

MASTER AGREEMENT AND LEASE FOR HAYWARD PARK SITES

Between the City of Hayward and the Hayward Area Recreation and Park District

THIS AGREEMENT AND LEASE is made and entered into as of this first (1st) day of July, 2023, hereafter referred to as the "Effective Date," by and between the CITY OF HAYWARD, a municipal corporation, located in the County of Alameda, State of California, hereinafter designated as "City," and the HAYWARD AREA RECREATION AND PARK DISTRICT, an independent special district organized pursuant to the laws of the State of California, hereinafter designated as "District."

RECITALS

WHEREAS, chapter 4 of division 5 of the Public Resources Code of the State of California authorizes and empowers any city and recreation district to cooperate with each other and to that end enter into agreements with each other for the purpose of establishing community recreation programs and facilities; and

WHEREAS, the District is the local parks and recreational service provider for the City of Hayward; and

WHEREAS, the District and City have a shared vision and mutual interest in providing Hayward residents with the opportunity to participate in recreation activities and access high-quality outdoor areas and developing a unified equitable approach to serving the community's recreational and outdoor needs; and

WHEREAS, since December 1944, the Hayward Area Recreation and Park District and the City of Hayward have collaborated to address youth and community needs for developing and maintaining parks and open spaces and providing recreational opportunities; and

WHEREAS, City and District entered into a Master Agreement and Lease dated November 17, 1970, for the purpose of establishing and maintaining park sites within the City of Hayward; and

WHEREAS, that Agreement has been renewed every ten years with minor modifications to add or remove park sites; and

WHEREAS, the partnership has allowed both governmental agencies to use facility and park space efficiently and share resources for upkeep and maintenance of joint parks, open spaces, and facilities and park space to be effectively programmed to best serve their

constituent groups; and

WHEREAS, the City and District acknowledge the benefits of the shared use agreement and seek to extend their working relationship; and

WHEREAS, both City and District are desirous of incorporating the park sites subject to the above-said Master Agreement and Lease into a new Master Agreement and Lease for a period of time.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, it is mutually agreed by and between the parties hereto as follows:

City hereby leases to District and District hereby hires from City the parcels of real property (park sites) described in Exhibit A to this Agreement ("premises"), under the following terms and conditions.

1. Term. The term shall commence on July 1, 2023 and shall terminate on June 30, 2033. At the conclusion of the 10 years, the District and City may enter into up to three successive 5-year extensions. Unless either party states their intention to end the lease in writing at least sixty (60) days prior to the end of the Initial Agreement or subsequent extension period, the term will automatically be extended for five years on July 1st of the expiration date.
2. Rent. District shall pay City the sum of one dollar (\$1.00) as rent for the year of this Lease upon the Effective Date of this Lease. It is mutually agreed and understood that the nominal rent herein provided is in recognition that District will expend substantial funds in maintaining and operating the parks and facilities.
3. Use of Premises. District, during the term herein provided, or any extension thereof, shall use said premises for public recreation purposes and shall direct and supervise community recreation programs and activities thereon. The District shall be responsible for all programming and events at parks and may collect fees, if applicable and outlined in the Districts Master Fee Schedule, for District purposes.

City shall notify the District at least 2 weeks in advance when planning events on sites in this agreement. Exceptions may be made for less notice, in writing, when sites are needed for large-scale emergency response. The District will be invited to applicable City of Hayward planning meetings to provide feedback and guidance in developing programming on District operated and maintained sites. District will provide, in addition to other information, cost estimates, time estimates, and feasibility of success.

4. Care of Premises. District shall be responsible for and shall supply all necessary and ordinary care, maintenance, and repair of all equipment, playground facilities, grounds, buildings, and improvements now on or hereafter placed on said premises, and all necessary and ordinary custodial, janitorial, gardening, and other services for said premises.

During the term of this Agreement, District and City agree to utilize the Hayward Area Recreation and Park District Board of Directors' (Board of Directors) approved and adopted Park Maintenance Standards to ensure equal level of care and maintenance for all District properties.

