



State of California – The Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION
Replacement Property Agreement

GRANTEE: Bloomington Recreation and Park District

PROJECT TITLE: Ayala Park

PROJECT NUMBER: Project Nos. 84-R-36004; 86-1-36035; BB-36-307; 00-36-108

REPLACEMENT PROPERTY AGREEMENT PERIOD is from: Date of Execution through June 30, 2040.

The TRANSFEREE and the State of California, acting through its Director of Parks and Recreation, agrees to the terms and conditions of this Replacement Property Agreement.

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

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

Bloomington Recreation and Park
District _____
Grantee

By _____

Date _____

By Curt Hagman _____
(Typed or printed name of Authorized Representative)

(Signature of AUTHORIZED REPRESENTATIVE)

Title Chairman, Board of Directors _____

Date _____

I. RECITALS

Whereas; multiple Contracts (hereinafter referred to as “CONTRACTS”, as further defined in Section II.A.) were entered into between the California Department of Parks and Recreation (hereinafter referred to as “STATE”) and The Bloomington Recreation and Park District (hereinafter referred to as “GRANTEE”) for the completion of the OLD PROJECT, as described in Exhibit A;

Whereas; in 2000, the STATE granted to GRANTEE a sum \$137,000, as a per capita grant (pursuant to Public Resources Code § 5096.343), which followed several prior grants, with total grants funds amounting to \$205,127, subject to the terms and conditions of the CONTRACTS;

Whereas; Public Resources Code § 5096.237 requires that if a grantee wishes to change the property for which state grant funds have been received, the grantee must demonstrate that the replacement property acquired, developed, rehabilitated or restored is valued at an amount equal to the grant to equal to the fair market value of the original property;

Whereas; as required by the Public Resources Code § 5096.237, and Public Resources Code § 5723, the GRANTEE obtained legislative approval through Assembly Bill No. 1330 (2018), attached as EXHIBIT B, to acquire replacement property to satisfy the requirements of the original CONTRACTS;

Whereas; on November 2, 2018, the GRANTEE received an appraisal of the OLD PROJECT, establishing OLD PROJECT’s fair market value of \$3,000,000, which was later revised through a supplemental appraisal to reflect a fair market value of \$2,130,000 (both appraisals attached as EXHIBIT C);

Whereas; the GRANTEE has committed to purchase the NEW PROJECT (description attached as Exhibit D), and has committed to expenditures on NEW PROJECT that will exceed \$3,000,000, including the land purchase, relocation and design and predevelopment and construction drawings;

Whereas; the GRANTEE agrees to purchase and carry out the NEW PROJECT;

Whereas; in order to effectuate such replacement, the STATE and the GRANTEE (hereinafter referred to as “PARTIES”) must enter into this agreement (hereinafter referred to as “REPLACEMENT PROPERTY AGREEMENT”) to establish the terms of such transfer;

NOW, THEREFORE; the PARTIES do agree to the following:

II. GENERAL PROVISIONS

A. Definitions

As used in this REPLACEMENT PROPERTY AGREEMENT, the following words shall have the following meanings:

1. The term "CONTRACTS" means the original agreements between STATE and the GRANTEE, which are attached as Exhibit A. (Contracts 84-03-170, 86-02-501, 88-07-526, C2003383.
2. The term "OLD PROJECT" means the completed grant scope as defined in the CONTRACTS.
3. The term "NEW PROJECT" means the grant scope as defined by Exhibit D.
4. The term "DEED RESTRICTION" means the appropriate form of restrictive title, rights, or covenants that the NEW PROJECT is subject to, pursuant to the CONTRACTS.

B. Project Replacement and Administration

1. The GRANTEE will receive all ownership and control of the NEW PROJECT property and facilities, and GRANTEE will have identical ongoing obligations under the CONTRACTS for the NEW PROJECT that previously applied to the OLD PROJECT.
2. The GRANTEE may sell the land or otherwise dispose of the land on which the OLD PROJECT is located.
3. The GRANTEE shall allocate no less than \$3,000,000, to acquire and carry out the NEW PROJECT.
4. GRANTEE shall, within a reasonable amount of time from execution of this REPLACEMENT PROPERTY AGREEMENT, as determined by the STATE, submit to STATE a copy of a fully executed and recorded DEED RESTRICTION, demonstrating that the GRANTEE is the owner of the NEW PROJECT and that GRANTEE is subject to the same restrictions as are required by the CONTRACTS. Failure to submit a copy of the DEED RESTRICTION to STATE will be considered a material breach and will result in immediate termination of this REPLACEMENT PROPERTY AGREEMENT.
5. Once the DEED RESTRICTION for the NEW PROJECT is accepted by the State, all obligations under the CONTRACTS for the OLD PROJECT will terminate.

