

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.:

24-0477

EMERALD NECKLACE CONSERVANCY, INC.)
JON BALL, BOB BARNEY, CARLA-LISA)
CALIGUA, ELEANOR CHU, JEFF COOK,)
LOUIS ELISA, DERRICK EVANS, MARJORIE)
GREVILLE, MELISSA HAMEL, ARLENE)
MATTISON, KAREN MAUNEY-BRODEK,)
JEAN MCGUIRE, BEVERLY MERZ, BEN)
TAYLOR, and RENEE WELCH,)

Plaintiffs,)

v.)

THE CITY OF BOSTON, and the TRUSTEES OF)
THE GEORGE ROBERT WHITE FUND,)
MICHELLE WU, Mayor of the City of Boston and)
Chairperson and Trustee of the George Robert)
White Fund, RUTHZEE LOUIJEUNE, Boston City)
Council President and Trustee of the George Robert)
White Fund, MAUREEN JOYCE, Boston City)
Auditor and Trustee of the George Robert White)
Fund; JAMES E. ROONEY, President and CEO of)
the Boston Chamber of Commerce and Trustee of)
the George Robert White Fund, and HANNAH L.)
KILSON, President of the Boston Bar Association)
and Trustee of the George Robert White Fund; and)
BOSTON UNITY SOCCER PARTNERS, LLC,)

Defendants.)

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2024 FEB 20 P 3:28
JOHN E. POWERS III
ACTING CLERK MAGISTRATE

VERIFIED COMPLAINT

Emerald Necklace Conservancy, Inc., a Massachusetts non-profit dedicated to the maintenance, restoration, protection, and improvement for public use of Franklin Park and the other public parks in the Emerald Necklace park system designed by Frederick Law Olmsted, and 15 individuals, including Boston residents and taxpayers (collectively, the "Plaintiffs") bring

this action against the City of Boston, the Trustees of the George Robert White Fund, a permanent public charitable trust, and Boston Unity Soccer Partners, LLC, a Delaware limited liability company and for-profit professional sports organization (collectively, the “Defendants”), to halt the pending privatization of The George Robert White Fund Stadium (“White Fund Stadium”) and approximately 3.0 acres of lands to the south and west of White Fund Stadium owned by the White Fund within Franklin Park (together with the White Fund Stadium, the “Project Site”).

Plaintiffs ask the Court to declare and protect the rights of the Plaintiffs, and all other residents of Boston, as: (1) beneficiaries under the permanent public charitable trust created by the acceptance by the City of Boston of Article Fourteenth of the Will of George Robert White (“White Fund Trust”) to the continued public use and enjoyment of the Project Site in Franklin Park, and (2) holders of constitutional rights to public parkland and public active recreation land and facilities under Article 97 of the Massachusetts Constitution.

The Project Site, a portion of Franklin Park, has been held in trust for over 74 years for the beneficiaries of the White Fund Trust—the residents of Boston. In that time, the Project Site has been used as an open space for public recreation, public school sporting events, and numerous music and cultural festivals. In 2023, the City began discussions with Boston Unity Soccer Partners, LLC to undertake a joint venture to redevelop the Project Site as the home for a professional sports team (the “Project”). The Project, if permitted to go forward, would illegally transfer the public trust lands constituting the Project Site to private parties, ensuring extensive, exclusive use of public trust lands by a private party for the operation of a professional sports team and associated uses. Although White Fund Stadium has fallen into disrepair and is in need of substantial renovations, the City has failed to consider any alternatives to the Project, all while

rapidly pushing forward the Project and ignoring the terms of the White Fund Trust and the requirements of Article 97.

The Project as proposed would not only violate the White Fund Trust and Article 97 by transferring public trust land to private use and excluding members of the public from the Project Site, including some Boston Public School sports teams who currently use White Fund Stadium, it would fundamentally alter the nature and feel of a significant portion of Franklin Park during the majority of fair weather weekends each year. Boston Unity Soccer Partners, LLC proposes to host at least 20 home games on Saturdays between April and November, causing a rapid influx of over 10,000 people on those days, and radically changing the public open space of Franklin Park, well beyond the boundaries of the Project Site, for a huge portion of summer weekend days. This does not even factor in the additional exclusive use of the Project Site during practice sessions for the professional soccer team on at least 20 additional Friday evenings, and the continuous, exclusive use of the West Grandstand buildings and the “Grove” portion of the Site by Boston Unity Soccer Partners, LLC.

The Project is progressing at an alarming speed, without many of the required elements of oversight and review expected for a development of this size and scale. The Project has failed thus far to engage in any *cy pres* review to amend the terms of the White Fund Trust; any Article 97 review before the Legislature; and any Article 80 review, for the City’s half of the Project, before the Boston Redevelopment Authority, d/b/a the Boston Planning & Development Agency (the “BPDA”), despite the City already issuing a request for qualifications to award a \$46,000,000 contract to manage the demolition and construction of its half of the Project. If allowed to continue apace, without intervention by this Court, the unlawful Project will cause irreparable harm to Franklin Park, to the White Fund Trust, and its beneficiaries, the people of

Boston, including the residents of the Environmental Justice Communities in Roxbury, Dorchester, Mattapan and Jamaica Plain surrounding Franklin Park.

PARTIES

1. Plaintiff Emerald Necklace Conservancy is a Massachusetts Chapter 180 Charitable Corporation with an place of business at 350 Jamaicaway, Boston, Massachusetts.
2. Plaintiff Jon Ball resides at 319 Forest Hill Street, #3, Boston, Massachusetts 02130.
3. Plaintiff Bob Barney resides at 463 Massachusetts Avenue, Apt. 1, Boston, MA 02118.
4. Plaintiff Carla-Lisa Caliga resides at 32 Burnett Street, #1, Jamaica Plain, Massachusetts 02130.
5. Plaintiff Eleanor Chu resides at 303 Columbus Avenue, Unit 606, Boston, Massachusetts 02116.
6. Plaintiff Jeff Cook resides at 44 Allerton Street, Brookline, Massachusetts 02445.
7. Plaintiff Louis Elisa resides at 68 Seaver Street, #2, Dorchester, Massachusetts 02121.
8. Plaintiff Derrick Evans resides at 77 Dale Street, Roxbury, Massachusetts 02119.
9. Plaintiff Marjorie Greville resides at 61 Mount Vernon Street, Boston, Massachusetts 02108.
10. Plaintiff Melissa Hamel resides at 311 Lamartine Street, Jamaica Plain, Massachusetts 02130.
11. Plaintiff Arleen Mattison resides at 209 Pond Ave, Brookline, Massachusetts 02445-7708.

12. Plaintiff Karen Mauney-Brodek resides at 531 Massachusetts Avenue #2, Boston, Massachusetts 02118.

13. Plaintiff Jean McGuire resides at 35 Dennison Street, Roxbury, Massachusetts 02119.

14. Plaintiff Beverly Merz resides at 524 Columbus Avenue, Apartment 5, Boston, Massachusetts 02118.

15. Plaintiff Ben Taylor resides at 61 Walnut Place, Brookline, Massachusetts 02445.

16. Plaintiff Renee Welch resides at 11 Beethoven Street, Roxbury, Massachusetts 02119.

17. Defendant City of Boston has a place of business at Boston City Hall, 1 City Hall Square, Boston, MA 02201.

18. Defendant Michelle Wu, Mayor of the City of Boston and Trustee of the George Robert White Fund, has a place of business at Boston City Hall, 1 City Hall Square, Boston, MA 02201.

19. Defendant Ruthzee Louijeune, President of the Boston City Council and Trustee of the White Fund Trust, has a place of business at Boston City Hall, 1 City Hall Square, Boston, MA 02201.

✓ 20. Defendant Maureen Joyce, Boston City Auditor and Trustee of the White Fund Trust, has a place of business at Boston City Hall, 1 City Hall Square, Boston, MA 02201.

21. Defendant James E. Rooney, President and CEO of the Boston Chamber of Commerce and Trustee of the White Fund Trust, has a place of business at the Boston Chamber of Commerce, 265 Franklin Street, Suite 1701, Boston, MA 02110.

22. Defendant Hannah L. Kilson, President of the Boston Bar Association and Trustee of the White Fund Trust, has a place of business at Nolan Sheehan Patten LLP, 84 State Street, Suite 940, Boston, MA 02109.

23. Defendant Boston Unity Soccer Partners, LLC (“BUSP LLC”) is a Delaware limited liability company with an address c/o Bill Keravuori, Able Company, 2235 Washington St., 2nd Floor, Boston, MA 02119.

JURISDICTION AND VENUE

24. The Court may exercise personal jurisdiction over the Defendants pursuant to G.L. c. 223A, § 2 and § 3(a).

25. Venue is appropriate in this Court pursuant to G.L. c. 214, § 5, G.L. c. 214, § 7A and G.L. c. 223, § 1.

26. This action is within the general subject matter jurisdiction of this Court pursuant to G.L. c. 214, § 5, G.L. c. 214, § 7A and G.L. c. 223, § 1.

FACTS

Public Ownership of the Project Site, including White Fund Stadium, by the White Fund Trust And 74-Year Use By the Public

27. Article Fourteenth of the Will of George Robert White (the “Will”) directs that “I do now give all the rest and residue of my property of every nature to the City of Boston, to be held as a permanent charitable trust fund known as the George Robert White Fund.” A copy of the Will is attached hereto as **Exhibit A**. Under the Will, Defendants Wu, Louijeune, Joyce, Rooney, and Kilson (collectively, “Trustees of the White Fund Trust”) are each a Trustee of the White Fund Trust *ex officio* due to their positions as Mayor, City Council President, City Auditor, President of the Boston Chamber of Commerce, and President of the Boston Bar Association.

28. The Will further directs, in pertinent part, that the net income from the White Fund Trust is “only to be used for creating works of *public* utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston” (emphasis added). Additionally, while the Will provides that any “work or works established from the Fund may be improved, extended, enlarged or added to from time to time” it also provides that “the current expense of their care and maintenance shall be borne by the City” and that “*no part of said income shall be mingled with other funds or applied in joint undertakings*; but that each work established under this gift shall be separate and distinct, and shall always bear in a conspicuous place a suitable inscription identifying it as erected or established from said George Robert White Fund” (emphasis added). Finally, the donor specifically noted his vision for public works including “a forum of substantial proportions for *public* gatherings, etc.” when he established the Trust (emphasis added). The terms of the Will were accepted by the City of Boston.

29. By instrument dated November 14, 1947 and recorded with the Suffolk Registry of Deeds in Book 6386 at Page 582 (the “Transfer Instrument”), the City transferred approximately fourteen (14) acres of land within Franklin Park to “the City of Boston – George Robert White Fund, a municipal corporation in the Commonwealth of Massachusetts, in its capacity as a public charitable trustee and for the purpose of the establishment of a stadium on said land.” The Transfer Instrument states that the White Fund Trust paid \$20,000 for the 14-acre parcel. A copy is attached hereto as **Exhibit B**.

30. Shortly after the transfer of the 14-acre parcel in 1947 to the White Fund Trust, the City, using funds from the White Fund Trust in the amount of approximately \$1.24 Million, constructed White Fund Stadium, a sports stadium with about 10,000 seats. White Fund Stadium was completed in 1949. Since 1949, as required by the terms of the Will and as directed by the

City of Boston, the operating costs of White Fund Stadium have been the responsibility of the Boston Public Schools.

31. The City of Boston Assessor's records show that the White Fund Trust is still the current record owner of the same 14-acre parcel, within which the Project Site including White Fund Stadium is located. A title search through the close of business on Friday, February 16, 2024, does not reveal any transfer of any portion of the 14-acre parcel out of the White Fund Trust, including the Project Site.

32. White Fund Stadium has been designated as a historic Landmark by the City Landmarks Commission pursuant to Chapter 772 of the Acts of 1975. Additionally, all of Franklin Park, which includes the Project Site, is listed on the National Park Services' National Register of Historic Places.

33. Since its completion, the 14-acre parcel including the Project Site and White Fund Stadium, has been used by the City for public recreational and public athletics use, including a) Boston Public School athletics, including football, cheerleading, track and field, cross-country, and soccer practices, matches, and games, b) in mid-June for graduation and moving-on ceremonies; c) an annual White Fund Stadium Sports Camp that provides free summer camp for youth aged 7-14, operated by Boston Centers for Youth & Families; d) for other public recreational activities, such as public basketball courts, public tennis courts, and public amateur soccer, and e) for numerous weekend music, cultural and community festivals and gatherings.

Project To Unlawfully Convert Property From Public To Private Use

34. Notwithstanding the terms of the Will and the ownership of the Project Site by the White Fund Trust, as well as the use of the Project Site for public recreational and athletic uses described above for over 74 years, in 2022 or 2023, the City began discussions with BUSP LLC

to undertake a joint venture to redevelop the Project Site, including the White Fund Stadium, for use by a for-profit professional sports team (the “Project”). The City then issued a “Request for Proposals for Lease of the West Grandstand and Adjacent Areas of White Stadium in Private-Public Partnership to Achieve City’s Comprehensive Stadium Renovation Plan to Serve Boston Public School Athletics” on or about April 25, 2023 (“RFP”) for the Project. A copy of the RFP is attached hereto as **Exhibit C**.

35. In the RFP, the City acknowledged that the Project Site, including the White Fund Stadium, has hosted a range of athletic, music, community, and cultural events throughout its history, including Black Panther rallies and an Elma Lewis School of Fine Arts-organized concert in the 1970s; additionally, the Project Site currently hosts the annual Boston Arts & Music (“BAMS”) Festival every June, and serves as the finish line for the Boston Athletic Association Half Marathon every November. *See Ex. C, pg. 11.*

36. As described in the public filings, presentations, and related documents produced by BUSP LLC and the City, including a Project Notification Form filed by BUSP LLC on December 18, 2023 under Article 80 of the City of Boston Zoning Code for its portion of the Project (the “PNF”), the Project would segment roles between BUSP LLC and the City.¹

37. Specifically, BUSP LLC’s portion of the Project proposes to redevelop and significantly expand the built conditions of two portions of the Project Site: (1) demolishing and rebuilding the West Grandstand portion of the White Fund Stadium, and (2) constructing at least two new buildings and gaining exclusive use of thousands of feet of what is currently open space public trust land located south and west of the White Fund Stadium. The City’s portion of the

¹ A copy of the PNF, which is over 300 pages long, can be found on the BPDA’s website for the Article 80 Review of BUSP LLC’s portion of the Project, found here: <https://www.bostonplans.org/projects/development-projects/white-stadium> and specifically the PNF can be found here: <https://bpda.app.box.com/s/qmgi7fbuyxuova9dcsxnh7foifjeywff>

Project focuses on demolishing and substantially expanding the East Grandstand of the White Fund Stadium and renovating the White Fund Stadium playing field. Graphics from a Community Meeting held on February 12, 2024 shows the segmentation of the Project between BUSP LLC and the City, as well as the approximate boundaries of the Project Site, are attached hereto as **Exhibit D.**²

38. BUSP LLC's redevelopment of the West Grandstand includes: demolition of the existing West Grandstand, except the exterior clamshell wall; and construction of a new West Grandstand building with bucket seats extending well beyond the existing foot print on both ends; adding a massive roof canopy extending as much as 25 feet above the existing structure in some areas; and building, for its private use, professional team office space, multiple professional athlete locker rooms, a professional athlete interview room, a press support media room, fourteen (14) corporate suites, a corporate suite level midfield Terrace, a large "Tunnel Club Lounge," a main kitchen, a catering kitchen, at least four (4) "Team Facilities" rooms, team storage space, an additional administrative staff room, a press box, and various utility and mechanical equipment rooms (collectively the private use areas within the West Grandstand are the "Private Professional Soccer Team Facilities.")

39. BUSP LLC's other portion of the Project would include development of a substantial leased area in the "Grove" area south and west of the Stadium—an area that is currently open space—including the construction of two new buildings, a beer garden, a bar, retail stores, and storage space; a large, lit scoreboard; the construction of additional mobile seating at the north and south ends of the Stadium; an entry plaza, including pylons, lighting, and

² See also: <https://www.boston.gov/education/white-stadium>

fencing; and the construction of extensive new paved accessways and pathways (collectively, “the Grove”), all primarily if not exclusively for the private use and profit of BUSP LLC.

40. The City has failed thus far to file a Project Notification Form under Article 80 of the Boston Zoning Code for its portion of the Project. However, some information regarding the City’s role in the Project can be gleaned from existing project documents. They reveal that the City’s redevelopment of the Stadium would include the demolition of the existing East Grandstand and the construction of a new Grandstand with new building additions.

41. Various project documents state that the City would contribute approximately \$50,000,000 to the Project, and BUSP LLC would contribute approximately \$30,000,000 to the Project.

42. Despite paying for only 3/8 of the Project costs, BUSP LLC and its affiliated entity, Grove Operating Company LLC, would have exclusive, full-time private use of the interior of the Private Professional Soccer Team Facilities located in the new West Grandstand and the Grove development just south and west of the White Fund Stadium via the proposed leases and accompanying agreements from the City, *i.e.* license agreements and joint-use agreements.

43. Furthermore, BUSP LLC and its affiliates would have extensive, exclusive use of the entire Project Site, including the East Grandstand and playing field that is not leased to BUSP LLC, during at least twenty (20) weekend days, and likely for an additional 20 practice sessions on Friday evenings. These home games would take over the entire Project Site—all of White Fund Stadium and acres of land that surround it—for private use on roughly 77% of Saturdays in the warmer months of April to November, bringing an influx of at least 10,000 people into the otherwise free, local, community-oriented public space of Franklin Park, precisely during peak

season when community demand for recreation in Franklin Park is at its highest. All Boston Public School regular season home football games, historically held in White Fund Stadium, would be evicted. The City’s RFP further states that school and public use of the Stadium is heaviest in the fall, conflicting with the professional soccer season and these other activities. *See* Ex. C, pg. 13.

