

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

457



FROM: Economic Development Agency

SUBMITTAL DATE:
March 25, 2010

SUBJECT: Agreement by and Between the County of Riverside and the Valley-Wide Recreation and Park District for the Maintenance and Operation of Eller Park

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that although the Agreement by and Between the County of Riverside and the Valley-Wide Recreation and Park District for the Maintenance and Operation of Eller Park ("Maintenance and Operations Agreement") could have a significant effect on the environment, nothing further is required because all potentially significant effects have been adequately analyzed in an earlier Mitigated Negative Declaration ("MND") and have been avoided or mitigated pursuant to that earlier MND;
2. Approve the Attached Maintenance and Operations Agreement; and
3. Authorize the Chairman to execute the attached Maintenance and Operations Agreement.

(Continued on Page 2)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	N/A

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
DATE 3/24/10
MICHELLE CLACK
Departmental Concurrence

Dep't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 3.14 & 4.4 of 12/12/06; 4.4 of 6/3/08; 3.19; 3.19 & 4.2 of 3/31/09; 4.1 of 6/23/09
District: 5
Agenda Number:

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

3.34

Agreement by and Between the County of Riverside and the Valley-Wide Recreation and Park District for the Maintenance and Operation of Eller Park

March 25, 2010

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RECOMMENDED MOTION (continued):

4. Authorize the Assistant County Executive Officer/EDA or designee to execute amendments to the Maintenance and Operations Agreement that extend the term of the agreement for an additional period of five (5) years, subject to County Counsel approval.

BACKGROUND:

On June 23, 2009 the Board of Directors of the Redevelopment Agency for the County of Riverside awarded a contract to Superior Construction Specialties, Inc. for the construction of Eller Park. The 5.24-acre park includes a parking lot, tot-lot play area, two picnic areas, a lighted baseball/softball diamond, a basketball court, walking trail, open turf areas, landscaping, and a restroom/concession building. The chain link fence along the northern property line will be replaced with a wrought iron fence, and the dilapidated fence along the eastern property line will be replaced with a block wall. Street improvements and the primary vehicular access point will be provided on Antelope Road. The County-owned park is located within the Valley-Wide Recreation and Park District (District) and was designed in cooperation with the District in anticipation that they would assume the operations and maintenance of the park.

The Maintenance and Operations Agreement (MOA) outlines the terms by which the District will perform operations and maintenance of the park for a period of five (5) years. In return for full responsibility of maintaining and operating the park, the District may keep all revenues generated from services and operations.

Staff prepared an Initial Study and determined that although the Agreement by and Between the County of Riverside and the Valley-Wide Recreation and Park District for the Maintenance and Operation of Eller Park could have a significant effect on the environment, nothing further is required because all potentially significant effects have been adequately analyzed in Environmental Assessment Initial Study RDA/CEQA 2007-14 and a Mitigated Negative Declaration was adopted by the Board of Directors of the Redevelopment Agency for the County of Riverside on March 31, 2009.

The attached Notice of Intent to Adopt a Finding that Nothing Further is Required was posted on March 10, 2010.

Agency staff recommends the Board of Supervisors approve the Agreement by and Between the County of Riverside and the Valley-Wide Recreation and Park District for the Maintenance and Operation of Eller Park.

Attachments:

1. Agreement By and Between the County of Riverside and the Valley-Wide Recreation and Park District for the Maintenance and Operation of Eller Park
2. Notice of Intent to Adopt a Finding that Nothing Further is Required
3. Notice of Determination

1 **WHEREAS**, the COUNTY will own the improvements constructed on the
2 PROPERTY; and

3 **WHEREAS**, COUNTY and DISTRICT have determined that there is a need to
4 maintain and operate the PROPERTY and improvements once construction is
5 completed by the AGENCY; and

6 **WHEREAS**, the DISTRICT has the expertise and ability to maintain and operate
7 the PROPERTY and improvements; and

8 **WHEREAS**, a portion of the PROPERTY may be needed by the Riverside
9 County Department of Transportation and the State of California's Department of
10 Transportation to complete the fly-over connection at Ethanac Road and Highway 74
11 (the "CALTRANS CONNECTION"); and

12 **WHEREAS**, if and when the Notice of Completion for the CALTRANS
13 CONNECTION is approved by the Riverside County Board of Supervisors, the
14 COUNTY will convey its ownership interest in the remaining portion of the PROPERTY
15 and improvements to the DISTRICT.