C. Replacement Property Agreement Termination

1. Any default of any term, provision, obligation or requirement of this REPLACEMENT PROPERTY AGREEMENT by the GRANTEE shall be considered a material breach of this REPLACEMENT PROPERTY AGREEMENT. In the case of a material breach by GRANTEE, STATE shall be entitled to all

remedies available under law and equity, including but not limited to: a) Specific Performance; b) Payment to the STATE of the fair market value of the NEW PROJECT or the actual sales price, whichever is higher; and c) Payment to the STATE of the costs of enforcement of this REPLACEMENT PROPERTY AGREEMENT, including but not limited to court and arbitration costs, fees, expenses of litigation, and reasonable attorney fees.

D. 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 REPLACEMENT PROPERTY AGREEMENT, 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 NEW PROJECT property, or the sale of the OLD 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.

E. Use of Facilities

1. The GRANTEE agrees that the GRANTEE shall operate and maintain the NEW PROJECT for the duration of the Contract Performance Period.
2. Notwithstanding Section E. 1, the NEW PROJECT property acquired or developed may be transferred or assigned to another entity only if the successor entity assumes the obligations imposed under this REPLACEMENT PROPERTY AGREEMENT and only with the prior approval of the STATE. Thereafter, the

GRANTEE shall no longer have the obligation to operate and maintain the NEW PROJECT.

3. Any NEW PROJECT property (including any portion of it or any interest in it, including any leases) may not be used as security or collateral for any debt, loan or mitigation, without the prior written approval of the STATE. Any such permission that is granted does not make STATE a guarantor or a surety for any debt, loan or mitigation, nor does it waive STATE's rights to enforce performance under this REPLACEMENT PROPERTY AGREEMENT. Any financial or legal interests created by any such leverage loan, pledge, promissory note or similar financial device or transaction in the NEW PROJECT property shall be completely subordinated to this REPLACEMENT PROPERTY AGREEMENT 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 NEW PROJECT property.
4. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint. If the project property is taken by use of eminent domain, GRANTEE shall reimburse STATE an amount at least equal to the full market value of the real property, including improvements, at the time of sale, at the discretion of the STATE.
5. All facilities shall be open to members of the public generally, except as noted under the special provisions of the CONTRACTS.

F. 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 acquired pursuant to this REPLACEMENT PROPERTY AGREEMENT.
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.

G. Severability

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

H. Liability

GRANTEE is solely liable for compliance with all land use regulations associated with the NEW PROJECT site.

I. Amendments

No amendment or variation of the terms of this REPLACEMENT PROPERTY AGREEMENT shall be valid unless made in writing, signed by the PARTIES and approved as required. No oral understanding or agreement not incorporated in the REPLACEMENT PROPERTY AGREEMENT is binding on any of the PARTIES.

J. Assignability

Without the written consent of the STATE, the GRANTEE interest in and control of any portion of the PROJECT and responsibilities under this REPLACEMENT PROPERTY AGREEMENT shall not be assignable or transferable by the GRANTEE either in whole or in part.

K. Section Headings

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

L. Waiver

Any failure by a PARTY to enforce its rights under this REPLACEMENT PROPERTY AGREEMENT, in the event of a breach or default, shall not be construed as a waiver of said rights; and the waiver of any breach or default under this REPLACEMENT PROPERTY AGREEMENT shall *not* be construed as a waiver of any subsequent breach.

M. Authority to Execute

Each undersigned represents and warrants that he or she has full authority to execute this REPLACEMENT PROPERTY AGREEMENT on behalf of the respective PARTY.

N. Choice of Law

This REPLACEMENT PROPERTY AGREEMENT and all and any rights, remedies, or obligations hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All representations, warranties, and agreements set forth in this REPLACEMENT PROPERTY AGREEMENT shall

be deemed continuing and survive the execution date and implementation of this REPLACEMENT PROPERTY AGREEMENT.

O. Counterparts

This REPLACEMENT PROPERTY AGREEMENT may be executed in counterparts and, as so executed, shall constitute one REPLACEMENT PROPERTY AGREEMENT binding on all the PARTIES.

P. Entire Agreement

This REPLACEMENT PROPERTY AGREEMENT sets forth the entire agreement of the PARTIES and supersedes all other oral and written representations.

Q. Privileges and Immunities

Notwithstanding anything to the contrary in this REPLACEMENT PROPERTY AGREEMENT, neither PARTY waives any of the privileges and immunities from liability, exemptions from laws, ordinances, and rules, or any pension, relief, disability, worker's compensation, and/or other benefits which apply to the activity of officers, agents, or employees of either PARTY.

Bloomington Recreation and Park District
GRANTEE

By: _____
Signature of Authorized Representative

Title: Chairman, Board of Directors

Date: _____

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By: _____

Date: _____

Exhibits:

Exhibit A – Contracts 84-03-170, 86-02-501, 88-07-526, C2003383

Exhibit B – Assembly Bill No. 1330 (2018)

Exhibit C – Old Project Appraisals dated November 2, 2018 and March 13, 2019

Exhibit D – New Project Description