44. The City has made it clear that BUSP LLC’s privately owned and operated professional soccer games will take priority over many competing public uses. In a response to questions raised during the Article 80: Large Project Review community meeting held on January 11, 2024, the City wrote: “The City will work closely with organizations that host events in the stadium, on the playstead, and on cross country courses to ensure they do not conflict with Boston Unity games.” *See* Article 80 Q&A from January 11, 2024, attached hereto as **Exhibit E**, at p. 2.

The City Has Pushed The Transfer From Public To Private Use At a Breakneck Pace

45. The City has coordinated with BUSP LLC to permit and execute the Project at an extraordinarily fast pace, beginning with the RFP issued on or about April 25, 2023. In response, BUSP LLC—the only respondent—submitted its Technical Proposal on June 26, 2023. This coordinated effort then proceeded through the following steps in a little over seven (7) months:

- i) on July 31, 2023, the City selected BUSP LLC as conditional Designee under the RFP process;
- ii) on November 28, 2023, BUSP LLC filed a Letter of Intent to File Project Notification Form for the Project with the BPDA;
- iii) on December 11, 2023, the BPDA published information regarding proposed amendments to Open Space zoning provisions of the Boston Zoning Code and Zoning Map. These amendments would convert the Site from “Open Space – Recreation” zoning use to “Open Space – Stadium” zoning use and include

- provisions which would allow, despite the “Open Space” designation, the construction and use of structures on the Project Site for retail and entertainment facilities, and restaurants serving alcohol and food, all without zoning limits as to the number, size, height, capacity, or location of structures on the Project Site;
- iv) on December 18, 2023, BUSP LLC filed the PNF for Article 80 review of only its portion of the Project, which asserts that BUSP LLC has site control from a private [sic] trust through the City’s conditional designation mentioned above;
 - v) on December 19, 2023, the BPDA held a public meeting regarding “Proposed Amendments to Open Space Zoning to Create a New Open Space Stadium (OS-S) Subdistrict and to Redistrict the 14 acres owned by City of Boston – George Robert White Fund in Public charitable trust from Open Space Park (OS-P)” and to allow as-of-right use of the OS-S subdistrict for retail, restaurant with alcohol and entertainment uses as part of an as-of-right private Stadium use, during which only 15 minutes were allowed for public questions and comments;
 - vi) on January 8, 2024, the BDPA closed the first public comment period on the PNF;
 - vii) on January 11, 2024, the BPDA held a public meeting on BUSP LLC’s PNF for the segmented west half of the Project;
 - viii) on January 23, 2024, the City Landmarks Commission opened a public meeting for design review of the BUSP LLC portion of the Project;
 - ix) on January 25, 2024, the City issued a Request for Statements of Qualifications (“RFQ”) to bid for the City portion of the Project, i.e., to manage demolition, rebuilding, and expansion of the East Grandstand and playing fields of White Fund Stadium, at the cost of \$46,000,000, which stated that applications for the required submission were available on January 22, 2024 and were due on February 7, 2024³;
 - x) on January 29, 2024, the City Parks Commission opened a public hearing on the BUSP LLC portion of the Project; and

³ See: <https://www.boston.gov/bid-listings/project-7278-0>

- xi) on February 12, 2024 the City opened a public meeting regarding the Project's impact on the Franklin Park Action Plan, which did not envision bringing a professional sports team into Franklin Park.

The City also scheduled a Zoning Commission hearing regarding the amendments to rezone the Site described in subparagraph (iii) above for February 14, 2024, which it postponed, but could reschedule at any time.

46. The City has further indicated that it will award a contract to manage demolition of the East Grandstand portion of the Project Site on February 20, 2024, as a part of the RFQ described in paragraph 21 (ix), despite the White Fund Stadium's designation as a historic Landmark by the City Landmarks Commission pursuant to Chapter 772 of the Acts of 1975, and the absence of any public review proceedings of the demolition or the City's Project redevelopment plans, whether before the BPDA under Article 80 of the Boston Zoning Code, the City Landmarks Commission, or the City Parks Commission.

47. Upon information and belief, according to the statements by City officials, the City intends to execute a 10-year lease with two 10-year options to extend with BUSP LLC, along with licenses and/or appurtenant rights for similarly long terms to BUSP LLC for the Project Site on or before March 24, 2024.

48. On information and belief, BUSP LLC intends to pay a non-refundable deposit of \$53,000,000 to the national league this spring to secure its right to field a professional sports team at the Project Site.

49. The City and BUSP LLC intend to complete the Project in time for professional team games to start in the new Stadium in the spring of 2026.

COUNT I
Declaratory Judgment For Violation of Public Charitable Trust
(City of Boston and the Trustees of the White Fund Trust)

50. Plaintiffs hereby incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

51. The White Fund Trust is a public charitable trust created in 1922 by the Will, and the City's acceptance, which states that the net income from the White Fund Trust is "only to be used for creating works of public utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston."

52. The acceptance of the bequest by the City constituted a contract between the estate of George Robert White and the City. *Salem v. Attorney Gen.*, 344 Mass. 626, 631 (1962) (acceptance of grant by city constituted a contract between the donor and the donee which must be observed and enforced).

53. The City transferred the Project Site to the White Fund Trust by Transfer Instrument on November 14, 1947, recorded with the Suffolk Registry of Deeds at Book 6386, Page 582. The City's transfer of the Project Site to the White Fund Trust on November 14, 1947 caused the Site to be irrevocably subject to the terms of the White Fund Trust.

54. The contract between the City and the estate of George Robert White requires the City to devote the Project Site, including White Fund Stadium, to the use and enjoyment of the public, specifically the inhabitants of Boston, not for private benefit.

55. According to the Project documents, the lease and appurtenant agreements would provide BUSP LLC with exclusive, year-round and full-time private use of the interior of the new West Grandstand building to manage and operate its professional sports business. Additionally, BUSP LLC's would be allowed to build two new buildings on what is currently

open space south and west of the White Fund Stadium and gain exclusive, year-round and full-time private use of that portion of the Project Site referred to as the “Grove.”

56. BUSP LLC would have extensive, exclusive, and private use of the entire Project Site, including all of White Fund Stadium and its playing field, on at least 20 game days a year, as well as at least 20 additional practice sessions each year, driving over 10,000 professional sports team fans to the Project Site on game days and radically changing the nature of Franklin Park, as well as continual private use of the adjacent facilities in the Grove for its retail and restaurant activities in conjunction with its for-profit professional sports team.

57. This Court should declare that the Project violates the White Fund Trust, a public charitable trust, because it converts the Project Site to private uses set forth above.

58. This Court should further declare that the City and the Trustees of the White Fund Trust cannot legally transfer any control of the Project Site, being public trust property, to the private, for-profit BUSP LLC and related entities because that would convert the White Fund Stadium and adjoining land to private uses listed above.

59. The City and Trustees of the White Fund Trust’s pursuit of the Project is a breach of the contract with the donor and a breach of their fiduciary duties to the residents of Boston.

COUNT II

Declaratory Judgment For Violation of Massachusetts Constitution Amendment Article 97 and The Public Lands Preservation Act, G.L. c. 3, § 5A (All Defendants)

60. Plaintiffs hereby incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

61. Under Article 97 of the Articles of Amendment to the Massachusetts Constitution (Article 97), twice approved by the legislature, and ratified by Massachusetts voters in 1972, lands and easements taken or acquired for conservation purposes shall not be used for other

purposes or disposed of without the approval of two-thirds roll call votes of each branch of the state legislature.

62. Under The Public Lands Preservation Act, G.L. c. 3, § 5A, enacted by the state legislature in furtherance of Article 97, public entities, including municipalities which seek to use public land for another purpose, must submit an alternatives analysis and other analyses, valuations, and documentation to the Secretary of Energy and Environmental Affairs for her consideration, which shall then accompany the petition to the state legislature.

63. In determining whether Article 97 state constitutional protections apply to land held by state and municipal entities for open space and recreational purposes, the court need only consider if the property was designated for those purposes in a manner sufficient to invoke Article 97 protections. Designation can occur through eminent domain taking, recording of a deed restriction, under the prior public use doctrine, or under long-term public use. The prior public use doctrine protects public lands and parks under Article 97 where the intent to dedicate the land as such is manifested by unequivocal declarations or acts of the owner which are accepted by the public. *Smith v. City of Westfield*, 478 Mass 49 (2017) (property used as a little league baseball fields and a playground for sixty years was subject to Article 97 process before it could be used by city as a school); *see also Opinions of the Attorney General*, No. 45, dated June 6, 1973, P.D 12, pp. 142-47 (attached hereto as **Exhibit F**).

64. By the 1947 Transfer Instrument, the City unequivocally dedicated the Project Site for use by the public as a public recreational stadium, and the public accepted the use of the Project Site for public recreational purposes by using the Project Site in this manner for over 74

years. Additionally, the City on page 113 of its 2023-2029 Open Space and Recreation Plan listed White Fund Stadium as protected by Article 97⁴.

65. Any transfer of Article 97 land, such as the lease or grant of similar license and joint-use agreements for the Project Site to private entities like BUSP LLC and its affiliates, would illegally dispose of Article 97 property.

66. By the 2023 conditional designation of BUSP LLC, the City delegated to BUSP LLC compliance with Article 97.

67. As a result, this Court should declare that the Project is subject to the requirements of the Article 97 process, including without limitation the submission of required materials to the Massachusetts Secretary of Energy and Environmental Affairs in accordance with G.L. c. 3, § 5A, and petitioning for the requisite vote in the state legislature, and the City, the Trust and BUSP LLC should be enjoined from proceeding with the Project unless and until those requirements have been satisfied.

COUNT III
(Equitable/Declaratory Relief pursuant to M.G.L. c. 214, s. 7A)
(All Defendants)

68. Plaintiffs hereby incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

69. The Project proposes to demolish the majority of White Fund Stadium, a designated historic space, as well as dispose of or alter the entirety of the Project Site, which is a portion of Franklin Park, and therefore would constitute impairment of open spaces, natural areas, and parks under G.L. c. 214, s. 7A.

⁴ See: <https://www.boston.gov/departments/parks-and-recreation/updating-seven-year-open-space-plan>

70. As a result of Defendants' proposed Project and failure to engage in the Article 97 process, including submission of an alternatives analysis and required materials to the Massachusetts Secretary of Energy and Environmental Affairs in accordance with G.L. c. 3, § 5A, they have failed to fully and properly examine the environmental impacts of the Project.

71. As a result of Defendants' actions, damage to the environment is about to occur, and this Court should restrain Defendants from causing such damage.

COUNT IV
(Preliminary/Permanent Injunctive Relief)
(All Defendants)

72. Plaintiffs hereby incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

73. The City of Boston, the Trustees of the White Fund Trust, and BUSP LLC should be enjoined from proceeding with their Project because it violates the purpose of the White Fund Trust, which requires the Site to be reserved for public use.

74. Specifically, the Defendants should be enjoined from:

a. Entering into any agreement transferring control of any portion of the Project Site to BUSP LLC and its affiliates, including any lease or related rights, licenses or joint-use arrangements, which would grant BUSP LLC and related entities the right to build upon and exclusively control and use the West Grandstand of the White Fund Stadium and the Grove site, as well as the right to control and use the entire Project Site for certain purposes for significant periods of time on Fridays and Saturdays from April - November, all in violation of the White Fund Trust;

b. Failing to comply with the Article 97 process, including without limitation engaging in the required alternatives analysis and legislative votes;

c. Continuing with the Request for Quotations (“RFQ”) for bids for construction management of the City portion of the Project, including management of the demolition, rebuilding, and expansion of the East Grandstand of the White Fund Stadium; and

d. Failing to engage in Article 80 review before the BPDA for the City’s portion of the Project.

75. Plaintiffs have a likelihood of success on the merits and will suffer irreparable harm if the Project is not enjoined, as the City intends to swiftly commence demolition of the East Grandstand—a designated historic landmark—and to enter into a lease and/or agreements with BUSP LLC and its affiliates transferring public trust lands to exclusive private use.

REQUESTS FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that the Court enter judgment in their favor:

1. Entering a declaratory judgment that that the Project violates the White Fund Trust because it converts the Project Site to private uses set forth above;
2. Entering a declaratory judgment that the City and the Trustees of the White Fund Trust cannot legally transfer any possession of, control of, or right to use the Project Site to BUSP LLC and its affiliates, which would violate the White Fund Trust;
3. Entering a declaratory judgment that Project is subject to the requirements of the Article 97 process, including submission of an alternatives analysis and other required materials to the Massachusetts Secretary of Energy and Environmental

Affairs in accordance with G.L. c. 3, § 5A, and petitioning for the required votes in the state legislature;

4. Entering an injunction barring the City and Trustees of the White Fund Trust from transferring any portion of the Project Site to any private entity, including BUSP LLC and its affiliates;
5. Entering an injunction barring Defendants from proceeding with the Project unless and until the requirements of Article 97 have been satisfied; and,
6. Granting such additional relief as is fair and just.

VERIFICATION

I, Karen Mauney-Brodek, as President of the Emerald Necklace Conservancy, have read the foregoing Verified Complaint, and, knowing the contents thereof, have found that the allegations of fact set forth therein are based on my own personal knowledge and are true, except as to those allegations stated to be based on information and belief, which I believe to be true, and that no material facts have been omitted therefrom.

Signed under the penalties of perjury this 20th day of February 2024.

/s/ Karen Mauney-Brodek
Karen Mauney-Brodek
President of the Emerald Necklace Conservancy

(Signed with approval)
/s/ Edward V. Colbert III
Edward V. Colbert III (BBO # 566187)

EMERALD NECKLACE CONSERVANCY, INC., JON BALL, BOB BARNEY, CARLA-LISA CALIGUA, ELEANOR CHU, JEFF COOK, LOUIS ELISA, DERRICK EVANS, MARJORIE GREVILLE, MELISSA HAMEL, ARLENE MATTISON, KAREN MAUNAY-RODEK, JEAN MCGUIRE, BEVERLY MERZ, BEN TAYLOR, and RENEE WELCH,

By their Attorneys,

/s/ Edward V. Colbert III
Edward V. Colbert III (BBO # 566187)
Caitlin Romasco (BBO # 684594)
Alana V. Rusin (BBO # 681826)
CASNER & EDWARDS LLP
303 Congress Street
Boston, MA 02210
(617) 426-5900
Colbert@casneredwards.com
Romasco@casneredwards.com
Rusin@casneredwards.com

Date: February 20, 2024

EXHIBIT A

ARTICLE FOURTEENTH: Whereas my sister Mary E. Sullivan has died, and I have otherwise provided for my sister Harriet J. Bradbury, I do now carry out by immediate gift my public charitable purpose which in previous wills I [7] had provided for in remainder, and I do now give all the rest and residue of my property of every nature to the City of Boston, the same to be held as a permanent charitable trust fund to be known as the George Robert White Fund, and the net income only to be used for creating works of public utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston. It is my intention that no part of said income, however, shall be used for a religious, political, educational or any purpose which it shall be the duty of the City in the ordinary course of events to provide.

The control and management of said Fund and the disbursement of the income shall be in the hands of a board of five trustees to consist of the Mayor, who shall be its chairman, the President of the City Council, the City Auditor, the President of the Chamber of Commerce and the President of the Bar Association of the City of Boston. If by the reason of the abolition of any one or more of these offices or the declination or resignation of any one or more of the persons holding them for the time being a vacancy or vacancies shall occur, I direct that such vacancies shall be filled by the remaining members of the board, by the election of the persons whose respective positions and duties shall in the opinion of the board most nearly correspond therewith. As this is a public charitable gift to the City of Boston, it is my

intention that the [8] City shall at all times be officially represented by a majority of the board of trustees charged with its management.

The business of the Fund shall be transacted through the regular departments of the City, viz. the Treasurer, Auditor, Corporation Counsel, etc., and a suitable office or offices for the use of the trustees shall be provided for them by the City in the City Hall or elsewhere, in which shall be kept all books and records of every nature relating to the management of the Fund, properly indexed and readily accessible during business hours for the reasonable inspection of citizens, so that all who so desire may have full knowledge of the conduct of the business of the Fund. I direct that said income shall not be anticipated or pledged beyond the amount actually in hand, but it may be accumulated for any purpose within the scope of the gift, and successive accumulations may be applied to the same object. Any work or works established from the Fund may be improved, extended, enlarged or added to from time to time, but the current expense of their care and maintenance shall be borne by the City. I also direct that no part of said income shall be mingled with other funds or applied in joint undertakings; but that each work established under this gift shall be separate and distinct, and shall always bear in a conspicuous place a suitable inscription identifying [9] it as erected or established from said George Robert White Fund. If for any reason the principal of said Fund shall at any time become impaired, the income shall be allowed to accumulate until such impairment shall have been made good.

Inasmuch as I believe an enlightened public opinion to be the most effective safeguard for the preservation and maintenance of

such a charitable fund and the best guide to its effective use, I direct that at least once a year the trustees shall cause to be published in most if not all of the daily newspapers of general circulation in Boston a full and comprehensive report, duly audited, and signed and sworn to by at least three of their number, setting forth the receipts, disbursements and investments of the Fund and a copy of this fourteenth article of my will establishing it.

In order to diminish the chance of hasty or unconsidered action in the expenditure of income, I believe that no substantial expenditure should be made for any purpose until it shall have been under consideration by the trustees for at least three months.

As it is probable that said Fund will consist in greater part of real estate centrally situated in the City of Boston which is reasonably sure to increase in value, I urgently recommend that such real estate be not sold for a period of at least one hundred (100) years, that leases of the same [10] shall be subject to revaluations as a basis of rentals every ten (10) years and where necessary shall provide for rebuilding by the lessees, that the real estate shall not be mortgaged, and the buildings thereon shall be kept fully insured.