16 **NOW, THEREFORE**, in consideration of the preceding promises and the mutual
17 covenants and agreements hereinafter contained, the parties hereto do hereby agree as
18 follows:

19 **SECTION 1. Purpose of the Agreement.** The purpose of this Agreement is to
20 outline the terms and conditions by which the DISTRICT will perform operations and
21 maintenance of the PROPERTY and PARK, as shown on Exhibit "A", which is attached
22 hereto and incorporated herein by reference.

23 **SECTION 2. Location of the PARK.** The PARK will be located on the
24 PROPERTY within the PROJECT AREA.

25 **SECTION 3. Effective Date.** The Effective Date of this Agreement is the date
26 the parties sign the Agreement. If the parties sign the Agreement on more than one
27 date, then the last date the Agreement is signed by a party shall be the Effective Date.

28 **SECTION 4. Term of Agreement.** This Agreement shall become effective upon

1 the Effective Date and shall continue in full force and effect for a period of five (5) years
2 unless an amendment extending the term is issued and signed by both COUNTY and
3 DISTRICT, or until such time the PROPERTY and improvements are conveyed to the
4 DISTRICT.

5 **SECTION 5. Consideration.** The COUNTY shall receive maintenance and
6 operations services for the PROPERTY and PARK. The DISTRICT, in return for full
7 responsibility of maintaining and operating the PROPERTY and PARK, may keep all
8 revenues generated from Services and Operations of the PARK as described in Section
9 7(A) herein.

10 **SECTION 6. COUNTY Obligations.**

11 A. **Conveyance.** Upon the Riverside County Board of Supervisor's approval
12 of the Notice of Completion for the CALTRANS CONNECTION, COUNTY shall convey
13 its ownership interest in the remaining portion of the PROPERTY and improvements to
14 the DISTRICT.

15 **SECTION 7. DISTRICT Obligations.** DISTRICT agrees to operate and maintain
16 the PROPERTY and PARK. Operation and maintenance of the PROPERTY and PARK
17 will be at the sole cost and expense of the DISTRICT and includes, but is not limited to,
18 normal wear and tear repair and damage repair.

19 A. **Use Restriction.**

20 1. The conveyance agreement and deed granting the PROPERTY
21 and improvements to the DISTRICT shall include a restriction that states the following:
22 "District shall maintain and operate the PROPERTY and PARK for the use and purpose
23 of a parking lot, baseball/softball diamond, basketball court, tot lot play area, picnic
24 areas, walking trails, open turf area, and a restroom/concession stand. If the
25 PROPERTY or PARK are abandoned by the DISTRICT, or if the PARK is no longer
26 used as a parking lot, baseball/softball diamond, basketball court, tot lot play area,
27 picnic areas, walking trails, open turf area, and a restroom/concession stand by
28 DISTRICT, or shall be put to any use other than uses and purposes herein specifically

1 referred to, then the grant and conveyance herein shall at once revert to the COUNTY
2 unless such alternate use is first approved, in writing, by the COUNTY Board of
3 Supervisors.”

4 2. DISTRICT shall not sell, convey or lease the PROPERTY or PARK
5 to another entity to operate unless approved, in writing, by the COUNTY Board of
6 Supervisors, such approval shall not be unreasonably withheld.

7 3. DISTRICT must notify in writing, two (2) months in advance, any
8 change in the outlined use of the property. Said notice must be sent to: Assistant
9 County Executive Officer, Economic Development Agency, P.O. Box 1180, Riverside,
10 CA 92502.

11 4. The DISTRICT and COUNTY hereby declare their express intent
12 that the restrictions set forth in this MOU shall run with the land, and shall bind all
13 successors in title to the PROPERTY.

14 B. Services and Operation. DISTRICT shall provide services and programs
15 to the community at the PARK. All operations at the PARK will be managed by the
16 DISTRICT and any and all fees collected for the services and programs shall be
17 retained by the DISTRICT. All fees, charges and prices for services at the PARK shall
18 be set by the DISTRICT and shall be comparable to those fees at other parks operated
19 by the DISTRICT.