To ensure the successful implementation of park standards and programs, and due to certain regional and City-wide issues that may impede the District's ability to meet the standards with consistency, when possible, the City agrees to provide support to the District, upon the District request, in the event that assistance is needed for maintenance or upkeep of the leased properties and for addressing cross-agency challenges, including but not limited to the items below. The City will provide support when resources are available, but is under no obligation to provide maintenance support under the terms of this Agreement:

- (a) Illegal dumping in parks,
- (b) Homelessness in parks and the impact of the user experience and ability to achieve maintenance standards, and
- (c) Any cooperative maintenance endeavors between the City and District, including use of specialized equipment to be used for maintenance in parks.

5. Utilities. District shall procure and pay for all utilities furnished to the premises and improvements thereon. The City agrees to work collaboratively with the District to determine mutually beneficial utility rates to provide high quality parks for citizens.

6. Insurance and Indemnification. District shall take out and keep in force during the term of this Agreement and Lease, at District's expense, public liability insurance with coverage in the amount of three hundred thousand dollars (\$300,000) for Property Damage and in the amount of four million dollars (\$4,000,000) Combined Single Limit for one occurrence for bodily injury, personal injury and property damage, and shall designate specifically that City is an additional named insured thereunder. Certificates evidencing said insurance coverage shall be presented to City Attorney of City for written approval. The District may meet its insurance obligation through a program of self-insurance which may include participation in a risk-sharing pool such as California Association of Park and Recreation Indemnity (CAPRI).

District will, at all times during the life of this Lease, and at its own expense, procure and maintain in force workers' compensation insurance covering all employees in connection with all its activities and operations upon said premises.

District shall obtain a written obligation on the part of any such insurance company to notify City in writing at least 45 days (in the case of workers' compensation, 10 days) prior to any cancellation or amendment of such policy and of any delinquency in premium payments. District agrees, if District does not take out such insurance or keep the same in full force and effect, that City may take out the necessary insurance and pay the premium therefore, and District shall repay to City the amount so paid by having such amount deemed to be additional rental and payable as such in the next rental payment due.

City shall be free of all liabilities and claims for damage by reason of any injury or death to any person or persons, or property of any kind whatsoever and to whomsoever belonging, from any cause or causes whatsoever, except any liability and claim caused solely by the negligent acts or willful misconduct of City, its officers, employees, agents or servants, while in, upon, or connected in any way with the premises, or District's performance of obligations, during the term of this Agreement and Lease or any extension of renewal thereof, and District hereby agrees to indemnify, save harmless, and defend City from all liability, damages, loss, costs and obligations, including court costs and counsel fees, on account of or arising out of or alleged to have arisen out of, directly or indirectly, any such injuries, death or losses.

Nothing in this Agreement and Lease contained shall prevent either party from obtaining additional insurance at its own expense.

The following endorsements must be attached to the policy:

- (a) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence". The policy must cover personal injury as well as bodily injury.
- (b) The policy must cover complete Contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property MUST BE ELIMINATED from the basic policy endorsements.
- (c) Broad Form property damage liability must be afforded. Permission is granted for deductible which shall not exceed \$500 without special approval of the City.
- (d) The City must be named as an additional insured under the coverage afforded with respect to the obligations being performed under the contract.

- (e) An endorsement shall be provided which states that the coverage is PRIMARY INSURANCE and that no other insurance effected by the City will be called upon to contribute to a loss under this coverage.

- 7. Improvements. Before final approval by the Board of Directors of any structures, facilities, alterations, repairs, additions, or improvements whether permanent or not, the District shall obtain the consent of the City Manager or their designee. These improvements the City Manager or their designee shall give consent unless in their opinion such structures, facilities, alterations, repairs, additions, or improvements would unreasonably interfere with the public use of the premises.

On a quarterly basis, the District's Director of Capital or designee will meet with the City's designee to review upcoming alterations, repairs, additions, or improvements. If the City Manager or designee has no concerns with the improvements, they will provide verbal consent accepting improvements, which will be reflected in the written meeting notes.