If any clause or provision of the foregoing charitable gift should be found to be invalid in law, it shall not invalidate the gift as a whole but shall so far as possible be construed as an expression of my general intent.

While I think that Boston has now few, if any, superiors in beauty and in the many privileges it affords to its citizens, yet I believe it has greater possibilities for the future, and there are several public blessings among those afforded by other cities,—

such as a zoological garden and handsome buildings therefor, an aquarium, a forum of substantial proportions for public gatherings, etc.—which we do not possess. It is with such things as these in mind that I have established the foregoing trust fund.

I can conceive that pressure might be brought to bear to use the income of this Fund for small and comparatively unimportant needs, which might be equally deserving and technically within the general scope of the Trust as heretofore expressed. A use of it for such purposes to any substantial extent would be contrary to my intention, which is that its income, accumulated if need be for a time long enough to make it sufficient, should [11] be used only for important civic improvements.

I suggest that printed copies, in convenient pamphlet form of this the fourteenth article of my will be kept at the office of the trustees of the Fund for free distribution to citizens of Boston.

I request that the trustees named in this article shall annually designate one of their number who shall visit and inspect my lot in Forest Hills Cemetery in the months of April and September of each year, and report to the board any neglect or failure to comply with the provisions of the contract of perpetual care, as well as Article First of this my will, in regard to the care of said lot, and it shall be the duty of said trustees to see that such neglect or lack of care be remedied without delay.

EXHIBIT B

6386 582

WHEREAS by an order passed In City Council of the City of Boston October 27, 1947 and passed again November 10, 1947 and approved by the Temporary Mayor of the City of Boston November 12, 1947 the Temporary Mayor of the City of Boston was authorized in the name and behalf of the City of Boston to transfer to the City of Boston - George Robert White Fund by an instrument in writing satisfactory in form to the Law Department of the City of Boston a parcel of land within Franklin Park containing approximately 609,840 square feet or 14 acres for the purpose of the establishment of a stadium on said land by the George Robert White Fund and upon the consideration of the payment to the City of Boston by said Fund of the sum of \$20,000, the fair cash value of said land. (A copy of said order is hereto attached and made a part of this instrument.)

NOW, THEREFORE, the City of Boston, a municipal corporation in the Commonwealth of Massachusetts, in consideration of the sum of twenty thousand dollars (\$20,000.) to it paid, the receipt whereof is hereby acknowledged, does hereby transfer to the City of Boston - George Robert White Fund, a municipal corporation in the Commonwealth of Massachusetts, in its capacity as a public charitable trustee and for the purpose of the establishment of a stadium on said land, a certain parcel of land within Franklin Park containing approximately 609,840 square feet or 14 acres as shown on a plan attached hereto and made a part of this instrument and marked "Plan Showing Land to be Transferred by City of Boston - Park Department to City of Boston - George Robert White Fund, City of Boston, Franklin Park, West Roxbury, October 16, 1947, Thomas F. McGovern, Chief Engineer, Street Laying-Out Department".

IN WITNESS WHEREOF the City of Boston has caused its corporate seal to be hereto affixed and these presents to be signed in its

6386 583

name and behalf by John B. Hynes, Temporary Mayor of the City of Boston this *fourteenth* day of *November* 1947.

City of Boston
By *John B. Hynes*
Temporary Mayor.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Boston, Mass. *November 14, 1947.*

Then personally appeared the above-named John B. Hynes, Temporary Mayor of the City of Boston, and acknowledged the foregoing instrument to be the free act and deed of the City of Boston.

Before me,

Andrew J. McFadden
Notary Public
Notary of the Town
My commission expires: *Dec. 24, 1947*

Approved as to form:

Joseph Albouk
Corporation Counsel,
City of Boston.

6386 584

CITY OF BOSTON
IN CITY COUNCIL

RECEIVED

NOV 13 1947

RECORDED 10 To 6

WHEREAS the City of Boston owns in fee Franklin Park, a public park in the West Roxbury District of the City of Boston, containing an area of approximately 23,000,000 square feet or 528 acres; and

WHEREAS the City of Boston - George Robert White Fund has selected within Franklin Park an area of approximately 14 acres as a site for the establishment of a stadium by the George Robert White Fund and has requested that the said parcel of land be transferred by the City of Boston to the City of Boston - George Robert White Fund, and has offered to the City of Boston the sum of \$20,000 as the fair cash value of said land; and

WHEREAS the Board of Park Commissioners of the City of Boston recommends that the request and offer of the City of Boston - George Robert White Fund be accepted and that the selected parcel of land be transferred by the City of Boston to the City of Boston - George Robert White Fund for the sum of \$20,000., the fair cash value of said land; now, therefore, it is hereby

ORDERED: That His Honor the Temporary Mayor of the City of Boston be and he hereby is authorized in the name and behalf of the City of Boston to transfer to the City of Boston - George Robert White Fund by an instrument in writing satisfactory in form to the Law Department of the City of Boston a parcel of land within Franklin Park containing approximately 609,840 square feet or 14 acres for the purpose of the establishment of a stadium on said land by the George Robert White Fund and upon the consideration of the payment to the City of Boston by said Fund of the sum of \$20,000., the fair cash value of said land. The parcel of land to be transferred is shown on a plan marked "Plan Showing Land To be Transferred by City of Boston - Park Department to City of Boston - George Robert White Fund" "City of Boston, Franklin Park, West Roxbury, October 16, 1947, Thomas F. McGovern, Chief Engineer, Street Laying-Out Department".

In City Council October 27, 1947. Read once and passed -
yeas nineteen, nays none.

In City Council November 10, 1947. Read a second time and
again passed - yeas fifteen, nays none.

Approved by the Temporary Mayor November 12, 1947.

Attest:

M. J. Malloy

Nov. 24, 1947. At 2 o'clock & 51 mins. P.M. Rec'd. Ent'd. City Clerk & Exam'd.

EXHIBIT C

THE CITY OF BOSTON
BOSTON PUBLIC SCHOOLS

REQUEST FOR PROPOSALS FOR
LEASE OF THE WEST GRANDSTAND AND ADJACENT AREAS OF WHITE STADIUM
IN PUBLIC-PRIVATE PARTNERSHIP TO ACHIEVE CITY'S COMPREHENSIVE
STADIUM RENOVATION PLAN TO SERVE BOSTON PUBLIC SCHOOL ATHLETICS



Event # EV00012353

Response Deadline: June 26, 2023

Dion Irish, Chief of Operations, City of Boston

Michelle Wu, Mayor

TABLE OF CONTENTS

I. ADVERTISEMENT

II. INTRODUCTION & INSTRUCTIONS

III. PROPERTY DESCRIPTION AND USAGE

IV. PUBLIC PRIVATE PARTNERSHIP OBJECTIVES & PRINCIPLES OF PARTNERSHIP

V. SUBMISSION REQUIREMENTS

VI. EVALUATION OF PROPOSALS AND SELECTION CRITERIA

VII. TERMS AND CONDITIONS

Appendix A. Stadium Usage Details

Appendix B. White Stadium Existing Conditions Aerial - Showing Leased Premises

Appendix C. White Stadium Existing Conditions Plan - Showing Leased Premises

Appendix D. Additional Lease Terms and Conditions

I. ADVERTISEMENT

**ADVERTISEMENT
CITY OF BOSTON
BOSTON PUBLIC SCHOOLS
REQUEST FOR PROPOSALS**

Event ID # EV00012353

The City of Boston ("City") and the Boston Public Schools ("BPS"), acting by and through the Public Facilities Department invites sealed proposals from interested and qualified firms for an up-to 10 year lease term with potential renewals to lease, improve and use the West Grandstand and adjacent areas of George Robert White Schoolboy Stadium in Franklin Park ("White Stadium") as part of a public private partnership to fully renovate, rebuild, and reimagine White Stadium as the home of Boston Public Schools athletics and a better resource for students, families, and the community. Anticipated term date for the lease is expected to commence at or around July 1, 2024.

Additional information, requirements, terms and conditions and all other related information is set forth in the Request for Proposal Documents (Documents) which may be obtained from the City's purchasing website and Supplier Portal, (<http://www.cityofboston.gov/procurement>) under **Event ID** EV00012353

For information regarding this RFP, contact:

Morgan McDaniel
Deputy Chief of Operations
morgan.mcdaniel@boston.gov
617.635.2487

All proposals shall be submitted in strict conformance with the instructions contained in the RFP document. Proposals shall be submitted in strict compliance with this RFP no later than June 26, 2023 at 4:30 PM.

All questions shall be submitted to the City no later than June 2, 2023 by 12:00 pm. Answers to questions shall be posted via an addendum no later than June 9, 2023.

The City will host a tour of the stadium for interested potential proposers on May 5, 2023 at 10:00 am.

Requests for Proposals shall be available on or about April 25, 2023.

II. INTRODUCTION & INSTRUCTIONS

2.1 Overview & Objective

White Stadium is a school athletic stadium that also hosts City and community events. The Stadium has served as a home field for many Boston athletes and community members since it was constructed in 1945. However, White Stadium is currently in disrepair and in need of revitalization. Decades ago, a fire destroyed the interior of the East Grandstand, which is not usable. The West Grandstand does not meet accessibility requirements to serve all Boston students and communities, is out of compliance with the Building Code, and lacks the spaces and amenities needed to be a citywide resource for BPS athletics. It is the intent of this RFP to bring new resources and a new partnership to White Stadium that will realize its full potential as a hub for the athletic program, enhance athletic offerings to BPS students, and bring significant benefits to Franklin Park and the surrounding communities.

The City and BPS envision revitalizing White Stadium as a centerpiece of BPS athletics benefitting Boston's students. In order to accomplish this, the City is planning a significant investment in the stadium and athletic facilities. Chief among these is the intended replacement of the East Grandstand. The City intends to replace the East Grandstand with a new facility that will host spectators and house student athletic and other programming facilities. It is also the City's intent to install a new eight-lane track for interscholastic competition and install a new top-tier grass field with a new irrigation system.

The purpose of this RFP is to lease the West Grandstand and a fenced-in area south of White Stadium (the "Leased Premises"), as shown in Appendix B and C, to a qualified partner to create a public-private partnership that will invest in this vision for White Stadium. The overall objective for the City is for the public-private partnership to provide needed capital investment to make White Stadium a high-quality venue for BPS athletics and other events, along with an operational program that enhances BPS athletics, activates Franklin Park, and provides a valued and welcome resource for community stakeholders.

The City and BPS will lease the Leased Premises to the most advantageous proposal, determined at the City's and BPS' sole discretion. A 10-year lease of the Leased Premises, along with the ability to renew the lease term for two (2) additional 10-year options, is being offered as a part of this RFP. The property is being offered in as-is condition.

2.2 Vision of Combined Public & Private Components

Boston Public Schools is seeking a partner whose proposed programming will accommodate and enhance BPS's athletic programming needs, support the City's vision for Franklin Park, provide economic and community benefit to the City of Boston and the local neighborhoods around Franklin Park, and provide civic value to the City while respecting the context of Franklin Park and the surrounding residential neighborhoods. In particular, as described in more detail below, the private partner's use must accommodate the City's robust scholastic track & field program in the Spring, cross-country and soccer programming in the Fall, capstone football games at the culmination of the Fall season, BPS graduations, and community events and programs. It is also part of the City's vision that the private partner will bring to the stadium a program that enhances the stadium's historic focus on athletics.

The Lease will include a license to use the Playing Field as well as the public portions of any reconstructed East Grandstand for athletic events up to a set number of days per year. The Lease will also include the obligation to permit spectators to use the West Grandstand during BPS athletic events and certain City-sponsored community events, and to accommodate certain track & field activities within the fenced-in area to the south of the stadium.

2.3 Instructions

Respondents are responsible for all information and materials contained in this RFP and any addenda, including but not limited to premises, conditions, necessary permits, additional labor costs, evaluation methodology, criteria, and the City's accompanying terms and conditions contained hereunder, or in any addendum to



B What We've Heard

- Segmented Design Process

CITY OF BOSTON

this RFP. These, and other pertinent requirements, are an integral part of this RFP. By filing a proposal, the Respondents do thereby represent that the Respondent's proposal conforms to all requirements set forth under this RFP and that the Respondent agrees to the City's and BPS' proposed lease terms (Appendix D) and all other terms and conditions referenced herein. Failure to conform to the requirements of this RFP may result in disqualification.

2.4 RFP Contact

With the release of this RFP, all communications must be directed in writing via email to the contact below. No other City employee, consultant, or Vendor is empowered to speak for the City with respect to this RFP. Any oral communication is considered unofficial and non-binding to the City.

After the proposal deadline, Respondents should not contact the RFP Coordinator or any other City official or employee, except to respond to a request by the RFP Coordinator.

The RFP contact is:

Morgan McDaniel
Deputy Chief of Operations
morgan.mcdaniel@boston.gov
617.635.2487

The Website for this RFP and related documents is the City of Boston Supplier Portal which you can access via boston.gov/procurement.

All project correspondence will be posted on the Supplier Portal website. It is the responsibility of Respondents to check regularly for updates and any RFP addenda.

Respondents are advised to conduct a thorough review of the Request for Proposals (RFP). Strict compliance with and adherence to the terms, conditions, specifications, contract form documents and all other provisions of this RFP is

mandatory.

2.5 Timeline

The table below shows the preliminary RFP Schedule. Dates are subject to change. Any changes will be posted in an addendum that can be found on the RFP website.

	DATE
RFP released	04/25/2023
Tour of Stadium with Interested Potential Proposers at 10:00 am	05/03/2023
Deadline to submit first round questions regarding the RFP <i>via email to morgan.mcdaniel@Boston.gov no later than 12:00 PM</i>	05/05/2023
Consolidated first round Q&A posted by the City on the Supplier Portal	05/19/2023
Stadium Open for Due Diligence Visits by Potential Proposers (and their agents)	5/15/2023 5/30/2023
Deadline to submit second round questions regarding the RFP <i>via email to morgan.mcdaniel@Boston.gov no later than 12:00 PM</i>	06/02/2023
Consolidated second round Q&A posted by the City on the Supplier Portal	06/09/2023
Deadline for proposals <i>Submitted via the City's Supplier Portal or via hard copy; proposals must be received prior to the deadline and cannot be submitted via email</i>	06/26/2023
Proposer Presentations	Week of 07/10/2023

All times are in Eastern (Local) Time

*Please note that all proposals will be public records. Do not submit confidential information in your Proposal.

If, at the time of the scheduled bid opening, City Hall is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the proposal opening will be postponed until 2:00 p.m. on the next normal business day. Bids will be accepted until that date and time.

2.6 Submission Instructions

Proposals may be submitted via the City's Supplier Portal or via hard copy.

City of Boston Supplier Portal Instructions

The Supplier Portal provides vendors the ability to submit a proposal electronically, and is accessible via boston.gov/procurement.

You will need to register with us in order to submit your proposal electronically; doing so will also allow you to receive email updates regarding this RFP and other opportunities. Please visit boston.gov/departments/procurement/how-use-supplier-portal for step-by step instructions to register.

Upon logging in under your account, look for Event ID # EV00012353. When responding, you will see specific places to upload your non-price Technical Proposal and other required forms. The Price Proposal must be submitted separately from the Technical Proposal according to statute. The evaluation team will complete its evaluation of the Technical Proposals prior to reviewing the Price Proposals.

Attachments containing price information, including the Price Proposal, should only be attached to the price line and not in the Event Header attachments section.

In the section of Event ID #EV00012353 labeled "Step 2: Enter Line Bid Responses", please enter the total proposed rent for the lease term under the line "Price

Proposal". Next, click the icon on the far right of the screen labeled "View/Add Question Comments and Attachments." There you will find the proper location to upload your Price Proposal form and any additional pricing proposals you may want to add. Please visit boston.gov/departments/procurement/how-use-supplier-portal for step-by-step instructions.

Submitting your proposal via the Supplier Portal can streamline the entire process, but please allow extra time to become familiar with the system. **Upload any applicable documents into the Supplier Portal and SUBMIT your submissions well before the deadline so that you have enough time to make a physical paper submission if you have any issues with the City's Supplier Portal.** We recommend submitting your proposal at least 24 hours prior to the deadline. Please note that Supplier Portal file uploads are limited to a 59-character file name length.

Hard Copy Instructions

Hard copies of the Technical and Price Proposals may be submitted by mail, delivery service, or in person. Respondents submitting a hard copy must submit a complete Technical Proposal and Price Proposal **in separate sealed envelopes along with one (1) digital copy (thumb drive) clearly marked as "Technical proposal" and "Price Proposal" on the outside of each delivery envelope.**

The envelope should be clearly marked as follows:

TECHNICAL & PRICE PROPOSAL

Name of the Proposal

RFP Number: RFP [Event ID #EV00012353]

Submitted by:

[Name of Respondent]

[Date Submitted]

and delivered or mailed to:

Contracts Unit
Property Management Department
1 City Hall Square Room 811
Boston, MA 02201

III. PROPERTY DESCRIPTION AND USAGE

3.1 Property Description

The existing Stadium, built in 1945 and dedicated in 1949, is located on the historic Playstead in Franklin Park, designed in 1885 by Fredrick Law Olmstead. White Stadium was originally constructed to seat 10,000 people and is run and used by Boston Public School athletics for sporting events, primarily soccer, football, and track and field. The Stadium has played host to a range of athletic, musical, and cultural events over its history. White Stadium hosted Black Panther rallies and big concerts in the 1970s and partnered with the Elma Lewis School of Fine Arts to host a 1974 soul concert with big names like Sly and the Family Stone.