20 Services and programs may include but are not limited to: youth
21 baseball/softball leagues, soccer leagues, and concessions. DISTRICT shall submit a
22 standard list of services and programs to COUNTY for approval within 30 days of the
23 Effective Date. Subsequently, DISTRICT may provide additional services and programs
24 as long as COUNTY approval is obtained prior to beginning them. COUNTY approval of
25 programs and services shall not be unreasonable withheld.

26 To the extent allowable by law, the DISTRICT shall operate the PARK on
27 days and at hours consistent with other parks operated by the DISTRICT. No games
28 shall begin after 11:00 p.m. on any night of the week. To the extent allowable by law,

1 the DISTRICT shall have the right to use and occupy the PARK to perform maintenance
2 and repair services and to operate the PARK as provided herein without further consent
3 or approval of the COUNTY except as otherwise expressly stated in this Agreement.
4 The DISTRICT agrees to use and occupy the PARK continuously during the Term of
5 Agreement for the purpose of operating the PARK.

6 C. Water and Irrigation. DISTRICT shall provide all water necessary for
7 irrigation. Irrigation shall be accomplished on a scheduled basis with such frequency
8 and quantity as to promote healthy growth. This shall be accomplished by adjusting
9 irrigation frequency as necessary, based on changes in rainfall and temperature. Any
10 repairs to the irrigation systems and all accessories, including sprinkler heads, risers
11 and pumps shall be performed on a timely basis.

12 D. Trees, Shrubs and Vines. All plant material shall be pruned, thinned and
13 trimmed on a regular basis to maintain a neat appearance and to promote optimum
14 health and growth. Tree maintenance shall include pruning of low hanging branches
15 and sucker growth from trees to promote healthy growth. Damaged or dying plant
16 material shall be replaced in a timely manner.

17 E. Ground Cover, Turf and Flower Beds. Maintenance shall consist of
18 trimming ground cover where needed around trees, turf and shrubs. Beds are to be
19 weeded and cleaned of leaves and debris on a regular basis to maintain a neat and
20 clean appearance. Grass shall be mowed and edged to its local confines, including
21 around all trees, sprinklers, fences, and lighting fixtures. After mowing and edging, the
22 grass clippings shall be removed from the sidewalks, driveways and curbs.

23 F. Hardscape Areas. All walkways, driveways, parking areas, decomposed
24 granite trails, and concrete areas shall be cleaned of litter, debris, and weeds on a
25 weekly basis.

26 G. Fertilizer. Fertilizer shall be applied on all areas twice a year to maintain
27 healthy growth. Application should be determined based on the time of year, soil and
28 plant type and condition of plant material.

1 H. Pest Control. All insects, disease, fungus and other pests on trees,
2 shrubs, groundcover and lawns shall be properly managed before severe damage is
3 caused.

4 I. Replacement of Light Bulbs. All light bulbs and lighting fixtures shall be
5 promptly repaired or replaced, as necessary, including those located on all structures
6 and monuments.

7 J. Materials, Supplies and Equipment. DISTRICT shall furnish all materials,
8 supplies, equipment, and labor.

9 K. Building Facade and Parking Lot. Graffiti, weeds and damaged areas
10 shall be promptly repaired or removed from all surfaces, including but not limited to,
11 building facades, walls, and parking lots.

12 L. Riverside County Transportation and Caltrans Right of Way.

13 All improvements constructed within the Riverside County Transportation
14 Department right of way and Caltrans right of way shall be maintained up to the same
15 standards as the rest of the facility.

16 M. Maintenance of BMP's.

17 DISTRICT shall maintain all BMP's as outlined in Appendices D and I of
18 the Water Quality Management Plan for the PARK and shall be responsible for any
19 other maintenance requirements of the facility as outlined in the Water Quality
20 Management Plan and Storm Water Pollution Prevention Plan for the PARK.

21 N. Start Date. Maintenance and Operations shall commence upon
22 completion of the PARK, which will be determined by Riverside County Board of
23 Supervisor's release of the ten percent contract retention.

