

State of California – The Natural Resources Agency

DEPARTMENT OF PARKS AND RECREATION

OPERATIONS AGREEMENT

This Operations Agreement (“CONTRACT”) is entered into by and between the State of California, acting through the California Department of Parks and Recreation (hereinafter referred to as “STATE PARKS”) and the City of Fresno, by and through the Department of Parks, After School Recreation and Community Services (hereinafter referred to as “PARCS”) , referred to collectively as the “PARTIES,” for the operation and maintenance of, and capital outlays relating to the California and Elm Street Gym, located at 1802 E. California Ave., Fresno, CA 93706.

RECITALS

WHEREAS under the Urban Parks Act (“UPA”) grant program STATE PARKS may award grants that finance the “acquisition and development of parks and recreation areas and facilities in the neighborhoods that are currently least served by park and recreation providers by emphasizing the expansion of neighborhood accessibility to parks.” (Pub. Resources Code, § 5641.)

WHEREAS, in October 2004, STATE PARKS awarded the Fresno County Economic Opportunities Commission (“EOC”), a private, non-profit 501(c)(3) corporation, a \$2.5 million UPA grant ("GRANT CONTRACT") for the "acquisition and development" of a Neighborhood Youth Center in the City of Fresno including a Recreational Building (COMMUNITY CENTER).

WHEREAS, in August 2006, STATE PARKS advanced EOC \$2 million under the UPA grant to construct the Neighborhood Youth Center.

WHEREAS, In April 2011, STATE PARKS paid EOC the remaining \$500,000 available under the Grant Contract as reimbursement for costs related to the construction of the Neighborhood Youth Center and the COMMUNITY CENTER.

WHEREAS, in November 2009, EOC sold the COMMUNITY CENTER to the City of Fresno for \$3,727,967.63.

WHEREAS, a dispute has arisen between EOC and STATE PARKS concerning their respective rights and obligations under the Grant Contract.

WHEREAS, EOC and STATE PARKS, desiring to settle their dispute arising under the Grant Contract and related matters set forth herein, entered into a Settlement Agreement (“SETTLEMENT AGREEMENT”), a copy of which is attached as **Exhibit 1** to this CONTRACT.

WHEREAS, in accordance with the SETTLEMENT AGREEMENT, EOC agrees to pay \$70,000 each year, beginning in 2020, for the next ten years (“SETTLEMENT FUNDS”) into an escrow account to be distributed to PARCS, subject to STATE PARKS’ prior approval and consent, exclusively for the operation, maintenance and capital outlays related to the COMMUNITY CENTER and for no other purpose.

WHEREAS to ensure that the SETTLEMENT FUNDS are spent in a manner consistent with the SETTLEMENT AGREEMENT, PARCS and STATE PARKS shall enter into this contract (“CONTRACT”) that will govern the payment of the SETTLEMENT FUNDS to PARCS and the use of those funds for the operation and maintenance of, and capital outlays for, the COMMUNITY CENTER.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

TERMS AND CONDITIONS

A. Definitions

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

1. The term “SETTLEMENT FUNDS” shall refer to funds that EOC shall deposit into the escrow account that STATE PARKS has established for the distribution of the SETTLEMENT FUNDS to PARCS pursuant to the SETTLEMENT AGREEMENT and this CONTRACT, for the sole purpose of paying OPERATIONS, maintenance, and capital outlay costs associated with the COMMUNITY CENTER, and for no other purpose, for each of the next ten years beginning from the date PARCS receives written notice that the COMMUNITY CENTER is safe to occupy, but beginning no later than July 1, 2023 , for a total of ten (10) years. The PERFORMANCE PERIOD of this CONTRACT shall therefore begin no later than July 1, 2023 and shall end no later than June 30, 2033.

The term “PERFORMANCE PERIOD” shall be defined as beginning from the date PARCS receives written notice that the GYM is safe to occupy, but no event shall the beginning of the PERFORMANCE PERIOD be later than July 1, 2023.

The term “OPERATIONS” shall be defined as including, but not limited to, COMMUNITY CENTER utilities, COMMUNITY CENTER based programming and events, staffing for COMMUNITY CENTER based programming, COMMUNITY CENTER based community events and materials to be utilized to activate the COMMUNITY CENTER such as sporting and fitness equipment. OPERATIONS costs shall be direct costs. COMMUNITY CENTER based programming shall be capped at 25% of SETTLEMENT FUNDS. The parties agree that PARCS may sub-contract COMMUNITY CENTER based programming to community-based organizations as long as the organization complies with all applicable terms of this CONTRACT.