During the term of this Agreement, District agrees to provide a report to City Council of capital improvements budgeted, scheduled, and completed for all District properties and programs in the City of Hayward. The report shall be submitted each fiscal year. The report shall include the status of planning and design and estimated timing for construction and opening. Information on changes made to planned capital improvement projects, if applicable, will be made available to the City.

- 8. Termination. In the event the District is dissolved or the territory of City is detached from District, this Lease shall terminate as of the date of such dissolution or detachment. Upon termination of the Lease, District shall vacate properties, and responsibility for maintenance of leased properties shall end.

Should either party desire to terminate the agreement prior to the designated term, the following shall apply:

- (a) There shall be no termination of the agreement within the first five (5) years of the term.
- (b) After the first five (5) years of the term or during any extension of the term either party may terminate this Agreement upon the occurrence of an uncured default by the other party of any material term hereof. The non-defaulting party shall provide written notice to the defaulting party of the default and demand that the default be cured within 12 months thereafter. The non-defaulting party may, in the exercise of its reasonable discretion, extend the time period for curing a default and shall notify the defaulting party in writing of such an extension. If the

defaulting party fails to cure the default within the 12-month period or such extended time specified by the non-defaulting party, then the non-defaulting party may terminate this Agreement at any time by providing a notice of termination to the defaulting party.

9. Dispute Resolution. The Parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Agreement that is not the subject of a notice of default described in Section 8, Termination, subject to the following provisions:
 - (a) A Party desiring to meet and confer shall so advise the other Party pursuant to a written notice.
 - (b) Within fifteen (15) days after provision of that written notice by the Party desiring to meet and confer, or some other date mutually agreed by the Parties, the Parties shall meet in person and attempt to amicably resolve their dispute. Each Party shall send to the meeting a person with the ability to resolve the dispute or to make a recommendation to the General Manager/City Manager to resolve the dispute.
 - (c) The Parties shall participate in mediation for any dispute that remains unresolved. The mediator shall be selected by mutual agreement of the Parties. The costs of the mediator shall be equally shared by the Parties. Each party shall otherwise bear its own costs and attorneys' fees related to the mediation.
 - (d) No Party shall file a legal action without first complying with the provisions of this Section 9.

10. Reservations by City. City hereby reserves, from the commencement of this Agreement and Lease, the right to enter upon said premises at any and all times to survey, locate, or inspect said premises, and the right at any and all times to install, construct, repair, or maintain any public utility, including, but not limited to, drainage, sewage, and water facilities, and City agrees to repair any damage that may result from those activities to any structures, facilities, or improvements placed on the premises by District with the City Manager's approval.

11. After-Acquired Property. It is mutually agreed and understood that City may acquire additional property to add to the premises described herein. The District reserves the right to reject the acceptance of a future park or acquired property due to insufficient funding to maintain all parks within the District to a consistent maintenance standard. The District may also request the City identify a funding source for all new park site parcels.

It is agreed that upon acquisition of said property by City, that property may be added to this Agreement and Lease upon written Agreement of both parties. Once added, that

property would be subject to all of the terms and provisions hereof as of the date the City Council of City designates such inclusion by resolution. Notice of such action shall be sent promptly by City Clerk of City to District.

12. Removal of Property. It is mutually agreed that any property made subject to this Agreement and Lease may be removed therefrom as of the date the City Council of City and the Board of Directors of District designate such removal by resolution.
13. Participation. The City shall formally invite District staff to participate in planning meetings as they pertain to District maintained parks including but not limited to: acquisition of new park or recreation facilities, City's Light, Landscaping, Assessment Districts Engineers Report, Capital Improvement Project on HARD maintained sites, Park Impact Fees, improvements/changes on HARD maintained sites, and provide periodic updates on development projects that incorporate parks, open-spaces, and recreational services.
14. Transparency and Reporting. The District agrees to provide an annual report during a City of Hayward's City Council meeting that will include, but is not limited to, an update on Capital Improvement Projects, data on participants in District recreation programs by zip code, and park maintenance standards. This information will be provided in a written format to City staff at least three weeks in advance of the City Council presentation to give staff a chance to ask clarifying questions. The purpose of this report is to help the Hayward City Council understand which residents in Hayward are accessing recreation programs and where, as well as residents experiences with these programs.
15. Notices. All notices herein provided to be given or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage fully prepaid, and addressed to the other party at the following address:

City
City of Hayward
c/o City Manager
777 "B" Street
Hayward, CA 94541

District
Hayward Area Recreation and Park District
c/o General Manager
109 "E" Street
Hayward, CA 94541

Such mailing address may be changed by either party by giving written notice thereof to the other party as herein provided.

16. Assignment. District shall not assign this Agreement and Lease voluntarily or by operation of law or any right hereunder, nor sublet the premises or any part thereof, without the prior written consent of the City Manager of City. No consent to any assignment of this Agreement and Lease, voluntarily or by operation of law, or any subletting of the premises shall be deemed to be a consent to any subsequent assignment of this Lease, voluntarily or by operation of law, or any subletting of the premises without obtaining the prior written consent of City Manager of City shall be void and at the option of City, exercised by written notice to District, shall terminate this Lease.
17. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.
18. Amendments. This Agreement may be amended at any point in writing signed by authorized representatives of District and City.
19. Severability. Should any provision of any of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions of such agreement which shall remain in force to the maximum extent possible.
20. Interpretation. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed. The defined terms herein shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written."
21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to interpret or enforce the term of this Agreement shall be filed in the Superior Court of Alameda County.
22. No Conflicts of Interest. Each Party warrants to the other that no member of the governing body of City or District and no other public official of such locality or localities during his/her tenure and for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project.

23. Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signatures delivered electronically or by facsimile shall be as binding as originals upon the Parties.
24. Authority. Each Party represents that the signatory has the authority to bind each respective entity, and assents to each and every term contained within this Agreement.
25. No Third-Party Beneficiaries. It is the intention of the Parties that under no circumstances are any rights created for persons or entities who are not parties to this Agreement and District and City owe no duty to any persons or entities not parties to this Agreement under a third-party beneficiary theory or under any other theory of law.
26. Attorneys' Fees. If either Party commences any legal action against the other party arising out of this Agreement or the performance thereof, each Party in such action shall be responsible for its own litigation expenses, including but not limited to court costs, expert witness fees, discovery expenses and attorneys' fees.
27. No Joint Venture. It is expressly understood and agreed that neither Party shall become as a result of this Agreement a partner of the other or a joint venturer with the other Party in the conduct of such Party's business or otherwise. This Agreement is not intended, and shall not be construed, to create the relationship of principal and agent, partnership, joint venture, or association as between City and District.
28. Successors and Assigns. Subject to the restrictions on assignment set forth above, all of the terms, covenants, and conditions of this Agreement shall be binding upon City and District and their respective permitted successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have caused this Master Agreement and Lease to be lawfully executed as of the Effective Date.

HAYWARD AREA RECREATION AND PARK DISTRICT

By: _____

James Wheeler, General Manager

Date: _____

Attest: _____

Secretary, Board of Directors

CITY OF HAYWARD, a Municipal Corporation

By: _____

Kelly McAdoo, City Manager

Date: _____

Attest: _____

Miriam Lens, City Clerk

Approved as to form: _____

City Attorney for City of Hayward

Date: _____

Exhibit A: City of Hayward Park Sites Leased by the Hayward Area Recreation and Park District