24 **SECTION 8. County Staff Inspections**. COUNTY staff shall have the right to
25 visit and inspect the operations of the PARK during normal business hours to confirm
26 compliance with this Agreement.

27 **SECTION 9. Termination**.

28 A. With Cause. This Agreement may be terminated by COUNTY with cause

1 upon giving thirty (30) days written notice to DISTRICT. DISTRICT's failure to perform
2 any covenant or provision of this Agreement would constitute a default, with the cure
3 period for this Agreement being thirty (30) days. If the failure to perform is not cured
4 within thirty (30) days after delivery by the COUNTY to the DISTRICT of written notice
5 of default specifying with particularity the nature of the default, this agreement may be
6 terminated.

7 **SECTION 10. Compliance with Laws and Regulations.** By executing this
8 agreement, the DISTRICT hereby certifies that it will adhere to and comply with all
9 federal, state and local laws, regulations and ordinances.

10 **SECTION 11. Personnel.** DISTRICT represents that it has all personnel
11 required to perform the maintenance services under this Agreement or will subcontract
12 for necessary services. DISTRICT personnel shall not be employed by, nor have any
13 direct contractual relationship with the COUNTY. The DISTRICT, its employees, or
14 personnel under direct contract with DISTRICT or subcontractors shall perform all
15 services required hereunder. DISTRICT and its agents, servants, employees and
16 subcontractors shall act at all times in an independent capacity during the term of this
17 Agreement, and shall not act as, and shall not be, nor shall they in any manner be
18 construed to be, agents, officers or employees of COUNTY.

19 **SECTION 12. Amendments to the Agreement.** The Assistant County
20 Executive Officer/EDA or designee is authorized to approve and execute changes,
21 approved by County Counsel, to the Agreement. Such changes shall be mutually
22 agreed upon by and between the Assistant County Executive Officer/EDA or designee
23 and DISTRICT and shall be incorporated in written amendments to this Agreement.

24 **SECTION 13. Ministerial Acts.** The Riverside County Economic Development
25 Agency ("EDA") shall administer this Agreement and the Assistant County Executive
26 Officer/EDA or designee are authorized to take such ministerial actions as may be
27 necessary or appropriate to implement the terms, provisions, and conditions of this
28 Agreement as it may be amended from time to time by COUNTY.

1 **SECTION 14. Principal Contact Persons.** The following individuals are hereby
2 designated to be the principal contact persons for their respective Parties:

3 **COUNTY:** Dominick Lombardi, Development Specialist
4 Riverside County Economic Development
5 1325 Spruce Street, Suite 400
6 Riverside, CA 92507
7 (951) 955-8916

8 **DISTRICT:** Jeff Leatherman, General Manager
9 Valley-Wide Recreation and Park District
10 901 W. Esplanade Avenue
11 San Jacinto, CA 92581
12 (951) 654-1505

13 **SECTION 15. Conflict of Interest.** No member, official or employee of
14 COUNTY or DISTRICT shall have any personal interest, direct or indirect, in this
15 Agreement nor shall any such member, official or employee participate in any decision
16 relating to this Agreement which affects his or her personal interests or the interests of
17 any corporation, partnership or association in which he or she is directly or indirectly
18 interested.

19 **SECTION 16. Interpretation and Governing Law.** This Agreement and any
20 dispute arising hereunder shall be governed and interpreted in accordance with the laws
21 of the State of California. This Agreement shall be construed as a whole according to
22 its fair language and common meaning to achieve the objectives and purposes of the
23 parties hereto, and the rule of construction to the effect that ambiguities are to be
24 resolved against the drafting party shall not be employed in interpreting this Agreement,
25 all parties having been represented by counsel in the negotiation and preparation
26 hereof.

27 **SECTION 17. No Third Party Beneficiaries.** This Agreement is made and
28 entered into for the sole protection and benefit of the parties hereto. No other person or
entity shall have any right of action based upon the provisions of this Agreement.

SECTION 18. Assignment. The DISTRICT will not make any sale, assignment,
conveyance or lease of any trust or power, or transfer in any other form with respect to

1 this Agreement, the PROPERTY or the PARK, without prior written approval of the
2 COUNTY.

