

Mr. Ludwig

AGREEMENT AND SUBLEASE

THIS AGREEMENT AND SUBLEASE, made and entered into this first day of December, 1949, by and between the CITY OF OAKLAND, by and through its Board of Park Directors, hereinafter referred to as the City, and ALAMEDA COUNTY ECOLOGICAL SOCIETY, a non-profit corporation, hereinafter referred to as sublessee,

WITNESSETH:

WHEREAS, the State Park Commission of the State of California and the City of Oakland, a municipal corporation, did heretofore enter into an agreement and lease, a copy of which is attached hereto and made a part hereof; and

WHEREAS, it is the desire of the City to sublease the real property and the whole thereof described in said lease from State Park Commission, and in accordance with the terms and provisions of said lease from State Park Commission;

NOW, THEREFORE, in consideration of the premises, the parties hereto do agree as follows, to-wit:

1. That immediately upon the execution and delivery of this agreement in duplicate, an original to each of the parties hereto, and the execution by the State Park Commission of the State of California of a lease to the City of Oakland of the real property herein described and demised, the sublessee shall have for a period of twenty-five years from and after the date hereof the care, maintenance and control of the state park properties described in that certain Agreement and lease between the State Park Commission of the State of California and the City of Oakland, a municipal corporation, which said agreement and lease is attached hereto and made a part hereof. For the purposes set forth in said agreement and lease attached hereto and during said period of twenty-five years, sublessee shall have jurisdiction of and over said property for the purposes of developing, maintaining, controlling, using and operating the same for a public park in accordance with this agreement.

2. During the term of this sublease, sublessee agrees to perform all of the obligations of every kind, character and description agreed to be performed by the City under the terms of said agreement and lease from State Park Commission of the State of California.

3. This sublease is subject to all of the terms and provisions of said agreement and lease from the State Park Commission of the State of California.

4. Sublessee agrees to make only such charges and to expend the same only for the purposes set forth in said agreement and lease from the State Park Commission of the State of California.

5. Sublessee agrees to expend not less than fifty thousand (\$50,000.) dollars for capital improvements on the real property herein demised and described in said agreement and lease from the State Park Commission of the State of California within a period of three years after approval of the master plan provided for in paragraph 5 of said agreement and lease.

For the purpose of guaranteeing the performance of sublessee's obligation to make capital improvements as provided in this paragraph, sublessee shall, prior to the execution and delivery of this sublease, deposit with the Treasurer of the City of Oakland the sum of thirty-seven thousand and five hundred (\$37,500.) dollars, lawful money of the United States. As and when capital improvements are made by sublessee pursuant to this paragraph, sublessee shall be entitled to repayment out of said sum of thirty-seven thousand five hundred (\$37,500.) dollars, to the extent of 75% of the cost of such capital improvements, provided, however, that the total amount repaid to sublessee under the terms of this paragraph shall in no event exceed the sum of thirty-seven thousand five hundred (\$37,500.) dollars deposited by sublessee. Sublessee shall submit to the Auditor of the City of Oakland accompanying any demand for repayment such evidence of expenditures made hereunder as may be required by said Auditor to reasonably satisfy himself that sublessee is entitled to repayment.

Before undertaking any capital improvement under the terms of this paragraph, sublessee shall submit plans and specifications for such improvement to the Board of Park Directors of the City of Oakland. In the event that said Board of Park Directors of said City of Oakland, within a period of thirty days after the submission to it of such plans and specifications, shall, in the exercise of a sound and reasonable discretion, disapprove such plans and specifications in writing on the ground of structural unsoundness or non-conformity to the master plan, sublessee shall not be entitled to repayment or reimbursement under the terms of this paragraph.

Before undertaking any capital improvement not subject to the reimbursement provisions hereinabove in this paragraph set forth, and before submitting plans for the same to the State Park Commission of the State of California, sublessee shall file plans for such improvements with the Board of Park Directors of the City of Oakland.

6. Sublessee shall develop, operate and maintain the demised premises and improvements thereon as and for a public park in accordance with all of the terms and provisions of the agreement and lease from the State Park Commission of the State of California attached hereto, including a botanical garden and arboretum during the term of this sublease, and to that end shall be used for park pleasure purposes during the term hereof.