EXHIBIT A: CITY OF HAYWARD PARK SITES LEASED BY THE HAYWARD
AREA RECREATION AND PARK DISTRICT

	PARK NAME	ADDRESS	ACRES	APN(S)
1	Alden E. Oliver Sports Park	2580 Eden Park Pl	24.52	456-0097-001-00
2	Bechtel Mini Park	27798 Ross Pl	0.77	452-0076-026-00, 452-0076-047-00, 452-0076-025-00, 452-0076-048-00
3	Birchfield Park*	Santa Clara St and Winton Ave	1.12	443-0005-076-00, 443-0015-001-04
4	Canyon View Park	Farm Hill Dr and Daisy Ct	5.41	081D-2081-069-00, 081D-2081-068-00, 081D-2081-070-00, 081D-1900-003-13
5	Children's Park at Giuliani Plaza	22738 Main Street	≈0.30	428-0066-049-00, part of 428-0066-045-00
6	Christian Penke Park	Tahoe Ave and Morningside Dr	4.17	456-0050-059-00, 456-0046-109-00
7	College Heights Park*	27020 Fielding Dr	1.99	081D-2086-058-00, 081D-2086-059-00
8	Douglas Morrisson Theatre*	N Third St @ Crescent Ave	0.17	415-0210-028-02
9	Eden Greenway #8*	25625 Cypress Ave	0.23	443-0075-035-02
10	Eldridge Park	Hamrick Ln and Rieger Ave	3.44	454-0070-002-00
11	Fairway Greens Park	30504 Vanderbilt St	2.47	083-0221-050-01
13	Greenbelt Park/Trails	Ward Creek Canyon	7.90	425-0350-001-01, 425-0350-001-04, 425-0350-001-02, 425-0250-037-00, 425-0250-036-00, 425-0250-035-00

14	Greenwood Park	Eden Ave & Middle Ln	3.45	441-0083-019-00, 441-0083-018-00
15	Haymont Mini Park	Colette St & Luvena Dr	0.43	452-0036-001-02
16	Hayward Area Senior Center	22325 ^N 3rd St	0.97	Part of 415-0250-001-04
17	Jalquin Vista Park	28846 Bay Heights Rd	2.89	085A-6424-007-00
18	Japanese Garden	^N 3rd St and Crescent Ave	3.60	415-0250-001-04, 415-0230-038-00, 415-0230-039-00
19	Kennedy Park	19501 Hesperian Blvd	14.53	432-0104-001-01
20	La Placita Park	El Dorado Ave at Sonoma St	≈0.20	Public Right of Way
21	Longwood Park	Leonardo Way and Reed Way	2.93	432-0056-033-00
23	Memorial Park and Hayward Plunge	24176 Mission Blvd	33.96	445-0070-015-00, 445-0140-001-00
24	Mission Hills of Hayward Golf Course*	275 Industrial Parkway West	39.09	078G-2651-017-02, 078G-2651-016-00, 078G-2651-018-02, 078G-2651-018-01, 078G-2651-006-01, 078G-2651-006-02
25	Nuestro Parquecito	E 10th and Jefferson St	2.25	452-0084-110-01, 452-0080-055-01, 452-0068-109-01
26	Palma Ceia Park	27600 Decatur Way	4.55	455-0060-032-01
27	Ruus Park	Dickens Ave and Folsom Ave	4.09	464-0040-003-00, 464-0035-013-00
28	Shoreline Park*	Breakwater Ave	≈0.10	438-0080-013-08
29	Sorensdale Park*	275 Goodwin St	12.7	452-0028-102-00, 452-0028-101-00

30	Southgate Park*	26780 Chiplay Ave	3.85	455-0024-097-00, 455-0024-001-00
32	Stratford Village Park	Stratford Rd & Canterbury Ln	2.34	464-0122-001-00, 464-0122-105-00
33	Tennyson Park*	Panjon St and Huntwood Ave	9.61	465-0001-011-02, 465-0001-009-06, 465-0001-011-01, 465-0005-009-05
35	Weekes Park and Community Center	27182 Patrick Ave	14.65	453-0050-052-01, 453-0075-004-05

*These nine parks are owned by multiple agencies. The maps below show in yellow which portions are owned by the City, and thus covered under this Agreement.