The Stadium consists of two 5,000-seat grandstands flanking a grass playing field and 6-lane running track. Both grandstands are out of compliance with the modern Building Code. As part of the reconstruction, the City intends to demolish the East Grandstand, which suffered significant fire damage decades ago and is unusable and currently sitting idle. A high white concrete wall encloses the northern and southern ends of the Stadium. There is also a fenced-in grass area south of the track, which has been used for long jump and discus.

The ceremonial entrance gate at the north end of the Stadium is primarily used during large events. The site is generally accessed at the north end of the west grandstand. The two grandstands are mirrored in both plan and elevation, with the exception that there is a press box atop the west grandstand. A fire in the east grandstand has rendered it unusable except for storage.

The following description of a conceptual study that was completed for the Stadium is NOT offered to indicate any specific requested capital improvement in response to this RFP and is NOT exhaustive of any other work that may be required to make White Stadium comply with any existing land use, building, and/or accessibility codes or regulations, and is included solely to provide information about the condition of the Stadium.

A conceptual 2013 study indicated that the Stadium required considerable capital investment to become a state-of-the-art home for student athletes. The work contemplated in the study included the following:

- The west half of the promenade level and the entire second floor of the west grandstand would be completely gutted and renovated.
- The east half of the promenade level and lower level will require more minor renovations.
- The existing west grandstand seats approximately 5,000. To accommodate handicap accessibility guidelines, three rows of seating will need to be removed and level platforms created for handicap seating.
- A new press box would be built at the main cross aisle level, adjacent to the handicap seating areas.
- All seating would be removed, repaired, and re/installed after the concrete stepped seating area is waterproofed.
- All existing systems were assumed to be at the end of their useful life and will be replaced.

The Leased Premises would be limited to the West Grandstand and the fenced-in area south of White Stadium, as shown in Appendix B and C.

3.2 Site Context: Franklin Park

Franklin Park, within which the George Robert White Stadium and its site features are located, is designated as a historic landmark by the Boston Landmarks Commission pursuant to Chapter 772 of the Acts of 1975. Any proposed development would require review and approval from the Boston Landmarks

Commission (BLC). All modifications to the existing buildings and site features and any proposed new facilities must be respectful and sensitive to the historic status of the facility.

In 2022, the Boston Parks and Recreation Department completed the Franklin Park Action Plan, available [here](#). Its park-wide goals are to improve connections and activate all areas of the park to better serve Boston families and residents, amplify magnet destinations such as White Stadium, and unify the park by applying a consistent standard of care. The City anticipates that all components of the Action Plan will take significant financial resources. In 2023, the Parks Department will launch the Phase 1 Prioritization Plan to identify areas for renovation that are a priority for the community and in most urgent need. The City and BPS believe that the vision for White Stadium reflected in this RFP will meaningfully advance the broader goals of the Action Plan, and ask that prospective bidders reflect their commitment to the Action Plan as part of their response.

3.3 Current Uses of the Stadium

The stadium is currently actively programmed for a number of uses. BPS Athletics uses the stadium for sports across the spring, summer, and fall seasons. Other BPS uses include school day games and graduation ceremonies. The stadium also hosts events such as the Caribbean Kiddie Festival, the Boston Athletic Association Half Marathon Finish, and Special Olympics events.

The stadium is used most heavily in the fall season

- **Spring Season:** The stadium is mainly used in afternoons for track practice and track meets. In mid June, the stadium is heavily used for graduation and moving-on ceremonies.
- **Summer Season:** The stadium hosts the Parks and Recreation summer camp, 200 children per year and uses the field, basketball court, and track. The program relies on the grandstand facilities to provide shade and shelter. This free program has been offered for 25 years.
- **Fall Season:** The stadium is used on weekday afternoons for soccer practice

and games, football practice and games, cheerleading practice, and cross country practice. Typically a few soccer and football games are held on Saturdays each season, and several special events take place on weekends.

See Appendix A for details on stadium usage.

3.4 Current Circulation and Parking

Primary vehicular access to the site is via the Pier Point Road access from Walnut Avenue to the northwest. Access from the north has been closed off.

On-site parking is currently very limited and shared with the Franklin Park Zoo and other park uses. There is existing parking for the Boston Public Schools at the west side of the stadium. There is also a parking area at the east, which is primarily used as two basketball courts.

Large event parking is accommodated with parallel parking on both sides of the ring road (Pier Point Road and Playstead Road). During special events such as Zoo Lights, attendees park on both sides of Circuit Drive. The congestion requires details from State police, Boston police, and park rangers.

The parking lot is maintained by the Boston Parks and Recreation Department and monitored and secured by the Park Rangers. BPS Athletics staff currently access the lot during work hours 7am-4pm. Events extend days to 6pm-10pm depending on the activity.

3.5 Regulatory Context

BPS Property. The Stadium is in the care, custody and control of the Boston Public Schools. Any lease or license requires BPS approval and adoption.

Article 97. The potential application of Article 97 is fact specific and it is the

Proposer's obligation to assess whether its proposed program will require Article 97 approvals, and if so to take the leading role in securing such approval including any necessary commitments.

Landmarks. Franklin Park is designated as a landmark by the Boston Landmarks Commission (BLC) pursuant to Chapter 772 of the Acts of 1975. Proposer is responsible for obtaining any BLC review and approvals necessary for its program.

Park Review. The City of Boston Municipal Code Section 7-4.11 (the "100' rule") requires the approval of the Boston Parks and Recreation Commission for all buildings and structures that are constructed or altered within 100 feet of a park or parkway.

Taxation. Proposer is responsible for assessing whether the program it proposes is subject to real estate, income, excise, or other taxes and shall be responsible for such taxes.

Building and Life Safety. Proposer is responsible for obtaining any and all building, zoning, and other permits and approvals required to conduct its program, including from the Inspectional Services Department and Boston Fire Department.

Article 80. Proposer is responsible for adhering to Article 80 review applicable to any portion of its program.

Proposer shall be responsible for compliance with all other applicable laws and regulations, including any public construction procurement laws that may apply.

IV. PUBLIC PRIVATE PARTNERSHIP OBJECTIVES & PRINCIPLES OF PARTNERSHIP

The City is seeking proposals for uses that will revitalize White Stadium in line with the following principles:

PRINCIPLES OF PARTNERSHIP

4.1 Benefit and Opportunity for BPS Athletics.

The City seeks a public-private partner committed to our vision to restore White Stadium as a central hub for BPS athletics and who, through their own proposed uses, will enhance and complement our athletic offerings, through facilities improvements, programming, and other opportunities. The proposer should be clear in their submission about any current uses that are not consistent with a proposed partnership program, and how the proposal would address such uses. The facility should provide a high-quality, appropriate athletic experience for all student-athletes and spectators, and expand opportunities to host athletic events.

4.2 Park Activation

The City seeks a partner that will retain and enhance the stadium's civic value. In addition to advancing an enhanced vision for BPS athletics, the proposal should accommodate city and community programming, and consider how the proposed uses contribute to Franklin Park, its existing institutions (including the Franklin Park Zoo), and the surrounding community.

The City seeks a partnership that will contribute to the activation and usability of Franklin Park in line with the values and aspirations expressed in the Franklin Park Action Plan.

As Boston's largest open space and the final link of The Emerald Necklace, Franklin Park draws visitors from the neighborhood, the city, and the region. At 500+ acres, its scale makes it a particularly important open space resource for communities who lack access to larger parks and natural areas within their neighborhoods. Franklin Park was intended to serve as a common ground — a place for recreation,

relaxation, and to experience nature — welcoming all communities and bringing people together for shared experiences that support discovery, education, and mental and physical health.

The park has a long legacy of serving many groups in many different ways - from performance and recreation to education and community building. Any activation and renewal of White Stadium should build on its history and amplify its program and character.

4.3 Economic Development.

The City seeks a partnership that will contribute to the economic development of Boston and the communities surrounding Franklin Park. With the goal of closing the racial wealth gap, we are seeking a partner who will ensure the meaningful participation of local and diverse workers and businesses throughout the development of the project and operation of the West Grandstand and adjacent areas, and who will show a commitment to supporting activities that will bring people to the area as customers and future patrons.

4.4 Respect for Neighbors

The City seeks a partnership that will activate the Stadium in a manner that recognizes and respects the impacts that activation can have on those who live, work, and play around the Stadium. Proposed programming should be of reasonable quantity, timing, and size to prevent placing a burden on local residents as well as other Parks uses. Impacts that must be addressed include traffic, noise, congestion impacting other park uses, and trash.

The Site is located near multiple dense residential neighborhoods. The selected proponent must present a transportation plan that will minimize congestion on local residential streets surrounding the stadium, maximizes use of public transportation, and is consistent with transportation and circulation guidelines in the Franklin Park Action Plan.

A proposed program could require Article 80 review, and as a component of such review it is expected that there may be mitigation commitments required of the proposer. All such mitigation will be the responsibility of the proposer. Even in the event that a proposed program is not subject to Article 80 review, it is expected that during the community process for evaluating proposals and negotiating the details of a relationship with any selected proposer, impacts of the proposed program on nearby neighborhoods, Franklin Park, and the Zoo will be identified. During this process the Selected Proposer may choose to make operational or financial commitments to such stakeholders in order to mitigate such impacts. The City/BPS may consider whether stakeholders' views on the impacts of the proposed program in exercising its right to enter into an agreement with the most advantageous proposer.

4.5 Facilities Maintenance

The prevailing Respondent will be responsible for cost and management of maintaining the Leased Premises in clean, good working order and provide appropriate security. The proposer will also be responsible for the cost of all repairs and improvements to the Leased Premises to support the proposer's expected programming.

The City anticipates that if the successful Respondent's proposed program requires the field to meet certain conditions, the Respondent will bear the costs of maintaining the field in that condition.

V. SUBMISSION REQUIREMENTS

Proposals must include the Submission Requirements set forth in this section. These Submission Requirements must also be submitted in accordance with the instructions set forth in Section II of this RFP. Omission of any of the required information may lead to a determination that the proposal is non-responsive.

Respondents must provide the City with a written proposal that contains all of the following sections and addresses the information called for in each section. Any information a Respondent would like to share that is in addition to what is required should be done so separately either by uploading the information to the City of Boston Supplier Portal or by sending in hard copy format to the address stated above.

TECHNICAL PROPOSAL

5.1 Cover Letter and Executive Summary

In conformity with the requirements and specifications set forth under this RFP, provide a statement of the Respondent's approach to each requirement or specification. This statement should be clear, mirroring the layout of the RFP as well as demonstrating the Respondent's understanding of the requirements of this RFP.

5.2 Description of the Respondent

Provide a letter of interest signed by the principal(s) of the proponent. This letter should introduce the project team and organization structure. Please specify the names, professional backgrounds, and roles of the members of the Respondent's principals and leadership team, including the person(s) who will have primary responsibility for managing the Leased Premises and carrying out other management and maintenance obligations in the Stadium. Please note that the City of Boston is committed to inclusive leadership and is also asking for a DEI Plan as part of the submission in section 5.10.

5.3 Description of Your Proposed Program

The opportunity to lease the Lease Premises is contemplated to include the right to license the use of the field and public areas of the East Grandstand for a set number of events annually during the term of the lease, including any extensions, under a separate license agreement with the City. Any proposed events and uses should enhance White Stadium as a central hub for the BPS athletic program and align with the City's commitment to rebuild White Stadium as a resource for the surrounding neighborhood and the robust and varied activities within Franklin Park.

Please describe in as much detail as possible your proposed use of the stadium and how those uses align with the City's and BPS' plan for White Stadium as a central hub for the BPS Athletic Program, the City's vision for enhanced youth sports, and the Franklin Park Action Plan. This description should focus on the events, programming, and any other activities you plan to conduct in the stadium. Please include, at a minimum: (1) the number of events you plan to program per year (broken down by the winter, spring, summer, and fall seasons), (2) the times of day and days of the week on which you anticipate events occurring, and (3) your estimates of attendance at such events. Where specificity is not possible, please describe the general character of events you will seek to program and indicate what information reflects your best estimate of the requested information. *Proponents should familiarize themselves with the guidelines for hosting special events in the City of Boston.*

5.4 Proposed Investments in the Stadium

Describe in detail any proposed renovations and improvements to the Leased Premises for your proposed lease program.

- Describe how the proposed renovation or improvements will be implemented. The description should include a timeline that lists pre-development and construction tasks as well as any proposed phases of work.
- Identify whether there are components of your proposed renovations or

improvements that are optional - meaning that you could proceed with your proposed program even if you do not perform a particular improvement.

- Provide an outline of required regulatory approvals that you will need to obtain and a projected timeline to obtain these approvals. This outline is not binding upon the City in any manner. It is being requested only to assist the City in assessing the viability and thoughtfulness of a proposed program.
- Provide a cost estimate and sources of funding for the proposed improvements.

5.5 Facilities Management and Operations

Describe your team's organization experience in your proposed use and in facilities management. Your description should include the following, as applicable to your proposed use:

- Plans for the physical upkeep of the Leased Premises, including cleaning, maintenance, and repairs
- Plans for ticketing and admissions
- Access and opportunity for BPS students and families, accounting for different levels of discretionary income.
- Plans for the security and safety of the facility
- Plan for relations with the City, Boston Public Schools, and with residents and businesses on streets abutting Franklin Park within a ¼ mile radius.

5.6 Transportation Management Plan

Please provide a preliminary transportation plan that addresses the details of how people will travel to and from the stadium for events, and how you intend to mitigate parking and traffic impacts in the surrounding community. **Note: a conforming preliminary plan is required with your proposal, but the selected proposer will be required to complete a detailed plan acceptable to the Boston Transportation Department (BTD) prior to entering any agreement. For avoidance of doubt, the City reserves all rights in its sole discretion not to enter into a lease agreement with the prevailing proposer, including if a proposer does not complete a detailed plan acceptable to the BTD.** The plan

should provide analysis, clear and location-specific plans and strategies, and offer a credible path to reducing reliance on private vehicles by event attendees. At a minimum, the plan should:

- General
 - Model anticipated attendance and points of origin for attendees
 - Project overall mode share and set specific targets intended to minimize personal vehicle use
 - Model modal split for all types of events (games, concerts, etc.)
- Transit
 - Model transit capacity, frequency, and usage, including for night and weekend events
 - Model specific transit service usage assumptions (e.g. which lines/stations/stops), including access routes to and from stadium
 - Shuttle implementation plan for access from nearby transit stations to stadium, including pickup/dropoff plans at stations and stadium
 - Assess pedestrian accessibility / safety along key walking routes to stations/stops (ADA, lighting, etc.)
- Active Transportation
 - Assess pedestrian accessibility and safety along key walking routes to stadium, both inside and outside of Franklin Park
 - Plan for bicycle parking
 - Plan for Bluebikes, including potential for valet services and/or increased dock capacity
- Pick up / drop off
 - Identify pickup and drop off areas at the stadium for shuttles and TNC vehicles, including capacity and volume estimates
 - Management plan for curbside access for shared vehicles, including any police details or other types of active management
 - Identify infrastructure changes needed to support pick up / drop off activities
- On-site parking

- Identify specific locations for proposed on-site parking within the park, including a map clearly showing the number and layout of potential spaces at each location
- Provide access and parking management plan, including lot management and routing to/from potential parking areas
- Detail anticipated approach to pricing and reservation of on-site parking
- Identify any infrastructure changes that would be needed to allow use of identified on-site parking areas
- Off-site parking
 - Identify specific locations for potential off-site parking and include any known information about availability and use restrictions
 - Provide a shuttle implementation plan, including pick up / drop off locations at stadium
 - Detail anticipated approach to pricing and reservation of off-site parking.
 - Note that green space in Franklin Park is not available for parking.
- Street parking
 - Provide an analysis of the number of on-street parking spaces anticipated to be used by event attendees and the potential geographic distribution
 - Review existing curb regulations in areas within walking distance of stadium to inventory potential on-street space and potential regulatory changes
 - Analyze potential for reduced availability of on-street parking for residents and other park visitors, and recommend specific strategies to minimize negative community impacts
 - Provide recommendations for enforcement coverage (location and volume) to address potential non-compliance by event attendees
- Congestion and traffic management
 - Provide detailed analysis of anticipated trip generation and vehicular volumes on various paths of travel to/and from events

- Plan for traffic management, in and around the stadium area, including any City of Boston resources that would be needed to implement
- Transportation Demand Management and Event Management
 - Identify strategies for reducing vehicle trip volume to and from the stadium for events.
 - Plan should evaluate various strategies, including subsidized alternatives (transit, Bluebikes), parking pricing, priority road access and pick up / drop off for transit shuttles, and more.

5.7 Description of Park Activation

Describe how the proposed partnership will contribute to the activation and usability of Franklin Park in line with the values and aspirations expressed in the Franklin Park Action Plan.

5.8 Description of Economic Development Benefits and Community Benefits

Estimate the number of construction jobs and permanent (full or part-time) jobs that will be generated by the proposed lease program. Describe how the proposed program will support activities that will bring people to the area as customers and future patrons.

Proposals must include a narrative of the community benefits supported by the development, including any benefits to the local community that are above those generated by the proposed program itself.

5.9 Diversity and Inclusion Plan

The City of Boston and Boston Public Schools are strongly committed to ensuring that partnerships involving City assets provide opportunities for diversity and inclusion, wealth-creation, and workforce participation for businesses and individuals who have historically been underrepresented in real estate development.

Proponents must submit a Diversity and Inclusion Plan showing the extent to which they will engage certified Minority-Owned Businesses (“MBEs”), and Women-Owned

Business Enterprises (“WBEs”) (collectively referred to as ‘M/WBEs’) as subcontractors on this project , and demonstrating how they will maximize the economic participation and employment, particularly in management roles, of people of color and women.

Participating MBEs and WBEs must have received or have pending applications for certification under the State of Massachusetts Supplier Diversity Office or the City of Boston. Firms with pending certifications may be included in a proposal on the condition that certification is granted by the start of work or the firm is replaced by a firm certified under the State of Massachusetts Supplier Diversity Office or City of Boston. All replacements or substitutions must be approved by the City of Boston.

