

Lease Agreements and Turn-Key Agreements

Resource for Checklist Item #10 of the Application Guides
for the Regional Park Program and Rural Recreation and Tourism Program

July 1, 2020

Purpose and Reference:

This document provides instructions for Checklist Item #10, options 3 and 4, on page 45 of the Regional Park Program (RPP) application guide and page 46 of the Rural Recreation and Tourism Program (RRT) 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 landowner.

3. Lease Agreements continued from Checklist Item #10:

Lease agreements are where the APPLICANT is proposing to construct, 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 48:

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 landowner (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

Checklist Item #10, Option 3

In this alternative to land ownership by the APPLICANT, the landowner is giving the APPLICANT permission to construct, 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 landowner.

B. Provide a signed* copy of the agreement between the APPLICANT and the landowner, 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 the Office of Grants and Local Services (OGALS) sends a letter at the end of the competitive process stating that the GRANT will be awarded, the APPLICANT and landowner 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 landowner'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 landowner, complete this checklist. Attach a copy of the signed Agreement between the landowner 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:

✓	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"> • 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 landowner 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 landowner, instead of acquiring it. If you own the project site property, please provide one of the documents listed in Checklist Item #10, option 1.

If the APPLICANT will acquire the property to become the landowner, 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 landowner, instead of acquiring it. ACQUISITION to become the landowner gives site control. For ACQUISITION projects, please provide the documents listed in Checklist Item #10, option 2.

Operation Partnerships: If a public agency receives a grant award, can the public agency give operational site control to a NON-PROFIT that will provide recreation and other community services on the park 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 or county entity apply for an ACQUISITION and DEVELOPMENT OF DEVELOPMENT only project, receive a grant award, complete the PROJECT, and then transfer the grant contract obligations to another entity of the same city or county?

Yes. At the time of application, the city or county must provide a Resolution using the template in the Application Guide, but with additional language regarding the transfer.

The city or county must add language to the authorizing resolution establishing its intent for "City/County Entity A" (the APPLICANT/GRANTEE) to transfer the CONTRACT obligations to "City/County Entity B" (the entity assuming contract obligations) 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/County 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/County 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.

TURN-KEY AGREEMENT

Checklist Item #10, Option 4

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.
 - RPP eligible public agencies: County, JOINT POWERS AUTHORITY, or an eligible DISTRICT as defined on page 64 in the Application Guide.
 - RRT eligible public agencies: City, County, or an eligible DISTRICT as defined on page 66 in the Application Guide.
- B) Must be, or become, the landowner.
- 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 32-33 of the RPP application guide, and pages 33-34 of the RRT application guide, with these additions:
 - a. State the intent to transfer the PROJECT and CONTRACT obligations to the _____ (identify the eligible transferee) 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 using the same template from 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 California 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.