

Lease Agreements and Turn-Key Agreements

Attachment to page 46 items #3-4 of the *DRAFT APPLICATION GUIDE for the Statewide Park Development and Community Revitalization Program*

October 1, 2018

Purpose and Reference:

This document provides instructions for #3-4 on page 46 of the DRAFT October 1.2018 SPP APPLICATION GUIDE.

- This document is only for lease agreement or turn-key projects on land not owned by the APPLICANT.
- Ignore this document if the APPLICANT already owns the land, or is proposing an ACQUISITION to become the land owner.

3. Lease Agreements continued from page 46:

Lease agreements are where the APPLICANT is proposing to construct, and operate and maintain the PROJECT on land owned by a separate public agency or utility district.

In this option, if the GRANT is awarded, the APPLICANT/GRANTEE will complete the PROJECT and then operate and maintain the PROJECT for public use during the 30 year CONTRACT performance period. **See pages 2 through 4 below for instructions**

4. Turn Key Agreements continued from page 46:

Turn-key agreements are where the APPLICANT is proposing to construct the PROJECT, then, upon PROJECT COMPLETION, and with approval by the State, transfer the PROJECT and CONTRACT obligations. The land owner (transferee) will become responsible to operate and maintain the PROJECT for public use during the remainder of 30 year CONTRACT performance period. **See page 5 below for instructions**

These alternative requirements to site ownership give the GRANTEE, State, and public assurance that the property will be used for the purpose of the GRANT.

LEASE AGREEMENT

#3 on page 46 of the DRAFT October 1.2018 Application Guide

In this alternative to land ownership by the APPLICANT, the land owner is giving the APPLICANT permission to construct, and operate and maintain the PROJECT during the 30 year CONTRACT performance period. The 30 years starts with the APPROPRIATION DATE.

Include A and B in the APPLICATION:

A. Provide the Lease Agreement Form (see next page). The Form lists the land tenure agreement requirements between the APPLICANT and the land owner.

B. Provide a signed* copy of the agreement between the APPLICANT and the land owner, such as the lease, joint powers agreement, easement, memorandum of understanding, or other document.

On the signed copy, highlight the sections that meet the requirements listed in the Lease Agreement Form.

*Draft/unsigned agreements:

If the agreement cannot be signed at the time of APPLICATION, provide A and B as explained above, with a letter(s) from the APPLICANT signed by the AUTHORIZED REPRESENTATIVE and the landowner in which each commits to sign the land tenure agreement should the GRANT be awarded. If OGALS sends a letter at the end of the competitive process stating that the GRANT will be awarded, the APPLICANT and land owner must sign the land tenure before the CONTRACT can be signed by California Department of Parks and Recreation (DPR).

When the Public Agency/Utility cannot agree to a 30 year term requirement:

If the Public Agency/Utility has a policy prohibiting 30 year term agreements, provide:

- A and B as explained above, and,
- a letter(s) from the landowner and APPLICANT that:
 - States the landowner's policy prohibiting long term land tenure agreements.
 - Describes the past long standing use (or likelihood of long term use) of the property by the APPLICANT
 - States the land owner's commitment to continue to renew the land tenure agreement with the APPLICANT in incremental periods to satisfy 30 year land tenure term requirement, absent any unforeseen circumstances.
 - Agrees to renew the land tenure agreement with the landowner in incremental periods to satisfy the 30 year land tenure term requirement. The letter must be signed by both parties, including the AUTHORIZED REPRESENTATIVE.

DPR expects the GRANTEE to fully comply with the Use of Facilities terms of the CONTRACT (see the CONTRACT provisions in the GRANT ADMINISTRATION GUIDE). If the landlord does not renew a lease, and the GRANTEE cannot comply with the time period stated in the CONTRACT, DPR may hold the GRANTEE in breach of CONTRACT.

Lease Agreement Form Checklist

If the APPLICANT does not own the land in fee simple, and is not going to acquire the land to become the land owner, complete this checklist. Attach a copy of the signed Agreement between the land owner and APPLICANT. Identify the page numbers where the following information can be found in the Agreement and highlight the provisions in the Agreement where the information is located. *All items are required.*

Applicant:

Project Name:

<input checked="" type="checkbox"/>	Page	Required Item
<input type="checkbox"/>		Type of agreement: For example: lease, joint powers agreement, easement, memorandum of understanding, etc. _____
<input type="checkbox"/>		Parties to the agreement and date signed: Party _____ Date Signed _____ _____ _____
<input type="checkbox"/>		Term of the agreement: ____ years from _____ to _____
<input type="checkbox"/>		Agreement Start date: _____ End date: _____ <ul style="list-style-type: none"> • SPP grants require at least 30 years of site control for GRANTEES to operate and maintain the site for public recreational use. • The 30 years begins on the APPROPRIATION DATE.
<input type="checkbox"/>		Renewal option: The agreement must include an option, which can be non-binding, for the GRANTEE to renew the agreement beyond the original 30 year term.
<input type="checkbox"/>		Termination clause: Any of the following is acceptable: <ul style="list-style-type: none"> • No termination clause – the agreement is non-revocable. • Termination clause specifies the agreement is revocable only for cause. • The termination clause cannot allow the land owner to revoke the agreement without cause, i.e., at will.
<input type="checkbox"/>		Site Control, Roles and Responsibilities should the GRANT be awarded: <ul style="list-style-type: none"> • The agreement authorizes the GRANTEE to <i>proceed with the construction</i> PROJECT. The GRANTEE may delegate construction to other entities. • The agreement establishes when the general public can use the PROJECT and gives GRANTEE <i>permission to operate</i> the PROJECT SITE (such as scheduling recreational programs). The GRANTEE may delegate operational roles to other entities but is bound through the CONTRACT provisions to ensure full public access for the duration of the land tenure period. • The agreement identifies which entity will <i>maintain</i> the PROJECT SITE. The GRANTEE may delegate maintenance to other entities but is bound through the CONTRACT provisions to ensure maintenance of the PROJECT SITE for the duration of the land tenure period.