The Diversity and Inclusion Plan should address all **phases** of development, as applicable, including but not limited to:

- pre-development (ex. development entity, ownership, equity and debt investment, design, engineering, legal, other consultants);
- construction (ex. general contractor, sub-contractor, trades, workers performing construction, suppliers, engineering and other professional services); and
- ongoing operations (ex. building tenants, facilities management, contracted services).

The Diversity and Inclusion Plan should include the following good faith **measures** relating to M/WBE participation:

- The proponent’s strategy for supplier diversity and M/WBE outreach, including its goals and its good faith efforts the proponent may propose for M/WBE participation. Proposals should indicate what strategies will be pursued, or are being pursued, to identify M/WBE participation, including outreach and identification activities to timely inform the M/WBE community of upcoming opportunities.
- Strategies which support sustainable capacity development in M/WBE firms, such as mentor-protégé relationships or joint ventures. These partnerships for capacity development should describe the impact of participating in this project on the M/WBE firm’s future business growth and opportunities.

- The proponent's strategy to support workforce training/capacity building for populations underrepresented in the construction trades as well as other fields of real estate development.
- A description of the respondent's prior experience and track record undertaking similar programs at other locations including examples deployed on private property.

The Diversity and Inclusion Plan should discuss why it is specific, realistic, executable, and impactful.

5.10 References

Please provide three (3) references, including their contact information and relationship. Reference that can provide information on respondent's record as a tenant/lessee, or business or project partner, is preferred. The City is not responsible or obligated to make multiple attempts to contact references. Note that incorrect contact information or a non-responsive reference will be considered as a negative reference.

5.11 Company Performance

1. Has your company, or any principal member of the proposer, ever failed to complete any work awarded or failed to meet obligations under a lease agreement?
 - a. If the answer is yes, please state all circumstances. The answer to this question must be signed by the appropriate representative, including the name, date, title and full address.
2. Please list any adverse legal judgments against your firm, or any principal member of the proposer, as a result of alleged unsatisfactory performance or breach of contract within the past three years. If your firm was incorporated in the last three years, please also provide the above information for each of the principals of the firm and for any businesses which they have had an ownership interest within the past three years.

5.12 Additional Information

Submit the following forms, which can be downloaded from Event ID # EV00012353 in the Supplier Portal:

- A completed Certificate of Non-Collusion.
- A completed DCAMM Disclosure Statement for Transaction with a Public Agency concerning Real Property. MGL C. 7C, s. 38.
- A completed Minimum Quality Requirements Form
- A completed Contractor Certification Form

Please also provide any other information about the Respondent's experience or qualifications to perform the Services that have not been presented in previous responses and that the Respondent believes is relevant to this RFP.

5.13 Financial Proposal

Offered price is one of the many factors used in determining the most advantageous proposal.

The price proposal should include four components:

1. **Base Rent:** This is the minimum annual rent that you propose to pay for the lease. All price proposals must propose an annual base rent of no less than \$400,000.00, to be paid in 12 equal monthly installments. Price proposals must include at least a 3% annual increase in the Base Rent. Because the community-centered evaluation and contract negotiation process may result in modifications to how much of your Proposed Program the City/BPS agree may be included in any final agreement you may offer a proposed base rent for your full proposed program, $\frac{2}{3}$ quantity of your proposed program, and $\frac{1}{2}$ quantity of your proposed program.
2. **Revenue Sharing/Additional Rent:** Identify and describe all potential sources of revenue and propose whether, and on what basis, you propose to include any portion of those revenues as Additional Rent to the City in excess of the Base Rent.
3. **Community Mitigation and Investment:** For informational assessment purposes, please identify an approximate amount of funding or resources that you would be prepared to commit to any separate funding or

operational commitments to mitigate impacts on stakeholders.

Using the price proposal form which can be downloaded from Event ID # EV00012353 in the Supplier Portal, clearly outline the financial offer. Submit the form in both Excel and PDF format. The PDF version must be signed by the authorized principal.

5.14 Proposal Checklist

CHECKLIST FOR SUBMITTING PROPOSAL (<i>for your use only; you do not need to submit this checklist</i>)	RFP SECTION	COMPLETE (✓)
A. TECHNICAL PROPOSAL		
Cover Letter and Executive Summary	5.1	
Description of the Respondent	5.2	
Description of your Proposed Program	5.3	
Proposed Investments in the Stadium	5.4	
Facilities Management and Operations	5.5	
Transportation Management Plan	5.6	
Description of Park Activation	5.7	
Description of Economic Development Benefit to the Area	5.8	
Diversity and Inclusion Plan	5.9	
References	5.10	
Company Performance	5.11	

<p>Additional Information</p> <ul style="list-style-type: none"> ● Certificate of Non Collusion ● DCAMM Disclosure Statement for Transaction with a Public Agency Concerning Real Property ● Minimum Quality Requirements Form ● Contractor Certification Form ● Other additional information 	<p>5.12</p>	
<p>B. PRICE PROPOSAL</p> <p><i>Did you upload/submit the price sheet separately?</i></p>		
<p>Price Proposal Form</p> <ul style="list-style-type: none"> ● PDF file with signature ● Excel file 	<p>5.13</p>	

VI. EVALUATION OF PROPOSALS AND SELECTION CRITERIA

A. MINIMUM QUALITY REQUIREMENTS:

The RFP Evaluation Committee will be responsible for the evaluation of the proposals. Each proposal will be initially evaluated to determine whether the Respondent submitting the proposal meets the minimum quality requirements (See the Minimum Quality Requirements form attached to the Event ID # EV00012353 in the Supplier Portal). The proposal(s) that the City determines to have met the minimum quality requirements will then be rated according to the evaluation criteria described below. **Those Respondents that do not meet the minimum quality requirements are subject to rejection and elimination from further consideration.**

B. COMPARATIVE EVALUATION CRITERIA

The following are the technical criteria that the Awarding Authority's evaluators will use in rating responses to this RFP.

For each evaluation criterion, the evaluators shall individually assign a rating of one of the following:

- **Highly Advantageous:** The Project Team meets **MOST** of the qualifications listed.
- **Advantageous:** The Project Team meets **SOME** of the qualifications listed.
- **Not Advantageous:** The Project Team meets **FEW** of the qualifications listed.
- **Unacceptable:** The Project Team meets **NONE** of the qualifications listed.

In assigning an overall rating to proposals the selection committee shall have discretion to weigh different criteria in any manner which it deems most advantageous for the City. Evaluation criteria do not carry any set value, and this RFP does not imply any correlation between the number of comparative requirements relating to a particular area and the importance of that area to the selection committee.

CRITERION #1: Enhances BPS Athletics Program

- The proposal will coexist with all, or nearly all, current BPS athletic programming at reasonable times OR the only impacts to BPS athletic impacts are to uses that can be accommodated on the nearby Playstead fields.
- The proposal offers programmatic benefits that will enhance the BPS athletics program.
- The athletic facilities made available for BPS through any proposed redevelopment and/or improvements are of higher quality than what is currently available to BPS students.

CRITERION #2: Activation of Franklin Park

- The proposal will contribute to the activation and usability of Franklin Park in line with the values and aspirations expressed in the Franklin Park Action Plan
- The proposal offers benefits to current park users and existing institutions, including the Zoo.
- The proposal will have minimal negative impact on the existing programming and operations of Franklin Park.

CRITERION #3: Economic Development and Community Benefits

- The proposal will contribute to the economic development of Boston, and specifically the communities surrounding Franklin Park.
- The proposal demonstrates a commitment to supporting activities that will bring Boston families and other people to the area as customers and future patrons.
- The proposal includes additional benefits to the local community above those generated by the proposed program itself.

CRITERION #4: Team's Demonstrated Ability to Deliver its Proposal

- The proponent team has significant experience successfully operating the uses proposed for the stadium
- The proposed improvements and ongoing operations of the proposed programs are financially feasible.
- The proponent has significant experience managing construction projects of

the scale of any improvements proposed or anticipated for the Stadium.

- The facilities management and operations plan is feasible and well thought through.

CRITERION #5: Transportation Plan

- The transportation plan provides a credible, specific path to minimize negative community impacts
- The transportation plan provides a credible, specific path to minimize vehicular use
- The transportation plan provides specific, realistic, data-informed, and implementable recommendations for all aspects of transportation management related to the stadium
- The transportation plan is backed with detailed analysis and data to underpin recommended strategies.

CRITERION #6: Diversity and Inclusion

- The Diversity and Inclusion Plan is specific, realistic, and executable.
- The Diversity and Inclusion Plan demonstrably increases opportunities for sustained, long-term participation and capacity building for people of color, women, and certified M/WBES
- The Diversity and Inclusion Plan addresses each phase and measure noted in section 5.9.

C. RULE FOR AWARD

The contract for the lease of the Leased Premises will be awarded to the most advantageous proposal(s) based on the selection criteria outlined above in addition to the price proposals and the respondent's acceptance of the RFP and anticipated lease terms summarized in Section VII, Terms and Conditions, as well as Appendix D. The successful respondent(s) will be deemed, in the opinion of the City, to be the most responsive and acceptable proposal(s) taking into consideration the experience of the respondent, the quality of premises to be leased, and their conformity with the specifications required, including price.

The composite ratings and reasons of the RFP Evaluation Committee will be

presented to the Chief Procurement Officer's designee for review and approval. The City reserves its right to require clarification and explanation from all Respondents on their price proposals if such is necessary to understand and evaluate the same. The Chief Procurement Officer's designee will determine the most advantageous proposal from a responsive and responsible Respondent, taking into consideration the price proposals and the evaluation criteria in the RFP.

The City retains the right to not award to any proposer.

VII. TERMS AND CONDITIONS

7.1 City's Right to Reject

The City is under no obligation to proceed with this RFP and may cancel the RFP at any time with or without the substitution of another. The City reserves the right to reject in whole or in part any or all Proposals, when the City determines that rejection serves the best interests of the City. The City may waive minor informalities in the Proposal or allow the Respondent to correct them.

7.2 Proposal Costs

Any and all costs incurred by any Respondent in responding to this RFP, or in otherwise developing proposals, are entirely the responsibility of the Respondent and shall not be reimbursed in any manner by the City.

7.3 Use of City Name

The proposer and any Subcontractor(s) agree not to use the City of Boston name or seal, or that of any other City Agency or Department in advertising, trade literature, or press releases without the prior approval of the City.

7.4 Award and Contract

If a lease is awarded, the lease will be awarded to that responsive and responsible Respondent whose Proposal is deemed most advantageous to the City taking into consideration the evaluation criteria, Proposal Pricing, and acceptance of these Terms and Conditions. The City will contract with the selected Respondent that best meets the City's needs and may not necessarily make an award to the lowest price bidder.

An award letter or award notification is not a communication of acceptance of a Respondent's proposal. No final award has been made until final execution of a lease by the selected Respondent and the City of Boston (by its Awarding Authority/Official and the City Auditor), and the approval of the final lease by the

Mayor of Boston. Until such time, the City may reject any or all proposals or elect not to proceed with this RFP.

7.5 Prevailing Wage

The successful respondent will pay prevailing wages to all covered employees in any construction undertaken on the Stadium as defined in MGL C. 149, ss. 26 - 27D, and will comply with all other applicable laws relating to the construction of improvements, which may include public construction procurement laws.

7.6 Minimum Insurance Requirements

The Lessee will provide and maintain during the term of the lease all insurance required below with respect to the lease of White Stadium and the performance of any work undertaken by the Lessee, its agents and employees. Lessee will also be responsible to ensure that its vendors, contractors and subcontractors maintain similar limits of insurance, or as appropriate for the risk.

Insurance will be issued by insurers with a minimum AM Best Rating of A-VII. Insurance Certificates on Acord Forms evidencing requirements below must be provided to the Official prior to work being performed, with renewal certificates provided within 30 days of expiration. Complete copies of policy and endorsements may be required.

Notwithstanding requirements below, the Landlord may at any time request that the amounts and types of coverage be increased if necessary for adequate protection, based on the standard of a prudent landlord of similar space in Boston, Massachusetts. These requirements shall not be construed to limit the liability of the Contractor or its insurer. Failure to maintain such insurance throughout the Contract period will constitute a material breach of contract and be grounds for termination.

Minimum Scope and Limit of Insurance

1. Commercial General Liability: Including bodily injury, property damage, products and completed operations, personal and advertising injury with

limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate limit subject to a per location aggregate.

2. Property Management Professional Liability with limits no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. If the policy is on a claims-made basis retroactive date must be before contract begin date, and insurance must be maintained for at least three years after termination of contract
3. Liquor Liability Insurance for (\$2,000,000) per occurrence if alcohol will be provided by a Licensee, caterer or other vendor who is in the business of selling or furnishing alcohol.
4. Automobile Liability: All motor vehicles, including Hired and Non-Owned, used in connection with the Agreement; \$1,000,000 combined single limit per accident.
5. Workers' Compensation: As required per Massachusetts General Law c.152 Employer's Liability E.L. \$1,000,000 per accident and employee, including disease
6. Umbrella Liability excess of General Liability, Auto Liability and Employer's Liability for \$25,000,000 Each Occurrence/Aggregate.
7. Property Insurance on all risk basis including all causes of direct physical loss including flood, earthquake and windstorm, covering:
 - a. The Premises. The insured value will not be less than one hundred percent (100%) of the full replacement cost of the Premises and leasehold improvements, not subject to a co-insurance penalty. Such full replacement cost shall be recalculated upon the Landlord's demand but not more frequently than any twenty-four (24) calendar months. Landlord may require an appraisal be performed by an MAI appraiser as designated by the Landlord, at the Lessee's sole cost and expense.

Property policy must specifically extend to property undergoing construction, subject to full replacement cost without a co-insurance penalty. If not included a separate builders risk policy subject to the same terms as the property policy.

- b. Personal property contents thereof. The insured value should not be less than one hundred percent of the full replacement cost of tenant's business personal property and shall not contain a coinsurance percentage.
- c. Loss of Income with limit equivalent to potential loss of income for 36 months.

General Conditions

- City of Boston will be named as Additional Insured for General Liability, Automobile Liability, and Liquor Liability.
- The Property Policy and Builders Risk will be endorsed naming the Landlord as Loss Payee with respect to proceeds attributable to the Premises.
- Insurance shall be primary and non-contributory over any such insurance or self-insurance available to the City of Boston, its officials, employees and volunteers.
- Waiver of Subrogation will be included for all coverages in favor of City of Boston. The Workers Compensation Policy will be specifically endorsed as such.
- All policies will be endorsed to provide thirty days written notice to the certificate holder, the City of Boston, in the event of cancellation, non-renewal or material changes in coverage.

7.7 City of Boston Standard Contract Forms

The following standard contract forms are listed for informational purposes only. These forms will be a part of the contract that the City will sign with the selected Respondent. Respondents are not required to submit these forms with their proposals.

1. Certificate of Authority (Form CM-06)
2. Vendor Certification (Form CM-09)
3. Standard Contract and General Conditions (Form CM 10 and 11)
4. C.O.R.I. Forms, including City Ordinance
5. Wage Theft Prevention Form (Form CM-16)

7.8 Additional Reviews

The selected Respondents are subject to the following additional reviews and must satisfy the stated requirements prior to execution of a contract. In the event that a Respondent does not satisfy these requirements, the City may rescind its award notification and cancel the RFP process in whole or part, or the City may rescind its award notification and proceed to the next highest-ranked and eligible Respondent.

1. *Tax Delinquency Review:* The City of Boston Collector-Treasurer's Office will conduct a review of the selected Respondent's property tax history. The selected Respondent cannot be delinquent in the payment of taxes on any property owned within the City of Boston. The selected Respondent must cure such delinquency prior to execution of a lease. If the selected Respondent has been foreclosed upon by the City of Boston for failure to pay property taxes, then said Respondent will be deemed ineligible for a contract offered pursuant to this RFP, unless such Respondent promptly causes the decree(s) or judgment(s) of foreclosure to be vacated by the Land Court and the City made whole. The City, in its sole discretion, shall determine the timeliness of the selected Respondent's corrective action in this regard and will disqualify the Respondent if vacating the tax-title foreclosure is not prosecuted expeditiously and in good faith, so as to avoid undue delay.
2. *Water and Sewer Review:* The City of Boston Water and Sewer Commission will conduct a review of the selected respondent's water and sewer account(s). The selected respondent cannot be delinquent in the payment of water and sewer charges on any property owned within the City of Boston and, if found to be delinquent, must cure such delinquency prior to execution of a contract for lease.
3. *Property Portfolio Review:* The City will review the selected respondent's portfolio of property owned to ascertain whether there has/have been abandonment, Inspectional Services Department (ISD) code violations, or substantial disrepair. If unacceptable conditions exist in the selected Respondent's property portfolio, the City may deem the selected respondent ineligible for contract for lease.

Appendices

The following documents are attached in the Supplier Portal as appendices.