3 **SECTION 19. Indemnification.** DISTRICT shall indemnify and hold harmless
4 the COUNTY, its Agencies, Districts, Special Districts and Departments, their respective
5 directors, officers, Board of Supervisors, elected and appointed officials, employees,
6 agents and representatives from any liability whatsoever, based or asserted upon any
7 services of DISTRICT, its officers, employees, subcontractors, agents or
8 representatives arising out of or in any way relating to this Agreement, including but not
9 limited to property damage, bodily injury, death or any other element of any kind or
10 nature whatsoever arising from the performance of the DISTRICT, its officers, agents,
11 employees, subcontractors, agents or representatives from this Agreement. DISTRICT
12 shall defend, at its sole expense, all costs and fees including, but not limited to, attorney
13 fees, cost of investigation, defense and settlements or awards, the County of Riverside,
14 its Agencies, Districts, Special Districts and Departments, their respective directors,
15 officers, Board of Supervisors, elected and appointed officials, employees, agents and
16 representatives, in any claim or action based upon such alleged acts or omissions.

17 With respect to any action or claim subject to indemnification herein by
18 DISTRICT, DISTRICT shall, at their sole cost, have the right to use counsel of their own
19 choice and shall have the right to adjust, settle, or compromise any such action or claim
20 without the prior consent of COUNTY; provided, however, that any such adjustment,
21 settlement or compromise in no manner whatsoever limits or circumscribes DISTRICT's
22 indemnification to COUNTY as set forth herein.

23 DISTRICT's obligation hereunder shall be satisfied when DISTRICT has provided
24 to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for
25 the action or claim involved.

26 The specified insurance limits required in this Agreement shall in no way limit or
27 circumscribe DISTRICT's obligations to indemnify and hold harmless the COUNTY
28 herein from third party claims.

1 In the event there is conflict between this clause and California Civil Code
2 Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such
3 interpretation shall not relieve the DISTRICT from indemnifying the COUNTY to the
4 fullest extent allowed by law.

5 COUNTY shall indemnify and hold harmless the DISTRICT, its respective
6 directors, officers, Board of Directors, elected and appointed officials, employees,
7 agents and representatives from any liability whatsoever, based or asserted upon any
8 services of COUNTY, its officers, employees, subcontractors, agents or representatives
9 arising out of or in any way relating to this Agreement, including but not limited to
10 property damage, bodily injury, death or any other element of any kind or nature
11 whatsoever arising from the performance of the COUNTY, its officers, agents,
12 employees, subcontractors, agents or representatives from this Agreement. COUNTY
13 shall defend, at its sole expense, all costs and fees including, but not limited to, attorney
14 fees, cost of investigation, defense and settlements or awards, DISTRICT and its
15 respective directors, officers, Board of Directors, elected and appointed officials,
16 employees, agents and representatives, in any claim or action based upon such alleged
17 acts or omissions.

18 With respect to any action or claim subject to indemnification herein by COUNTY,
19 COUNTY shall, at their sole cost, have the right to use counsel of their own choice and
20 shall have the right to adjust, settle, or compromise any such action or claim without the
21 prior consent of DISTRICT; provided, however, that any such adjustment, settlement or
22 compromise in no manner whatsoever limits or circumscribes COUNTY indemnification
23 to DISTRICT as set forth herein.

24 COUNTY obligation hereunder shall be satisfied when COUNTY has provided to
25 DISTRICT the appropriate form of dismissal relieving DISTRICT from any liability for the
26 action or claim involved.

27 In the event there is conflict between this clause and California Civil Code
28 Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such

1 interpretation shall not relieve the COUNTY from indemnifying the DISTRICT to the
2 fullest extent allowed by law.

3 **SECTION 20. Insurance.** Without limiting or diminishing DISTRICT's obligation
4 to indemnify and hold the COUNTY harmless, DISTRICT shall procure and maintain, or
5 cause to be maintained at its sole cost and expense, the following insurance coverage
6 during the term of this Agreement:

7 a. **Workers' Compensation:**

8 If DISTRICT has employees as defined by the State of California,
9 DISTRICT shall maintain Workers' Compensation Insurance
10 (Coverage A) as prescribed by the laws of the State of California.
11 Policy shall include Employers' Liability (Coverage B) including
12 Occupational Disease with limits not less than one million dollars
13 (\$1,000,000) per person per accident. Policy shall be endorsed to
14 waive subrogation in favor of the COUNTY and, if applicable,
15 provide a Borrowed Servant/Alternate Employer Endorsement.

