provisions of Executive Order Number 99-4, issued by the Governor of the State of Arizona relating to nondiscrimination in employment, which by reference is incorporated herein and becomes a part of this Agreement.

E. ARIZONANS WITH DISABILITIES ACT OF 1992 AND AMERICANS WITH DISABILITIES ACT

The PARTICIPANT shall comply with all applicable provisions of the Arizonans with Disabilities Act of 1992, A.R.S. §41-1492, et. seq. and the Americans with Disabilities Act, (Public Law 101-336, 42 U.S.C. 12101-12213 and 47 U.S.C. §225 and 611), and applicable state rules and federal regulations under the Acts (28 CFR Parts 35 and 36).

F. RECORDS RETENTION AND AUDITS

1. Complete financial records and all other documents pertinent to this Agreement shall be retained by the PARTICIPANT and made available to the Staff, if requested, for review and/or audit purposes for a period of five (5) years after project closure.
2. The PARTICIPANT may substitute microfilm copies in place of original records, but only after project costs have been verified.

G. STATE CONTRACT CANCELLATION

1. The State or its political subdivisions or any department or agency of either may cancel this contract, without penalty or further obligation pursuant to A.R.S. §38-511.
2. Every payment obligation of the BOARD under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated or appropriated for the continuance of this Agreement, this Agreement may be terminated by the BOARD at the end of the period for which the funds are available. No liability shall accrue to the BOARD or the State of Arizona in the event this provision is exercised, and the BOARD shall not be obligated or liable for any future payments or for any damages resulting as a result of termination under this paragraph.

H. REMEDIES

1. The BOARD may temporarily suspend this Agreement by providing notice to the PARTICIPANT in writing. The BOARD may terminate or reinstate a suspended Agreement, and PARTICIPANT may not recover any losses, costs, or damages of any sort from the BOARD related to the suspension, reinstatement, or termination.
2. The PARTICIPANT may unilaterally terminate the Participant Agreement at any time before the first payment on the Project. After the initial payment, the Participant Agreement may be terminated, modified, or amended by the PARTICIPANT only by written mutual agreement of the parties.

3. The BOARD may terminate the Participant Agreement in whole, or in part, at any time before the date of completion, whenever it is determined that the PARTICIPANT has failed to comply with the terms or conditions of the grant. The BOARD will promptly notify the PARTICIPANT in writing of the determination and the reasons for the termination, including the effective date. All payments made to the PARTICIPANT shall be recoverable by the BOARD under a Participant Agreement terminated for cause.
4. The BOARD or PARTICIPANT may terminate the Participant Agreement in whole, or in part, at any time before the date of completion, when both parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The PARTICIPANT shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The BOARD may allow full credit to the PARTICIPANT for the grant share of obligations properly incurred before the effective termination date and which cannot be canceled.
5. Termination either for cause or for convenience requires that the Project in question be brought to a state of public usefulness to the terms set forth by the BOARD; otherwise, all funds provided by the BOARD shall be returned to the BOARD.
6. The BOARD may require specific performance of the terms of this agreement or take legal steps necessary to recover the funds granted if the PARTICIPANT fails to comply with the terms of the grant or breaches any condition or special condition of the Participant Agreement.
7. The remedies expressed in this Agreement are not intended to limit the rights of the BOARD. This Agreement shall not in any way abridge, defer, or limit the BOARD'S right to any right or remedy under law or equity that might otherwise be available to the BOARD.

I. CULTURAL RESOURCES

The PARTICIPANT agrees to meet the requirements of the State Historic Preservation Act (ARS §41-861 to 41-864) before project initiation.

Acceptance of all terms and conditions of this agreement and its attachments is acknowledged by the PARTICIPANT'S signature on the cover sheet of this agreement.