Birchfield Park



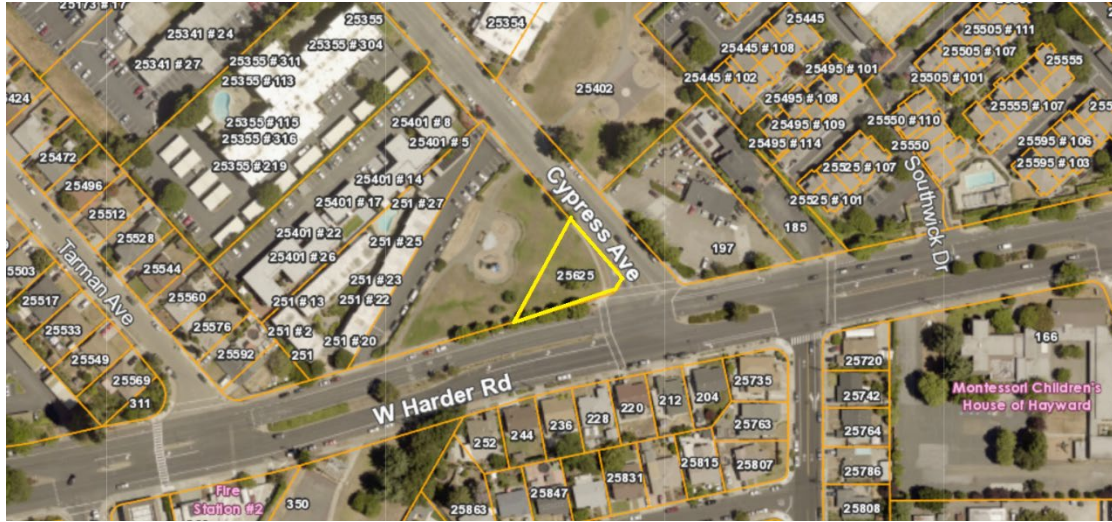
College Heights Park



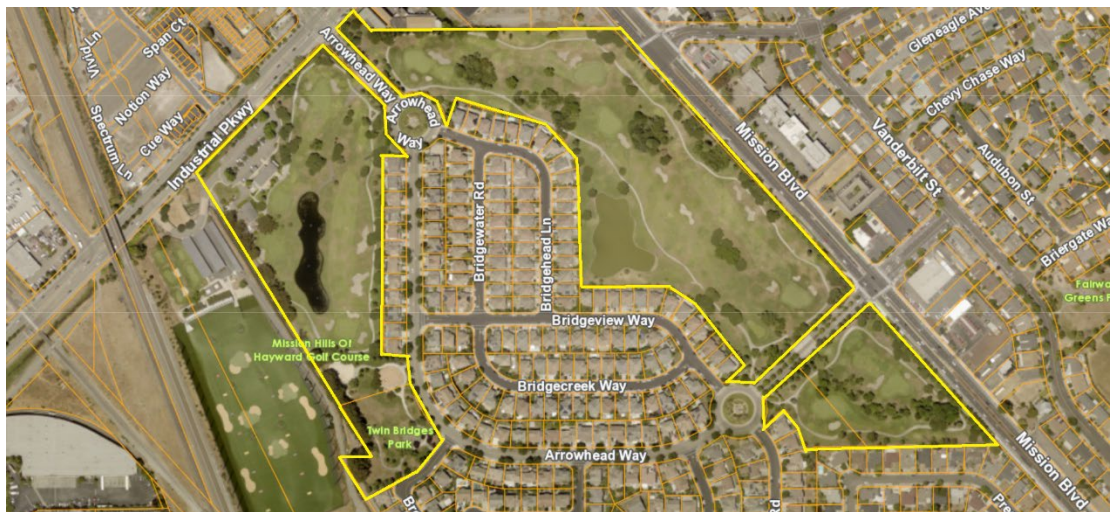
Douglas Morrison Theater



Eden Greenway #8



Mission Hills Of Hayward Golf Course and Twin Bridges Park



Shoreline



Sorensdale Park



Southgate Park



Tennyson Park