- **Appendix A.** Stadium Usage Details
- **Appendix B.** White Stadium Existing Conditions Aerial - Showing Leased Premises
- **Appendix C.** White Stadium Existing Conditions Plan - Showing Leased Premises
- **Appendix D.** Additional Lease Terms and Conditions

EXHIBIT D

White Stadium



*Community Engagement Meeting 4:
Alignment with Franklin Park Action Plan*

WHAT WE'VE HEARD

Segmented Design Process



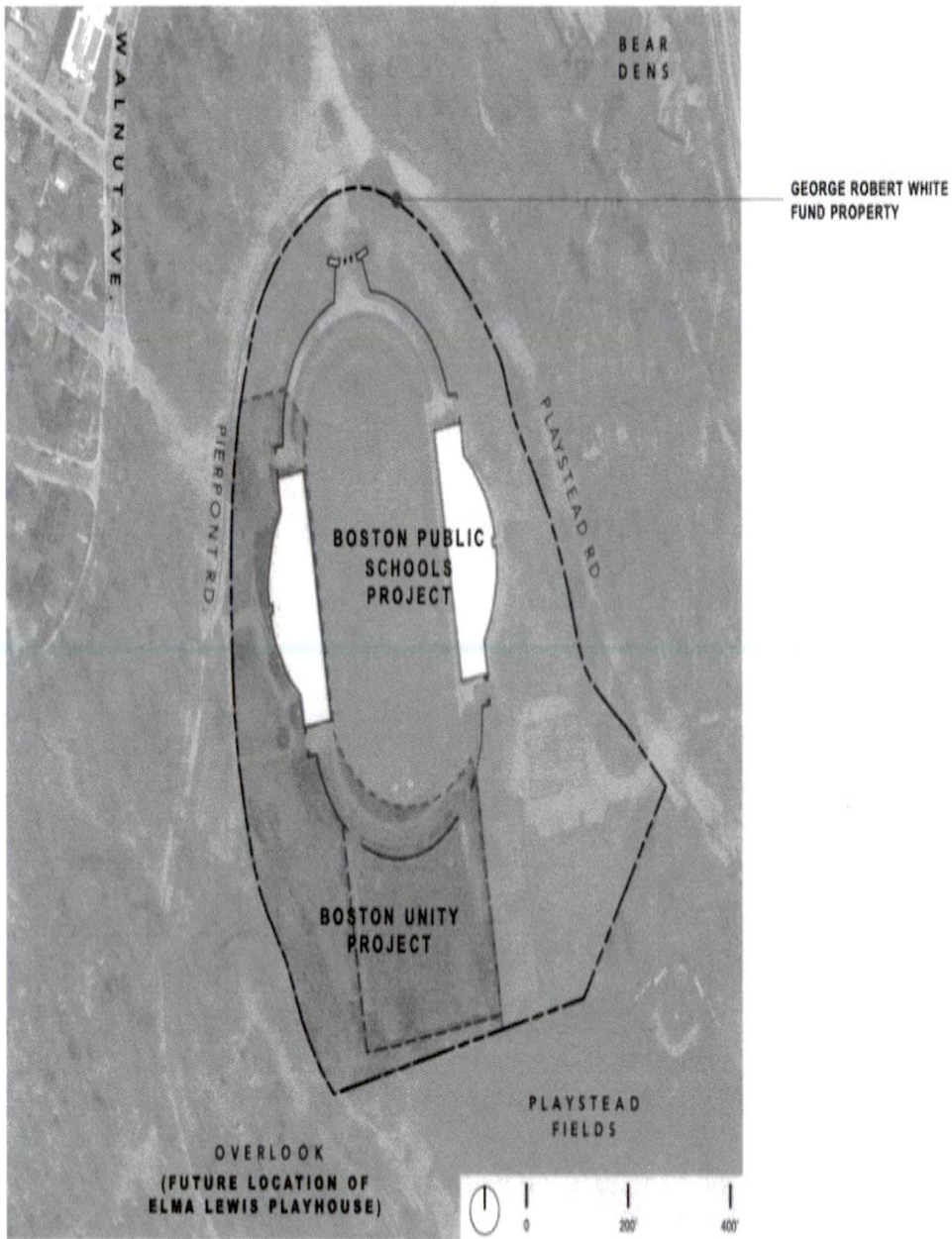
Why two coordinated projects? To prioritize our main goals:

1. Maintaining control of Boston Public Schools (BPS) facilities
2. Providing state-of-the-art amenities with robust maintenance schedules through a private partnership

The City is overseeing the construction of the field and East Grandstand, while Boston Unity is leasing and renovating the West Grandstand and Grove. Both design teams work in close collaboration.

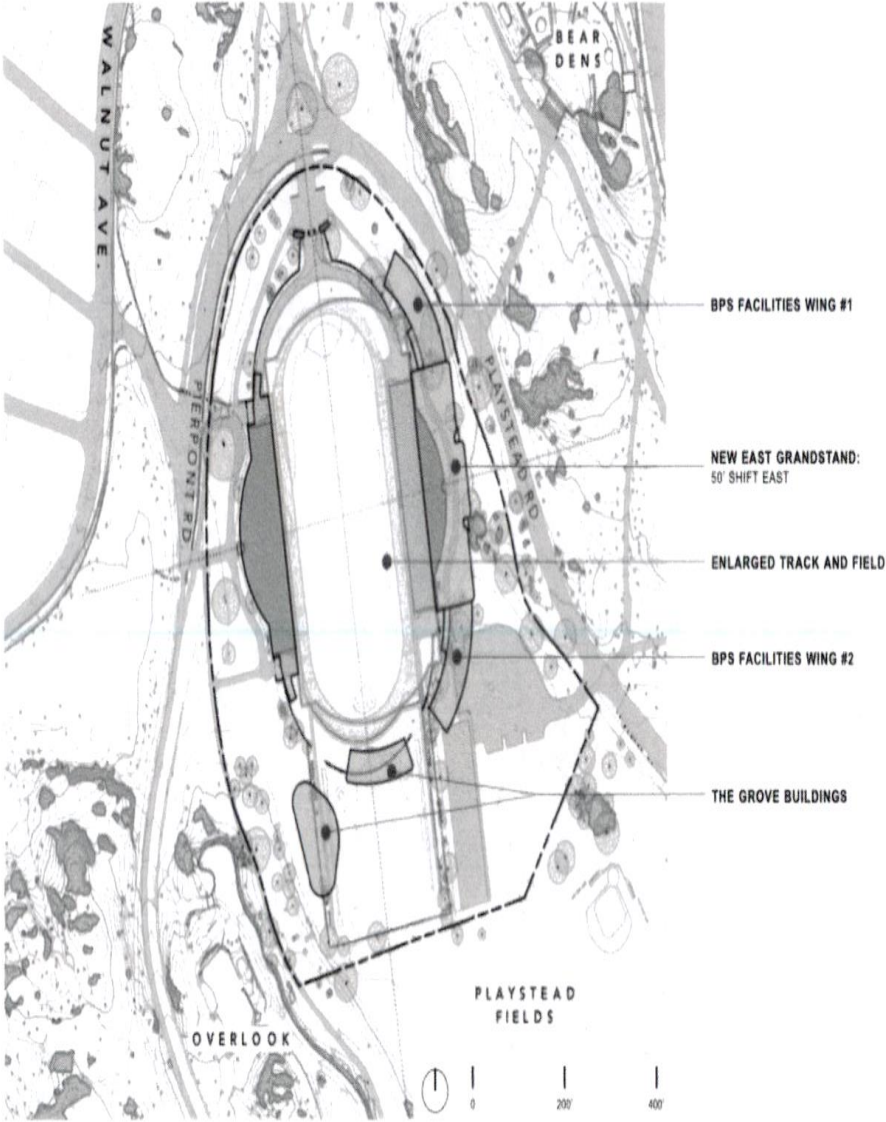
Today, we are ready to present unified designs.

Project Boundaries

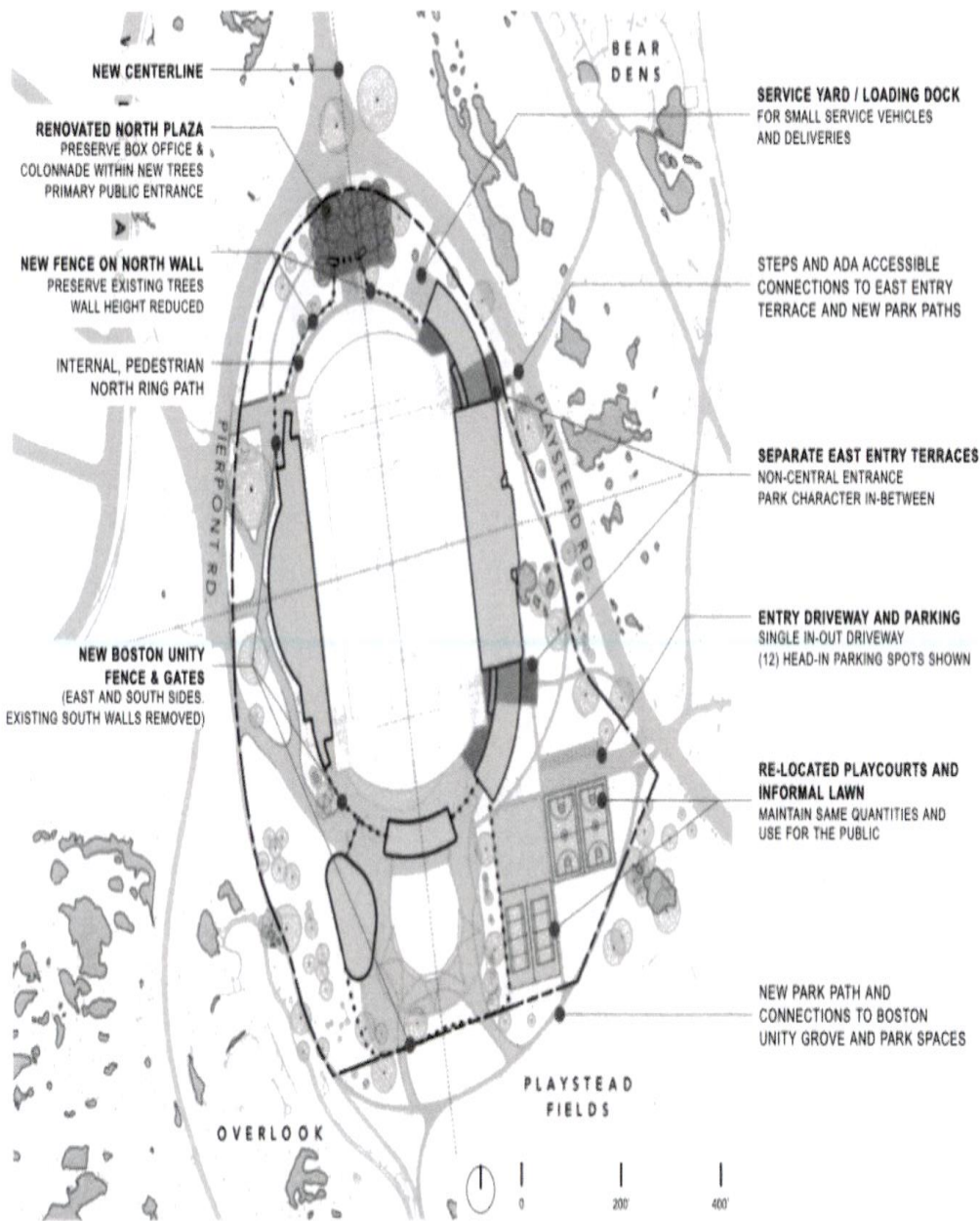




A Renovated White Stadium



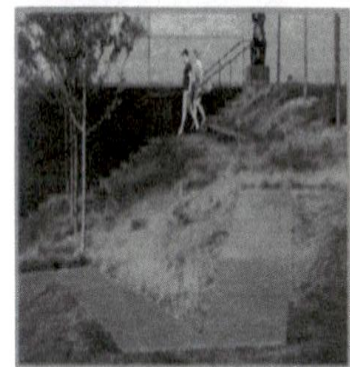
Site Plan



NORTH PLAZA CHARACTER



NEW NORTH FENCE CHARACTER



STEPS AND ACCESSIBLE PATH TO EAST ENTRY EXAMPLE

EXHIBIT E

WHITE STADIUM

PUBLIC MEETING: ARTICLE 80 LARGE

PROJECT REVIEW Q&A

This document outlines responses to the questions asked at the Article 80: Large Project Review community meeting held on January 11th, 2024 about the White Stadium Project.

I. Boston Public Schools	0
II. Public Access to Playstead and Grove	2
III. Transportation	3
IV. Supplier Diversity and Community Benefits	5
V. Scheduling and Permitting	7
VI. Franklin Park Environmental Protection and Upkeep	7
VII. Legal Agreement	8
VIII. Design	9

I. BOSTON PUBLIC SCHOOLS

1. What is the plan for the two football teams that currently play games at White Stadium, during construction and after construction?

While the renovated White Stadium will host late season, marquee games, including Thanksgiving rivalry games for many schools, the two schools that currently use the Stadium for football will be relocated to alternative fields during the regular season. We are working to identify those long-term homes. For example, we're upgrading Clemente Field to enable more football. More information will be shared in the coming weeks and months.

2. What happens if BUSP wins the championship? Is that game being held at White Stadium?

Boston Unity will use White Stadium for twenty games per year during the soccer season between March and November. The twenty games includes potential playoff and championship games.

3. How has BPS been engaged on this project?

BPS student athletes and coaches have been engaged since the White Stadium project began in the winter 2022 when the programming study began to envision a new athletic hub at White Stadium. Since then, the BPS Athletics Department has worked closely with the Mayor's Office and Public Facilities Department. At this stage of the project, the design of the East Grandstand has advanced enough that we will be re-engaging with BPS students and coaches for their feedback and input on relocation needs and making the athletic hub welcoming.

4. What is the plan and design for the East Grandstand?

Informed by BPS and community feedback, the new East Grandstand will provide:

- i. A professionally maintained grass field;
- ii. A new eight-lane track, long jump area, and field event spaces;
- iii. A state of the art athletic facility with
 1. Brand new locker rooms;
 2. A new strength and conditioning suite;
 3. Sports medicine suite;
 4. Student resource space;
 5. Community space; and
 6. BPS Athletics offices

These enhancements will promote health and wellness while providing year-round opportunities for the BPS athletic programs to develop our

students as scholar-athlete leaders. The revitalized site will also offer year-round employment and internships.

The design is in development by our designer, Jones Architecture, working closely with BPS. We will continue to share details publicly as the design is refined.

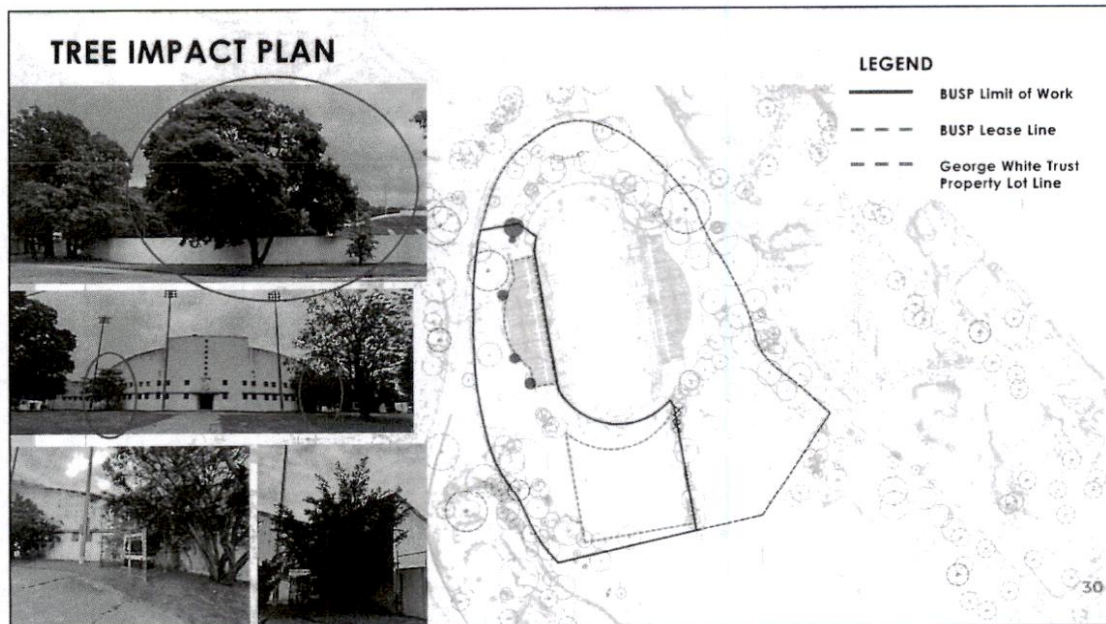
5. How will annual events like cross country meets or regular Franklin Park usage, like Zoo visitations, be coordinated with the White Stadium project?

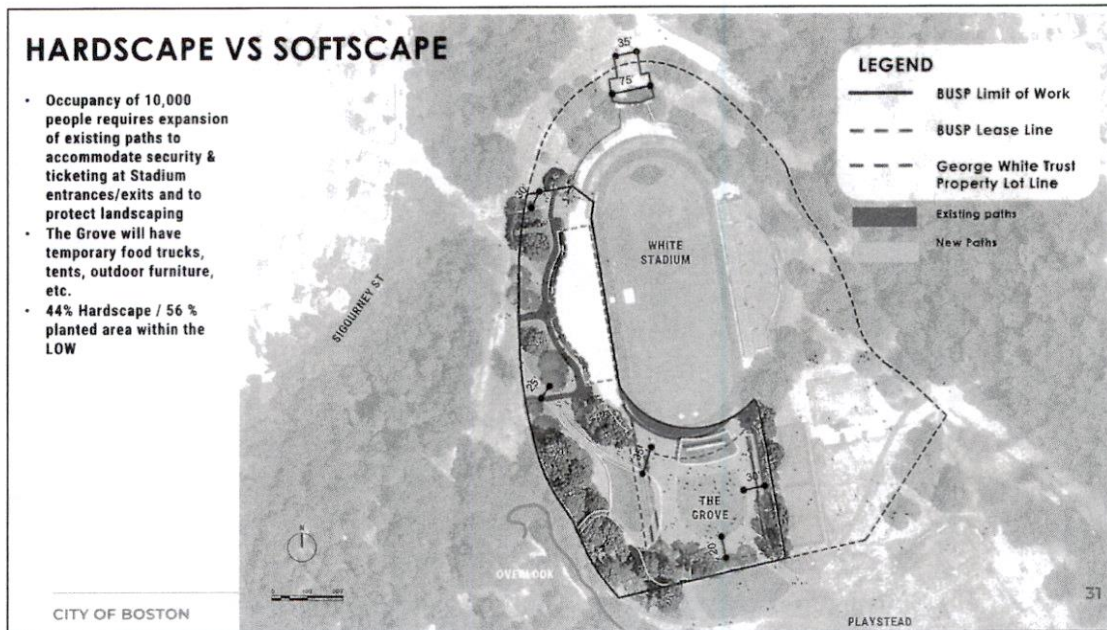
The City will work closely with organizations that host events in the stadium, on the playstead, and on cross country courses to ensure they do not conflict with Boston Unity games. The City is also working closely with the Franklin Park Zoo to minimize disruption to Zoo visitors.