Questions about the Lease Agreement Form

If the APPLICANT owns the property, is the Lease Agreement Form required?

No. As stated on the top of the form, it is only required if the APPLICANT is going to lease the property from another land owner, instead of acquiring it.

If you own the project site property, please read the top of page 46 in the Application Guide and provide item #1.

If the APPLICANT will acquire the property to become the land owner, is the Lease Agreement Form required?

No. As stated on the top of the form, it is only required if the APPLICANT is going to lease the property from another land owner, instead of acquiring it. ACQUISITION to become the land owner gives site control. For ACQUISITION projects, see item #2 on page 46 of the Application Guide.

Operation Partnerships: If a city receives a grant award, can the city give operational site control to a NON PROFIT that will provide recreation and other community services on city property?

Yes, NON PROFITS or other entities can partner with a GRANTEE to provide recreational and other community services. However, the GRANTEE is responsible for overseeing long term project operation to ensure that the GRANT CONTRACT obligations are met. The PROJECT must still remain open for the public when a NON PROFIT or other entity operates the site.

Can one city entity apply for an ACQUISITION and DEVELOPMENT or DEVELOPMENT only project, receive a grant award, complete the PROJECT, and then transfer the grant contract obligations to another entity of the same city?

Yes. At the time of application, the City must provide a Resolution using the template in the Application Guide, with the following addition: (Note: "City Entity A" is the APPLICANT/GRANTEE, and "City Entity B" would assume the transfer of the CONTRACT obligations as described below.)

The City must add language to the authorizing resolution establishing its intent for "City Entity A" to transfer the CONTRACT obligations to "City Entity B" upon successful completion of the project, should the GRANT be awarded. The Resolution must also include language specifying that, if the GRANT is awarded, "City Entity A" as the GRANTEE must comply with the CONTRACT provisions through project completion for 30 years, or until the State approves the transfer of the CONTRACT obligations to the "City Entity B", whichever is earlier.

OGALS' requirements ensure that the continuity of the CONTRACT obligations will be maintained for the benefit of the public if a competitive Prop. 68 GRANT is awarded.

Note: The above arrangement may also be discussed in the response to Applicant Capacity on page 43 of the Application Guide.

TURN KEY AGREEMENT

#4 on page 46 of the DRAFT October 1.2018 Application Guide

A “Turn-Key Project” is when the APPLICANT proposes to complete the PROJECT with the intent to transfer the PROJECT and CONTRACT obligations to an eligible agency for long term operation and maintenance.

The transferee must meet these requirements:

- A) Must be an eligible public agency: City, County, JOINT POWERS AUTHORITY, or an eligible DISTRICT as defined in the Application Guide.
- B) Must be, or become, the land owner.
- C) Must be willing to accept and enter into a CONTRACT with DPR. This includes being responsible for long term public use (operation and maintenance).

Provide these three documents in the APPLICATION:

- 1) Authorizing Resolution from the APPLICANT: Use the Resolution shown on pages 33-34 of the Application Guide, with these additions:
 - a. State the intent to transfer the PROJECT and CONTRACT obligations to the _____ (identify the transferee City, County, JOINT POWERS AUTHORITY, or eligible DISTRICT) upon successful completion of the PROJECT, should the GRANT be awarded.
 - b. The _____ (name of APPLICANT’s agency, not transferee) acknowledges that it will comply with the CONTRACT provisions until the State approves the transfer of the CONTRACT obligations to the transferee.
- 2) Authorizing Resolution from the proposed transferee: The proposed transferee will provide a separate Resolution shown on pages 33-34 of the Application Guide, with these additions:
 - a. State the intent to accept the PROJECT and CONTRACT obligations from the _____(name of the APPLICANT not transferee) upon successful completion of the PROJECT and the State’s approval of the transfer, should the GRANT be awarded.
- 3) An agreement between the APPLICANT and the Transferee signed by both parties. The agreement must stipulate that the PROJECT and grant CONTRACT obligations will be transferred from the (APPLICANT) to the (Transferee) upon PROJECT COMPLETION and approval of the transfer by the CA. Department of Parks and Recreation (DPR). The agreement must stipulate that, if the GRANT is awarded, _____(APPLICANT) must comply with the CONTRACT provisions through project completion for 30 years, or until the DPR approves the transfer of the CONTRACT obligations to the Transferee, whichever is earlier.

These requirements ensure that the continuity of the CONTRACT obligations will be maintained for the benefit of the public if a competitive Prop. 68 GRANT is awarded.