The term “COMMUNITY CENTER” shall be defined as the building structure only and does not include exterior landscaping or pathways of access. The COMMUNITY

CENTER includes a gymnasium, lobby area, locker room, office space, programming space, and storage space.

B. General Responsibilities

1. PARCS shall at all times comply with all applicable current laws and regulations affecting the operation and maintenance of the COMMUNITY CENTER, including, but not limited to, those pertaining to the legal requirements for 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.)
2. STATE PARKS shall have the right to inspect the COMMUNITY CENTER and its surrounding property or facilities during the PERFORMANCE PERIOD of this CONTRACT. PARCS shall make said property available for inspection upon 24-hours' written notice from STATE PARKS.

C. Payment of SETTLEMENT FUNDS

Payment of the SETTLEMENT FUNDS to PARCS pursuant to this CONTRACT shall be contingent upon PARCS' and the City of Fresno's agreement to have the COMMUNITY CENTER open to the public for reasonable operating hours and be open to members of the public for recreational purposes no less than 20 hours per week on a yearly average, unless otherwise granted permission by STATE PARKS or under provisions of the enabling legislation and/or grant program for the PERFORMANCE PERIOD of the CONTRACT, or ten years from the date of the first disbursement under this CONTRACT, or until PARCS has spent all SETTLEMENT FUNDS, whichever occurs first.

Notwithstanding that the parties understand that the public availability of the COMMUNITY CENTER is contingent upon the annual budget appropriation of the City Council, if the COMMUNITY CENTER is not open to the public as required by this section, PARCS may be in breach of this CONTRACT and the parties shall discuss alternative terms to ensure the intent of this CONTRACT is met.

1. PARCS agrees that the SETTLEMENT FUNDS it receives pursuant to this CONTRACT shall be used exclusively for the OPERATIONS and maintenance of, and capital outlays for the COMMUNITY CENTER and for no other purpose.
2. Payments of SETTLEMENT FUNDS to PARCS shall be subject to STATE PARKS' written approval of PARCS' request for reimbursement or advance payment, which shall not be unreasonably withheld.
3. STATE PARKS has opened an escrow account ("ESCROW ACCOUNT") with Sacramento Bank of Commerce ("BANK"), 1504 Eureka Road, Suite 100, Roseville, CA 95661, Attention: Julianne Jacino.

4. In accordance with the SETTLEMENT AGREEMENT, EOC has deposited into the ESCROW ACCOUNT the first of ten installments of \$70,000 (SETTLEMENT FUNDS), in immediately available funds.
5. The SETTLEMENT FUNDS shall be disbursed as follows:

The SETTLEMENT FUNDS shall be distributed to PARCS, solely for the OPERATIONS, maintenance and capital outlays related to the COMMUNITY CENTER and for no other purpose. PARCS may request reimbursement or advance payment to STATE PARKS for costs related to the operation and maintenance of and capital outlays for the COMMUNITY CENTER, in an amount not to exceed \$70,000 annually for the term of the PERFORMANCE PERIOD (ten years) or until the SETTLEMENT FUNDS have been exhausted, at which time the Escrow Account shall be closed. PARCS is not required to request SETTLEMENT FUNDS each year but may allow the SETTLEMENT FUNDS to remain and accumulate in the Escrow Account for later payment. PARCS shall request the SETTLEMENT FUNDS utilizing the Payment Request Form and the Grant Expenditure Form, which are attached hereto and incorporated herein as Exhibit 2.

If STATE PARKS determines that PARCS' request for reimbursement or advance payment is consistent with the CONTRACT, it may approve PARCS' request for reimbursement or advance payment in writing and instruct Escrow to release to PARCS the requested SETTLEMENT FUNDS, or a lesser amount depending upon STATE PARKS' consistency determination. STATE PARKS shall not unreasonably withhold its written approval of PARCS' request for reimbursement or advance payment. If STATE PARKS determines that PARCS' request for reimbursement or advance is not consistent with the CONTRACT, STATE PARKS' will provide a determination to PARCS in writing, along with any applicable process for remedy.

6. No SETTLEMENT FUNDS, including principal, shall be distributed or paid either directly or indirectly to STATE PARKS. The SETTLEMENT FUNDS are intended to benefit solely the OPERATIONS, maintenance and capital outlays related to the COMMUNITY CENTER. It is STATE PARKS' obligation under this CONTRACT to provide oversight and ensure that all SETTLEMENT FUNDS distributed to PARCS pursuant to the CONTRACT are spent in a manner consistent with the requirements of the CONTRACT.