II. PUBLIC ACCESS TO PLAYSTEAD AND GROVE

1. How much green space will be eliminated and how many mature oak trees that surround the stadium will be destroyed?

In our current design, no mature oak trees will be removed or destroyed within BUSP's limit of work. Please refer to the below diagrams, presented at recent public meetings, showing four small trees and one larger but invasive tree (Norway Maple) being removed. Please also refer to the expanded hardscape areas being proposed for safety and function of the stadium and the Grove.





2. Will the Grove be available for events other than BUSP events?

Yes. We look forward to the Grove becoming a beloved attraction and focal point to be enjoyed by the community. Daily visitors are welcome to enjoy the varied programming we intend to provide at the Grove. Community and private events can be scheduled as well.

III. TRANSPORTATION

1. How will game-day parking restrictions be enforced? What are the mechanics if a neighborhood doesn't otherwise have residential parking restrictions?

Game day parking restrictions will be enforced by BTD Enforcement personnel, BTD Towing, and Boston Police. We anticipate in the case of White Stadium events that parking restrictions will be less for additional roadway capacity that would impact area residents and more to ensure stadium patrons do not attempt to park on residential streets and negatively affect residential on street parking availability. Given that a large parking facility is not being proposed to serve the stadium, the volume of cars destined for the site will be less than in other stadiums that rely on large parking facilities and generate additional traffic congestion. To that end, game day regulations and limitations for non-residents and accompanying signage for the surrounding streets will be implemented. We anticipate that residents will need stickers to identify their vehicles, and look forward to working through the details for implementation. A Residential Parking Program is being explored. Additional game day parking restrictions for all

parties, where accommodation for an abundance of pedestrians may be necessary, is also to be determined through the ongoing process.

2. What will the radius of game day parking restrictions be? There may be people on all sides of the park who will be affected.

BTD will be considering the adjoining residential streets emanating from the main entrance on Walnut Street within a walkshed deemed too distant for stadium patrons to travel. That is generally considered greater than a 15 minute walk. The capture would include the surrounding and adjoining neighborhoods on all sides. Again, these parking restrictions will be tailored to prohibit non-resident, game day patrons from overburdening the existing residential fabric. Additional parking restrictions for all parties will be determined as we move further along in the process and evaluation of needs, but it is not expected that additional parking restrictions to accommodate traffic volume will be necessary to a large degree. As mentioned previously, game day parking restrictions will be implemented to ensure pedestrian safety and is to be determined.

3. How will the City ensure the safety of pedestrians on game days?

Public safety is the collective responsibility of all participating City departments but will rely heavily on uniformed Boston Police officers, Boston Police traffic details, and the potential implementation of BTD approved street closures or soft closures allowing for vehicle access for residents only. Data analysis during the ongoing process will be used to formulate a strategic plan based on the anticipated pedestrian volumes and pedestrian corridors.

4. How will the transportation plan mitigate congestion on Walnut Ave?

Our Transportation Management Plan will encourage fans to utilize alternative modes of transportation to and from White Stadium. Vehicular traffic from spectators will be limited to shuttle buses connecting spectators with nearby transit stations and satellite parking facilities. In addition, the shuttle routes into and out of Franklin Park will be split between Walnut Avenue, Blue Hill Avenue, and the Arborway to reduce shuttle traffic on Walnut Avenue.

5. What is the capacity for bike parking?

The bike parking structure will not be permanent and will be sized to meet demand through observations and data collection as events occur. To begin, we plan to provide parking for approximately 1,000 bikes via bike valet and Bluebikes valet.

6. Can we set aside pull-over spaces for rideshare?

Yes, we are proposing a dedicated spot for rideshare pick up and drop off outside Franklin Park

7. *Is there a set place for ADA parking to go to the games? Are they expected to take shuttles?*

In order to remove private single-use vehicles from the historic Franklin Park, there will be no private parking (ADA or otherwise) available. ADA spectators that arrive by shuttle or TNC will be provided service through Franklin Park to the stadium.

8. *Where are these satellite parking lots?*

The specific satellite parking facilities have not been identified at this time. Catchment areas have been determined where satellite parking demand is expected. Through the advance sale of tickets and parking, BUSP will be able to monitor parking demand and determine the parking facilities that are needed.

9. *On game days, is there going to be more traffic or less traffic?*

Matches, like all events at Franklin Park, are going to generate traffic. The difference is that there will be a transportation management plan in place for BUSP matches, which has not been the case for other events at Franklin Park to date.

10. *Will the shuttles be electric?*

BUSP will explore all options for the provision of shuttles, which will be contracted through outside vendors. Although utilizing electric shuttles is an important goal that we hope to achieve, we do not yet know the extent to which shuttle availability will allow for this at the outset.

11. *How will transportation be managed during BPS events?*

The design contract for the East Grandstand will include a transportation plan, which will address transportation and circulation for BPS uses.

IV. SUPPLIER DIVERSITY AND COMMUNITY BENEFITS

1. *Is there going to be a construction bidding process? How is the general contractor being selected?*

Due to the public-private partnership, the City will be constructing the East Grandstand, and Boston Unity will be constructing the West Grandstand.

The City is subject to public procurement laws and will be following Ch. 149A for the construction of public buildings. This includes a public bidding process.

BUSP will engage in its own bidding process for the general contractor and subcontractors working on the West Grandstand side of the project. BUSP is committed to hiring a diverse set of professionals to work its portion of the project, with an ambitious goal of reaching 50% inclusion of women- and minority-owned businesses. Currently, through the design phase, BUSP has reached 52% M/WBE participation, as measured by percentage of fees.

2. How will this project support equity in contracting?

Due to the public-private partnership, the City will be constructing the East Grandstand, and Boston Unity will be constructing the West Grandstand. Each entity is subject to different laws.

As a public entity, the City follows public procurement law. The City is committed to equity in our contracting, and our Supplier Diversity team works to ensure that minority- and women-owned small businesses can thrive and grow in Boston through equitable access to City contracts. For capital construction projects, the law allows us to set targets for minority- and women- owned businesses based on their proportion in the market. We will be setting targets for this project when design advances.

One of BUSP's overarching goals is to partner with the local community as much as possible to address our contracting needs. We anticipate that our portion of the project will lead to 500 construction jobs and more than 300 permanent jobs. We intend to contract and employ a 50% threshold for minority, women, and veteran-owned businesses, with a special emphasis on local companies and people from the neighborhoods around Franklin Park. We will work to achieve this commitment in all three phases of the project, including:

- (1) design, planning and permitting, which we are in now;
- (2) construction, which will begin later in 2024; and
- (3) stadium operations, which will begin with the opening of the NWSL season in the spring of 2026. We have developed a 4-step plan to achieve this goal, including reporting and transparency to track and report out on our progress.

We will provide multiple avenues for engaging, recruiting, sourcing, mentoring, and supporting to develop individuals and businesses to be able to meet the needs of the project. We will continue to foster meaningful

relationships with community groups, business associations, and government agencies to help us meet our goals. For additional information on these plans, please refer to sides 32-39 of the November 29, 2023 community meeting presentation [here](#).

3. Are there opportunities for investment from local residents?

BUSP aspires to provide a platform for investment at all levels. The National Women's Soccer League (NWSL) has rules that govern investments in its member clubs, but we continue to explore avenues to welcome broader participation. In addition, we will continue to invite the local community to engage with us in meaningful ways as we build the team and renovate White Stadium alongside the City of Boston. For example, we will have a community fund advisory committee, which will include local residents, to help guide grant-making decisions from the annual fund.

4. What will be the quality of the food service worker jobs at the stadium? Will they be union food service or low wage?

BUSP's goal in all of its contracting, hiring, and partnerships is to focus on supplier diversity, with twin priorities of (1) an ambitious goal of 50% M/WBE participation at all levels, and (2) an emphasis on local sourcing of people and companies from as close to the stadium as possible. We look forward to working with union partners to the extent they are able to help us in achieving these important goals.

5. Will there be public wifi for outdoor and indoor usage of the stadium?

Yes, there will be full wifi coverage for use in the stadium and the Grove.

V. SCHEDULING AND PERMITTING

1. Who will be in charge of scheduling the stadium? Who will have priority over access to the stadium?

The City will ensure that BPS and community uses will be prioritized. The City will identify key dates of City and community events which will be "black out dates" for soccer games. The Boston Unity schedule developed with the National Women's Soccer League will honor those dates. Boston Unity will use the stadium for twenty games per year. The vast majority of the time, the stadium will be in use by BPS athletics and community users, as it is now. Summer Camp, Special Olympics, Kiddies Carnival, and Graduation ceremonies will still be held in White Stadium.

VI. FRANKLIN PARK ENVIRONMENTAL PROTECTION AND UPKEEP

1. What will become of the Overlook ruins?

The Franklin Park Action Plan (FPAP) identified several culturally-significant, site-defining features in need of rehabilitation and reuse, including the ruins of the former Overlook Shelter. This area has the potential to function as a hallmark gathering and performance space for park programs, including the Elma Lewis Playhouse. The Parks and Recreation Department are beginning a community process to reimagine the Overlook Ruins as a permanent home for the Elma Lewis playhouse. An RFQ was released recently for a feasibility study to begin this process. Guided by the Franklin Park Action Plan's recommendations, the selected design team will explore design options that activate the space, preserve and restore (as appropriate) the significant masonry elements, and support public use with a focus on performances.

Through the design review process, the City (including the BPDA and the Parks and Recreation Department) is also working with Boston Unity to refine their designs for the Grove to ensure a harmonious relationship with the Overlook.

2. Will restricted funds be set aside for long-term care and upkeep of Franklin Park?

In 2018, the City directed a portion of the proceeds from the sale of the Winthrop Square Garage to a \$5 million maintenance trust for Franklin Park. The earnings go towards maintenance and programming expenses related to Franklin Park. Currently, these funds are going towards repaving Glen Road path, invasive plant removal, cobble gutter and drain cleaning, and Wilderness picnic grove rehabilitation. At the 2024 State of the City address, the Mayor also announced an additional investment of the biggest increase in staffing in 50 years for the entire park, consisting of two additional maintenance crews, one focused on natural resources, and a dedicated full-time park administrator.

Boston Unity is also proposing a \$500,000 annual community benefits fund to be distributed to organizations and initiatives which support one of four thematic areas, one of which is investments in Franklin Park and the Franklin Park Action Plan. An advisory committee will be formed to recommend organizations and initiatives to receive funding.

VII. LEGAL AGREEMENT

1. ***What is the duration of the lease?***

The Request for Proposals issued by the City is for a ten-year lease with two ten-year options to extend.

2. ***There are a lot of things being committed here, such as a transportation plan. Is there going to be a legal document that codifies all these transportation plans?***

The City and Boston Unity will be entering multiple legal agreements, including a lease, a Cooperation Agreement through the Article 80 process, an Memorandum of Agreement with the Boston Parks and Recreation Department, and a Transportation Access Plan Agreement with the Boston Transportation Department

VIII. DESIGN

1. ***It looks like the mobile endline seating goes over the grass and track. How do you plan to protect those surfaces?***

As mentioned at the recent community meeting, the track will be appropriately designed to receive the weight of the seating and will also be covered with a protective layer when the endline seating is located on the track.

2. ***Is mobile seating being brought in and out, and how is that going to be over the track while protecting the track?***

Yes, the endline seating will move on and off the track. Please also refer to the above answer.

3. ***How will Boston Unity minimize the impact of sound on game days?***

Please refer to the slide below from the most recent community meeting presentation.

NOISE STUDY & GOALS

Minimizing Stadium/Crowd Noise

- **Scheduling** considerations to minimize late-night noise
- **Directional Speakers:** Utilize directional speakers to focus sound within the stadium
- **Volume Controls:** Implement controls on volume levels, particularly for music and non-emergency announcements

CITY OF BOSTON

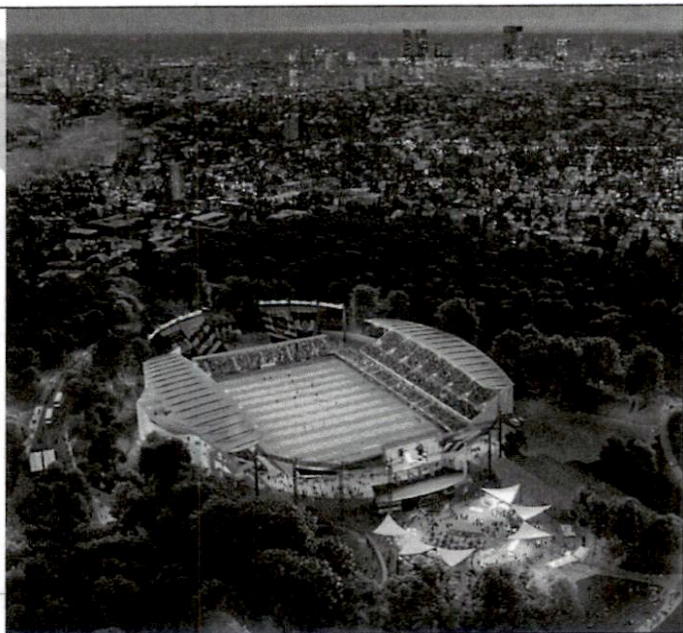


EXHIBIT F

may grant approval for the City of Brockton to borrow an amount of money which includes a sum allocated for replacement of equipment and furnishings.

Very truly yours,
ROBERT H. QUINN
Attorney General

Number 45

June 6, 1973

Honorable David M. Bartley
*Speaker of the House of
Representatives*
State House
Boston, Massachusetts

Dear Speaker Bartley:

The House of Representatives, by H. 6085, has addressed to me several questions regarding Article 97 of the Articles of Amendment to the Constitution of Massachusetts. Establishing the right to a clean environment for the citizens of Massachusetts, Article 97 was submitted to the voters on the November 1972 ballot and was approved. The questions of the House go to the provision in the Article requiring that acts concerning the disposition of, or certain changes in, the use of certain public lands be approved by a two-thirds roll-call vote of each branch of the General Court.

Specifically, your questions are as follows:

1. Do the provisions of the last paragraph of Article XCVII of the Articles of the Amendments to the Constitution requiring a two thirds vote by each branch of the general court, before a change can be made in the use or disposition of land and easements acquired for a purpose described in said Article, apply to all land and easements held for such a purpose regardless of the date of acquisition, or in the alternative, do they apply only to land and easements acquired for such purposes after the effective date of said Article of Amendments?
2. Does the disposition or change of use of land held for park purposes require a two thirds vote, to be taken by the yeas and nays of each branch of the general court, as provided in Article XCVII of the Articles of the Amendments to the Constitution, or would a majority vote of each branch be sufficient for approval?
3. Do the words "natural resources" as used in the first paragraph of Article XCVII of the Articles of the Amendments to the Constitution include ocean, shellfish and inland fisheries; wild birds, including song and insectivorous birds; wild mammals and game; sea and fresh water fish of every

description; forests and all uncultivated flora, together with public shade and ornamental trees and shrubs; land, soil and soil resources, lakes, ponds, streams, coastal, underground and surface waters; minerals and natural deposits, as formerly set out in the definition of the words "natural resources" in paragraph two of section one of chapter twenty-one of the General Laws?

4. Do the provisions of the fourth paragraph of Article XCVII of the Articles of the Amendments to the Constitution apply to any or all of the following means of disposition or change in use of land held for a public purpose: conveyance of land; long-term lease for inconsistent use; short-term lease, two years or less, for an inconsistent use; the granting or giving of an easement for an inconsistent use; or any agency action with regard to land under its control if an inconsistent use?

The proposed amendment to the Constitution was agreed to by the majority of the members of the Senate and the House of Representatives, in joint session, on August 5, 1969 and again on May 12, 1971, and became part of the Constitution by approval by the voters at the state election next following, on November 7, 1972. The full text of Article 97 is as follows:

ART. XCVII. Article XLIX of the Amendments to the Constitution is hereby annulled and the following is adopted in place thereof: — The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.

1. The first question of the House of Representatives asks, in effect, whether the two-thirds roll-call vote requirement is retroactive, to be applied to lands and easements acquired prior to the effective date of Article 97, November 7, 1972. For the reasons below, I answer in the affirmative.

The General Court did not propose this Amendment nor was it approved by the voting public without a sense of history nor void of a purpose worthy of a constitutional amendment. Examination of our constitutional history firmly establishes that the two-thirds roll-call vote requirement applies to public lands wherever taken or acquired.