7. Sublessee shall have the right to maintain on said real property during the term of this sublease a zoological garden and other activities not inconsistent with the use of said demised premises as a public park, botanical garden and arboretum.

8. This sublease shall be of no force or effect unless the terms and provisions thereof have been approved by the State Park Commission of the State of California.

9. By mutual agreement between the City and sublessee, any part or parts of the demised premises may be quitclaimed by sublessee to the City, and thereafter all obligations of sublessee hereunder with reference to the parcels so quitclaimed shall cease.

10. The City reserves the right to enter upon the demised premises for the purpose of making and maintaining plantings and improvements in accordance with said master plan. Such entry, however, shall be made in such manner as not to substantially or seriously impair the operations of sublessee authorized hereunder.

11. Officers and representatives of the State Park Commission of the State of California and of the City of Oakland shall have the right to free admission to the demised premises at all times during the term of this sublease for the purpose of discharging their respective duties.

12. No modification of this sublease shall be effective unless approved by the State Park Commission of the State of California.

13. Sublessee agrees to pay the City as rental hereunder the sum of Twenty-Five Dollars (\$25.00) per year, payable in advance during the term hereof on the date of the execution of this sublease and each anniversary of such execution.

14. This sublease may be cancelled by mutual consent of City and sublessee, and may be forfeited and terminated in the manner provided by law for the violation of the covenants and provisions hereof.

15. The City agrees not to exercise its power of cancellation and termination provided for in paragraph 11 of the lease from the State Park Commission of the State of California during the continuance of this sublease, without the consent of sublessee or the effecting of such termination in such manner as not to terminate the rights of sublessee in and to said property.

16. Sublessee shall maintain in continuous force during the term hereof insurance policies approved by the City Attorney of the City of Oakland, non-cancellable unless at least thirty days' prior notice shall have been given to the City Manager of said City, insuring State Park Commission, said City and sublessee from any and all liability and claims for damages arising out of the operation and maintenance of said park in not less than the following sums:

Public liability - one person	\$100,000.00
Public liability - more than one person	\$200,000.00
Property damage	\$ 10,000.00

17. No plantings or improvements made by the City of Oakland or improvements made by sublessee pursuant to paragraph 5 hereof and no live tree having a trunk diameter

over ten inches measured 30 inches above ground shall be removed or mutilated without consent of the Board of Park Directors of said City.

18. Sublessee waives all claims for damages and compensation arising from acquisition or dedication of portions of said real property for widening and relocation of Mountain Boulevard.

19. The powers herein granted to the City shall be exercised by its Board of Park Directors with such action or approval by the City Council or other officers of said City as may be required by charter or law.

IN WITNESS WHEREOF, the City of Oakland by and through its Board of Park Directors has caused these presents to be executed in its behalf by the President and Secretary of said Board thereto duly authorized by Resolution No. 8393 of said Board, with the consent of the Council of said City given by Ordinance No. 3163 C.M.S., and sublessee has caused these presents to be executed in its behalf by its President and Secretary and its seal thereto duly affixed, the day and year in this agreement first above written.

Approved by the STATE PARK COMMISSION OF CALIFORNIA

CITY OF OAKLAND, a municipal corporation, by and through its Board of Park Directors,

by J. H. [Signature] Chairman By W. J. [Signature] President

by J. H. Covington Secretary By Walter [Signature] Secretary

APPROVED:

State Department of Finance APPROVED: ORIGINAL SIGNED BY Walter [Signature] Director of Natural Resources

ALAMEDA COUNTY ECOLOGICAL SOCIETY, a Non-Profit corporation, By [Signature] President

APPROVED: ORIGINAL SIGNED BY [Signature] City Attorney

By Arthur A. [Signature] Secretary

DEPARTMENT OF FINANCE APPROVED MAR 30 1950 JAMES S. DEAN, Director ORIGINAL SIGNED BY [Signature] DEPUTY DIRECTOR OF FINANCE