D. Contract Termination

1. This CONTRACT shall not be rescinded, modified or amended except by mutual written agreement between PARCS and STATE PARKS.
2. Failure by PARCS to comply with the terms of this CONTRACT shall be cause for suspension of all of STATE PARKS' obligations under this CONTRACT unless STATE PARKS determines that such failure was due to no fault of PARCS. A defaulting party will

have thirty days from the date of the written notice to cure the breach or failure unless a different time period is provided in this CONTRACT in which case the latter shall apply. If the default is not susceptible to cure within the thirty days, the defaulting party shall begin to cure the default within the thirty days and after that diligently prosecute the cure to completion.

3. In addition to all other remedies provided by law, PARCS expressly agrees that in the event of PARCS' breach of this CONTRACT, STATE PARKS may require specific performance of the CONTRACT in accordance with the purpose of the CONTRACT to preserve, protect and increase the quantity and quality of parks, public recreation facilities, opportunities and/or historic resources available to the people of the State of California.
4. PARCS shall reimburse STATE PARKS on demand for all reasonable attorney fees and expenses incurred by STATE PARKS as a result of PARCS' breach or default under this CONTRACT. If PARCS is the prevailing party in any legal action brought by STATE PARKS, PARCS shall be entitled to recover reasonable attorney fees and expenses that PARCS incurs.

E. Indemnity

1. PARCS shall waive all claims and recourse against STATE PARKS 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 valid legal claims arising from the concurrent or sole negligence of STATE PARKS, its officers, agents, and employees.
2. To the fullest extent of the law, PARCS agrees to indemnify, hold harmless and defend STATE PARKS, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the OPERATIONS or maintenance of the COMMUNITY CENTER, 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 STATE PARKS, its officers, agents, or employees.
3. PARCS agrees that in the event STATE PARKS or any of its officers, agents or employees is named as codefendant in any legal action or claim connected in any way with the COMMUNITY CENTER or this CONTRACT, PARCS shall notify STATE PARKS of such fact and shall reimburse STATE PARKS for all litigation costs, expenses, and reasonable attorney's fees incurred by STATE PARKS in connection with such legal action.
4. PARCS and STATE PARKS agree that in the event of judgment entered against STATE PARKS and PARCS because of the concurrent negligence of STATE PARKS and PARCS, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction.
5. PARCS shall indemnify and hold harmless STATE PARKS, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out

of any and all legal actions pursuant to items to which PARCS has certified. PARCS acknowledges that it is solely responsible for compliance with items to which it has certified.

F. Financial Records

1. PARCS shall maintain satisfactory financial accounts, documents and records for the COMMUNITY CENTER and make them available to STATE PARKS for auditing at reasonable times. PARCS also agrees to retain such financial accounts, documents and records for five years following project termination or final payment, whichever is later.
2. PARCS shall keep such records as STATE PARKS shall prescribe, including records which fully disclose (a) the disposition of the proceeds of SETTLEMENT FUNDS, (b) the total cost of the operation and maintenance of the COMMUNITY CENTER; (c) the amount and nature of funds provided by other sources for the OPERATIONS and maintenance of the COMMUNITY CENTER, and (d) any other records that will facilitate an effective audit of use of the SETTLEMENT FUNDS.
3. PARCS agrees that STATE PARKS shall have the right to inspect and make copies of any and all books, records and reports pertaining to this CONTRACT and to the operation and maintenance of the COMMUNITY CENTER, or matters related thereto during regular office hours. PARCS shall maintain and make available for inspection by STATE PARKS 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 PARCS for 5 years following final payment of SETTLEMENT FUNDS.
4. PARCS shall use a generally accepted accounting system.

G. Use of Facilities

1. PARCS agrees to operate and maintain the COMMUNITY CENTER consistent with the requirements of this CONTRACT for the PERFORMANCE PERIOD defined in this CONTRACT.
2. The COMMUNITY CENTER shall maintain reasonable operating hours and be open to members of the public for recreational purposes no less than 20 hours per week on a yearly average, unless otherwise granted permission by STATE PARKS or under provisions of the enabling legislation and/or grant program.
3. PARCS agrees to operate and maintain the COMMUNITY CENTER in conjunction with the purposes of this CONTRACT and no other use, sale, transfer, or disposition of the COMMUNITY CENTER shall be permitted except as authorized in advance by STATE PARKS. Any use, sale, transfer or disposition of the COMMUNITY CENTER in violation of this section is void.