Specifically, Article 97 annuls Article 49, in effect since November 5, 1918. Under that Article the General Court was empowered to provide for the taking or acquisition of lands, easements and interests therein "for the purpose of securing and promoting the proper conservation, development, utilization and control" [of] "agricultural, mineral, forest, water and other natural resources of the commonwealth." Although inclusion of the word "air" in this catalogue as it appears in Article 97 may make this new article slightly broader than the supplanted Article 49 as to purposes for which the General Court may provide for the taking or acquisition of land, it is clear that land taken or acquired under the earlier Article over nearly fifty years is now to be subjected to the two-thirds vote requirement for changes in use or other dispositions. Indeed all land whenever taken or acquired is now subject to the new voting requirement. The original draftsmen of our Constitution prudently included in Article 10 of the Declaration of Rights a broad constitutional basis for the taking of private land to be applied to public uses, without limitation on what are "public uses." By way of acts of the Legislature as well as through generous gifts of many of our citizens, the Commonwealth and our cities and towns have acquired parkland and reservations of which we can be justly proud. To claim that new Article 97 does not give the same care and protection for all these existing public lands as for lands acquired by the foresight of future legislators or the generosity of future citizens would ignore public purposes deemed important in our laws since the beginning of our Commonwealth.

Moreover, if this amendment were only prospective in effect, it would be virtually meaningless. In our Commonwealth, with a life commencing in the early 1600s and already cramped for land, it is most unlikely that the General Court and the voters would choose to protect only those acres hereafter added to the many thousands already held for public purposes. The comment of our Supreme Judicial Court concerning the earlier Article 49 is here applicable: "It must be presumed that the convention proposed and the people approved and ratified the Forty-ninth Amendment with reference to the practical affairs of mankind and not as a mere theoretical announcement." *Opinion of the Justices*, 237 Mass. 598, 608.

2. In its second question the House asks, in effect, whether the two-thirds roll-call vote requirement applies to land held for park purposes, as the term "park" is generally understood. My answer is in the affirmative, for the reasons below.

One major purpose of Article 97 is to secure that the people shall have "the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of

their environment." The fulfillment of these rights is uniquely carried out by parkland acquisition. As the Supreme Judicial Court has declared,

"The healthful and civilizing influence of parks in or near congested areas of population is of more than local interest and becomes a concern of the State under modern conditions. It relates not only to the public health in its narrow sense, but to broader considerations of exercise, refreshment, and enjoyment." *Higginson v. Treasurer and School House Commissioners of Boston*, 212 Mass. 583, 590; see also *Higginson v. Inhabitants of Nahant*, 11 Allen 530, 536.

A second major purpose of Article 97 is "the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources." Parkland protection can afford not only the conservation of forests, water and air but also a means of utilizing these resources in harmony with their conservation. Parkland can undeniably be said to be acquired for the purposes in Article 97 and is thus subject to the two-thirds roll-call requirement.

This question as to parks raises a further practical matter in regard to implementing Article 97 which warrants further discussion. The reasons the Legislature employs to explain its actions can be of countless levels of specificity or generality and land might conceivably be acquired for general recreation purposes or for very explicit uses such as the playing of baseball, the flying of kites, for evening strolls or for Sunday afternoon concerts. Undoubtedly, to the average man, such land would serve as a park but at even a more legalistic level it clearly can also be observed that such land was acquired, in the language of Article 97, because it was a "resource" which could best be "utilized" and "developed" by being "conserved" within a park. But it is not surprising that most land taken or acquired for public use is acquired under the specific terms of statutes which may not match verbatim the more general terms found in Article 10 of the Declaration of Rights of the Constitution or in Articles 39, 43, 49, 51 and 97 of the Amendments. Land originally acquired for limited or specified public purposes is thus not to be excluded from the operation of the two-thirds roll-call vote requirement for lack of express invocation of the more general purposes of Article 97. Rather the scope of the Amendment is to be very broadly construed, not only because of the greater broadness in "public purpose," changed from "public uses" appearing in Article 49, but also because Article 97 establishes that the protection to be afforded by the Amendment is not only of public uses but of certain express rights of the people.

Thus, all land, easements and interests therein are covered by Article 97 if taken or acquired for "the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources" as these terms are

broadly construed. While small greens remaining as the result of constructing public highways may be excluded, it is suggested that parks, monuments, reservations, athletic fields, concert areas and playgrounds clearly qualify. Given the spirit of the Amendment and the duty of the General Court, it would seem prudent to classify lands and easements taken or acquired for specific purposes not found verbatim in Article 97 as nevertheless subject to Article 97 if reasonable doubt exists concerning their actual status.

3. The third question of the House asks, in effect, how the words "natural resources," as appearing in Article 97, are to be defined.

Several statutes offer assistance to the General Court, all without limiting what are "natural resources." General Laws c. 21, § 1 defines "natural resources," for the purposes of Department of Natural Resources jurisdiction, as including

"ocean, shellfish and inland fisheries; wild birds, including song and insectivorous birds, wild mammals and game; sea and fresh water fish of every description; forests and all uncultivated flora, together with public shade and ornamental trees and shrubs; land, soil and soil resources, lakes, ponds, streams, coastal, underground and surface waters; minerals and natural deposits."

In addition, G. L. c. 12, § 11D, establishing a Division of Environmental Protection in my Department, uses the words "natural resources" in such a way as to include air, water, "rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources" and "seashores, dunes, marine resources, wetlands, open spaces, natural areas, parks or historic districts or sites." General Laws c. 214, § 10A, the so-called citizen-suit statute, contains a recitation substantially identical. To these lists Article 97 would add only "agricultural" resources.

It is safe to say, as a consequence, that the term "natural resources" should be taken to signify at least these catalogued items, as a minimum. Public lands taken or acquired to conserve, develop or utilize any of these resources are thus subject to Article 97.

It is apparent that the General Court has never sought to apply any limitation to the term "natural resources" but instead has viewed the term as an evolving one which should be expanded according to the needs of the time and the term was originally inserted in our Constitution for just that reason. See *Debate of the Constitutional Convention - 1917-1918*, p. 595. The resources enumerated above should, therefore, be regarded as examples of and not delimiting what are "natural resources."

4. The fourth question of the House requires a determination of the scope of activities which is intended by the words: "shall not be used for other purposes or otherwise disposed of."

The term "disposed" has never developed a precise legal meaning. As the Supreme Court has noted, "The word is *nomen generalissimum*, and standing by itself, without qualification, has no technical significa-

tion." *Phelps v. Harris*, 101 U.S. 370, 381 (1880). The Supreme Court has indicated however, that "disposition" may include a lease. *U.S. v. Gratiot*, 39 U.S. 526 (1840). Other cases on unrelated subjects suggest that in Massachusetts the word "dispose" can include all forms of transfer no matter how complete or incomplete. *Rogers v. Goodwin*, 2 Mass. 475; *Woodbridge v. Jones*, 183 Mass. 549; *Lord v. Smith*, 293 Mass. 555.

In this absence of precise legal meaning, *Webster's Third New International Dictionary* is helpful. "Dispose of" is defined as "to transfer into new hands or to the control of someone else." A change in physical or legal control would thus prove to be controlling.

I therefore conclude that the "dispositions" for which a two-thirds roll-call vote of each branch of the General Court is required include: transfers of legal or physical control between agencies of government, between political subdivisions, and between levels of government, of lands, easements and interests therein originally taken or acquired for the purposes stated in Article 97, and transfers from public ownership to private. Outright conveyance, takings by eminent domain, long-term and short-term leases of whatever length, the granting or taking of easements and all means of transfer or change of legal or physical control are thereby covered, without limitation and without regard to whether the transfer be for the same or different uses or consistent or inconsistent purposes.

This interpretation affords a more objective test, and is more easily applied, than "used for other purposes." Under Article 97 that standard must be applied by the Legislature, however, in circumstances which cannot be characterized as a disposition — that is, when a transfer or change in physical or legal control does not occur. A change of use *within* a governmental agency or within a political subdivision would serve as an apt example. Within any agency or political subdivision any land, easement or interest therein, if originally taken or acquired for the purposes stated in Article 97, may not be "used for other purposes" without the requisite two-thirds roll-call vote of each branch of the General Court.

It may be helpful to note how Article 97 is to be read with the so-called doctrine of "prior public use," application of which also turns on changes in use. That doctrine holds that

. . . "public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion." *Robbins v. Department of Public Works*, 355 Mass. 328, 330 and cases there cited.

The doctrine of "prior public use" is derived from many early cases which establish its applicability to transfers between corporations granted limited powers of the Commonwealth, such as eminent domain and authority over water and railroad easements. *E.g.*, *Old Colony Railroad Company v. Framingham Water Company*, 153 Mass. 561; *Boston Water Power Company v. Boston and Worcester Railroad Corporation*,

23 Pick. 360; *Boston and Maine Railroad v. Lowell and Lawrence Railroad Company*, 124 Mass. 368; *Eastern Railroad Company v. Boston and Maine Railroad*, 111 Mass. 125, and *Housatonic Railroad Company v. Lee and Hudson Railroad Company*, 118 Mass. 391. The doctrine was also applied at an early date to transfers between such corporations and municipalities and counties. E.g., *Boston and Albany Railroad Company v. City Council of Cambridge*, 166 Mass. 224 (eminent domain taking of railroad land); *Eldredge v. County Commissioners of Norfolk*, 185 Mass. 186 (eminent domain taking of railroad easement); *West Boston Bridge v. County Commissioners of Middlesex*, 10 Pick. 270 (eminent domain taking of turnpike land), and *Inhabitants of Springfield v. Connecticut River Railroad Co.*, 4 Cush. 63 (eminent domain taking of a public way).

The doctrine of "prior public use" has in more modern times been applied to the following transfers between governmental agencies or political subdivisions: a) a transfer between state agencies, *Robbins v. Department of Public Works*, 355 Mass. 328 (eminent domain taking of Metropolitan District Commission wetlands), b) transfers between a state agency and a special state authority, *Commonwealth v. Massachusetts Turnpike Authority*, 346 Mass. 250 (eminent domain taking of MDC land) and see *Loschi v. Massachusetts Port Authority*, 354 Mass. 53 (eminent domain taking of parkland), c) a transfer between a special state commission and special state authority, *Gould v. Greylock Reservation Commission*, 350 Mass. 410 (lease of portions of Mount Greylock), d) transfers between municipalities, *City of Boston v. Inhabitants of Brookline*, 156 Mass. 172 (eminent domain taking of a water easement) and *Inhabitants of Quincy v. City of Boston*, 148 Mass. 389 (eminent domain taking of a public way), e) transfers between state agencies and municipalities, *Town of Brookline v. Metropolitan District Commission*, 357 Mass. 435 (eminent domain taking of parkland) and *City of Boston v. Massachusetts Port Authority*, 356 Mass. 741 (eminent domain taking of a park), f) a transfer between a special state authority and a municipality, *Appleton v. Massachusetts Parking Authority*, 340 Mass. 303 (1960) (eminent domain, Boston Common), g) a transfer between a state agency and a county, *Abbot v. Commissioners of the County of Dukes County*, 357 Mass. 784 (Department of Natural Resources grant of avigation easement), and h) transfers between counties and municipalities, *Town of Needham v. County Commissioners of Norfolk*, 324 Mass. 293 (eminent domain taking of common and park lands) and *Inhabitants of Easthampton v. County Commissioners of Hampshire*, 154 Mass. 424 (eminent domain taking of school lot).

The doctrine has also been applied to the following changes of use of public lands within governmental agencies or within political subdivisions: a) intra-agency uses, *Sacco v. Department of Public Works*, 352 Mass. 670 (filling a portion of a Great Pond), b) intramunicipality uses, *Higginson v. Treasurer and School House Commissioners of Boston*, 212 Mass. 583 (erecting a building on a public park), and see *Kean v. Stetson*, 5 Pick. 492 (road built adjoining a river), and c) intracounty

uses, *Bauer v. Mitchell*, 247 Mass. 522 (discharging sewage upon school land). The doctrine may also possibly reach *de facto* changes in use, e.g., *Pilgrim Real Estate Inc. v. Superintendent of Police of Boston*, 330 Mass. 250 (parking of cars on park area) and may be available to protect reservation land held by charitable corporations, e.g., *Trustees of Reservations v. Town of Stockbridge*, 348 Mass. 511 (eminent domain).

In addition to these extensions of the doctrine, special statutory protections, codifying the doctrine of "prior public use," are afforded local parkland and commons by G. L. c. 45 and public cemeteries by G. L. c. 114, §§ 17, 41. As to changes in use of public lands held by municipalities or counties, generally, see G. L. c. 40, § 15A and G. L. c. 214, § 3(11).

This is the background against which Article 97 was approved. The doctrine of "prior public use" requires legislative action, by majority vote, to divert land from one public use to another inconsistent public use. As the cases discussed above indicate, the doctrine requires an act of the Legislature regardless whether the land in question is held by the Commonwealth, its agencies, special authorities and commissions, political subdivisions or certain corporations granted powers of the sovereign. And the doctrine applies regardless whether the public use for which the land in question is held is a conservation purpose.

As to all such changes in use previously covered by the doctrine of "prior public use" the new Article 97 will only change the requisite vote of the Legislature from majority to two thirds. Article 97 is designed to supplement, not supplant, the doctrine of "prior public use."

Article 97 will be of special significance, though, where the doctrine of "prior public use" has not yet been applied. For instance, legislation and a two-thirds roll-call vote of the Legislature will now for the first time be required even where a transfer of land or easement between governmental agencies, between political subdivisions, or between levels of government is made with no change in the use of the land, and even where a transfer is from public control to private.

Whether legislation pending before the General Court is subject to Article 97, or the doctrine of "prior public use," or both, it is recommended that the legislation meet the high standard of specificity set by the Supreme Judicial Court in a case involving the doctrine of "prior public use":

"We think it is essential to the expression of plain and explicit authority to divert [public lands] to a new and inconsistent public use that the Legislature identify the land and that there appear in the legislation not only a statement of the new use but a statement or recital showing in some way legislative awareness of the existing public use. In short, the legislation should express not merely the public will for the new use but its willingness to surrender or forgo the existing use." (Footnote omitted.) *Robbins v. Department of Public Works*, 355 Mass. 328, 331.

Each piece of legislation which may be subject to Article 97 should, in addition, be drawn so as to identify the parties to any planned disposition of the land.

CONCLUSIONS

Article 97 of the Amendments to the Massachusetts Constitution establishes the right of the people to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic and esthetic qualities of their environment. The protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is declared to be a public purpose. Lands, easements and interests therein taken or acquired for such public purposes are not to be disposed of or used for other purposes except by two-thirds roll-call vote of both the Massachusetts Senate and House of Representatives.

Answering the questions of the House of Representatives I advise that the two-thirds roll-call vote requirement of Article 97 applies to all lands, easements and interests therein *whenever* taken or acquired for Article 97 conservation, development or utilization purposes, even prior to the effective date of Article 97, November 7, 1972. The Amendment applies to land, easements and interests therein held by the Commonwealth, or any of its agencies or political subdivisions, such as cities, towns and counties.

I advise that "natural resources" given protection under Article 97 would include at the very least, without limitation: air, water, wetlands, rivers, streams, lakes, ponds, coastal, underground and surface waters, flood plains, seashores, dunes, marine resources, ocean, shellfish and inland fisheries, wild birds including song and insectivorous birds, wild mammals and game, sea and fresh water fish of every description, forests and all uncultivated flora, together with public shade and ornamental trees and shrubs, land, soil and soil resources, minerals and natural deposits, agricultural resources, open spaces, natural areas, and parks and historic districts or sites.

I advise that Article 97 requires a two-thirds roll-call vote of the Massachusetts Senate and House of Representatives for all transfers between agencies of government and between political subdivisions of lands, easements or interests therein originally taken or acquired for Article 97 purposes, and transfers of such land, easements or interests therein from one level of government to another, or from public ownership to private. This is so without regard to whether the transfer be for the same or different uses or consistent or inconsistent purposes. I so advise because such transfers are "dispositions" under the terms of the new Amendment, and because "disposition" includes any change of legal or physical control, including but not limited to outright conveyance, eminent domain takings, long and short-term leases of whatever length and the granting or taking of easements.

I also advise that *intra*-agency changes in uses of land from Article 97 purposes, although they are not "dispositions," are similarly subject to the two-thirds roll-call vote requirement.

Read against the background of the existing doctrine of "prior public use," Article 97 will thus for the first time require legislation and a special vote of the Legislature even where a transfer of land between governmental agencies, between political subdivisions or between levels of government results in no change in the use of land, and even where a transfer is made from public control to private. I suggest that whether legislation pending before the General Court is subject to Article 97, or the doctrine of "prior public use," or both, the very highest standard of specificity should be required of the draftsmen to assure that legislation clearly identifies the locus, the present public uses of the land, the new uses contemplated, if any, and the parties to any contemplated "disposition" of the land.

In short, Article 97 seeks to prevent government from ill-considered misuse or other disposition of public lands and interests held for conservation, development or utilization of natural resources. If land is misused a portion of the public's natural resources may be forever lost, and no less so than by outright transfer. Article 97 thus provides a new range of protection for public lands far beyond existing law and much to the benefit of our natural resources and to the credit of our citizens.

Very truly yours,
ROBERT H. QUINN
Attorney General

Number 46

June 20, 1973

Honorable John F. Kehoe, Jr.
Commissioner of Public Safety
1010 Commonwealth Avenue
Boston, Massachusetts 02215

Dear Commissioner Kehoe:

You have requested my opinion on two questions relating to continued approval by you of Sunday licenses for certain games known as Skill Right, Fascination, Skill Light, Bing-O-Reno and Light A Line. You have advised me that the game Skill Right has been licensed by the Department of Public Safety since 1949, and the other games to which you refer were given temporary approval as Sunday games by the then Commissioner of Public Safety in 1962. You question whether you may continue to approve such Sunday licenses in view of the enactment of St. 1971, c. 486, entitled "An Act Authorizing the Licensing of a Game Commonly Called Beano."

I proceed first to a consideration of the pertinent statutory provisions. The power of the Commissioner of Public Safety to approve Sunday licenses is derived from G. L. c. 136, § 4, which provides in pertinent part:

"(1) The mayor of a city or the selectmen of a town, upon written application describing the proposed dancing or game,