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 STATE PARKS provided that such approval shall not be unreasonably withheld as long as the purposes for which the SETTLEMENT FUNDS were provided are maintained. Any such permission that is granted does not make STATE PARKS a guarantor or a surety for any debt or mitigation, nor does it waive STATE PARKS rights to enforce performance under this CONTRACT.
5. All real property, or rights thereto, operated and maintained with SETTLEMENT FUNDS shall be subject to an appropriate form of restrictive title, rights, or covenants required and approved by STATE PARKS, including but not limited to placing a deed restriction on the property's title filed with the County for the duration of this CONTRACT. If the COMMUNITY CENTER property is taken by use of eminent domain, PARCS shall reimburse STATE PARKS an amount at least equal to the amount of SETTLEMENT FUNDS received from STATE PARKS or the pro-rated full market value of the real property, including improvements, within 30 days of the time of sale, whichever amount is higher.
6. If eminent domain proceedings are initiated against PARCS, PARCS shall notify STATE PARKS within 10 days of receiving the complaint or other notice of such proceedings.

H. Nondiscrimination

1. PARCS shall not discriminate against any person on the basis of sex, race, creed, color, national origin, age, religion, ancestry, sexual orientation, disability, medical condition, or marital status in the use of property or a specific facility included in the COMMUNITY CENTER.
2. PARCS shall not discriminate against any person on the basis of residence, and shall not apply differences in admission or other fees on the basis of residence. Fees shall be reasonable and shall not unduly prevent use by economically disadvantaged members of the public.

I. Severability

If any provision of this CONTRACT or the application thereof is held invalid, that invalidity shall not affect the validity of 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.

J. Liability

STATE PARKS assumes no responsibility for assuring the safety of the operation and maintenance of the COMMUNITY CENTER. STATE PARKS rights under this CONTRACT to review and inspect the GYM shall not give rise to any warranty or

representation that the COMMUNITY CENTER and any plans or improvements are free from hazards or defects.

K. Assignability

PARCS shall not assign its interests in, and responsibilities under this CONTRACT, without the prior written consent of STATE PARKS. STATE PARKS' written consent shall not be unreasonably withheld.

L. 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.

M. 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.

N. Successors and Assigns

This CONTRACT shall be binding upon, and shall inure to the benefits of the parties, their successors in interest and assigns.

O. Governing Law

This CONTRACT shall be interpreted in accordance with the laws of the State of California.

P. Effective Date

The "Effective Date" of this CONTRACT is the date upon which all parties have executed the CONTRACT.

Q. Counterparts

This CONTRACT may be executed and delivered in two or more counterparts, each of which when so executed and delivered shall be the original, but such counterparts, together shall constitute but one and the same instrument. Electronic or facsimile signatures shall be deemed original signatures.

R. Amendments

This CONTRACT may not be orally superseded, modified, or amended. No waiver, modification, or amendment shall be valid unless in writing and signed by all parties.

S. Authority

Each of the undersigned, in executing this CONTRACT, represents and warrants that he or she has full authority and legal power to represent and execute this CONTRACT on behalf of a party to this CONTRACT, and that such individual's signature hereon shall be binding thereon.

T. Notices

Any notice request, demand or other communication which is required or may be given under or in connection with this CONTRACT, shall be in writing and shall be deemed to have been duly given if mailed by certified or registered mail, return receipt requested, by personal delivery by overnight delivery service, (e.g., Federal Express), or email addressed as follows:

- (a) If to STATE PARKS by U.S. Mail or Email:
California Department of Parks and Recreation
Jean Lacher
Chief, Office of Grants and Local Services
P.O. Box 942896
Sacramento, California 94296-0001
Phone: (916) 651-8597
E-Mail: Jean.Lacher@parks.ca.gov
- (b) If to STATE PARKS by Certified or Registered Mail:
California Department of Parks and Recreation
Jean Lacher
Chief, Office of Grants and Local Services
4940 Lang Ave, Dock H, Floor 13
McClellan, CA 95652
- (c) If to PARCS:
City of Fresno, Department of Parks, After School Recreation and Community Services (PARCS)
Aaron A. Aguirre
PARCS Director
1515 E. Divisadero
Fresno, California 93721
Phone: (559) 621-2900
E-Mail: Aaron.Aguirre@Fresno.gov

Notices, demands, consents, approvals, and other communications which are mailed by certified or registered mail shall be given when delivered; provided, however, that if any such notice or other communication shall also be sent by facsimile machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machine and forwards a copy thereof with tis mailed or courier delivered notice or communication.

I HAVE READ THE FOREGOING AGREEMENT AND FULLY UNDERSTAND AND ACCEPT IT.

City of Fresno, Department of Parks, After School
Recreation and Community Services

By: _____
Aaron A. Aguirre, PARCS Director

Printed Name

Date: _____

California Department of Parks and Recreation

By: _____
Sedrick Mitchell, Deputy Director
Community Engagement Division

Printed Name

Date: _____