16 b. **Commercial General Liability:**

17 Commercial General Liability insurance coverage, including but not
18 limited to, premises liability, contractual liability, products/completed
19 operations if applicable, personal and advertising injury covering
20 claims that arise from or out of DISTRICT's operations, use and
21 management of the premises, or the performance of its obligations
22 hereunder. Policy shall name, by Policy Endorsement, the
23 COUNTY, its Agencies, its Directors, Officers, Special Districts,
24 Board of Supervisors, employees, agents or representatives as
25 Additional Insured. Policy limits shall not be less than two million
26 dollars (\$2,000,000) per occurrence combined single limits. If
27 Policy contains a general aggregate limit, it shall apply separately
28 to this Agreement or be no less than two (2) times the occurrence

1 limit. Policy shall also contain coverage for five thousand dollars
2 (\$5,000.) Medical Payments per accident, per person, and Fire
3 Legal Liability in an amount not less than fifty thousand dollars
4 (\$50,000.)

5 c. **Vehicle Liability:**

6 If DISTRICT uses, or causes to be used, any vehicle or mobile
7 equipment in the performance of its obligations under this
8 Agreement, DISTRICT shall maintain liability insurance for all
9 owned, non-owned and hired vehicles in an amount not less than
10 one million dollars (\$1,000,000) per occurrence combined single
11 limit. If Policy contains a general aggregate limit, it shall apply
12 separately to this Agreement or be no less than two (2) times the
13 occurrence limit. Policy shall be endorsed to name the COUNTY as
14 Additional Insured.

15 d. **Property (Physical Damage):**

16 All-Risk personal property insurance coverage for the full
17 replacement value of all DISTRICT's equipment, systems,
18 structures and improvements/alterations if any (Care, Custody, and
19 Control of DISTRICT) used on COUNTY or County premises, or
20 used in any way connected with the accomplishment of the work or
21 performance of services under this Agreement.

22 e. **General Insurance Provisions - All lines:**

- 23 (1) Any insurance carrier providing insurance coverage hereunder shall
24 be admitted to the State of California unless waived, in writing, by
25 the County Risk Manager. Carrier(s) shall have an A.M. BEST
26 rating of not less than an A: VIII. Insurance deductibles or self-
27 insured retentions must be declared by the carrier(s), and such
28 deductibles and retentions shall have the prior written consent from

1 the County Risk Manager.

2 (2) Cause its insurance carrier(s) to furnish the COUNTY with either 1)
3 a properly executed original Certificate(s) of Insurance and certified
4 original copies of endorsements effecting coverage as required
5 herein, or 2) if requested to do so in writing by the County Risk
6 Manager, provide original certified copies of policies including all
7 endorsements and all attachments thereto, showing such insurance
8 is in full force and effect. Except on professional liability policy, the
9 COUNTY, its Agencies, Directors and Officers, Special Districts,
10 Board of Supervisors, elected officials, employees, agents or
11 representatives are named as Additional Insured. Further, said
12 certificates(s) and policies of insurance shall contain the covenant
13 of the insurance carrier(s) that thirty (30) days written notice shall
14 be given to the COUNTY prior to any material modification,
15 cancellation, expiration or reduction in coverage of such insurance.
16 In the event of a material modification, cancellation, expiration or
17 reduction in coverage, this lease shall terminate forthwith, unless
18 the COUNTY receives, prior to such Effective Date, another
19 properly executed original Certificate of Insurance and original
20 copies of endorsements or certified original policies, including all
21 endorsements and attachments thereto evidencing coverage set
22 forth herein and the insurance required herein is in full force and
23 effect. **DISTRICT shall not commence operations under this**
24 **Agreement until the COUNTY has been furnished original**
25 **Certificate(s) of Insurance and certified original copies of**
26 **endorsements or policies of insurance including all**
27 **endorsements and any and all other attachments as required**
28 **in this Section. The original endorsements for each policy and**

1 **the Certificate of Insurance shall be signed by an individual**
2 **authorized by the insurance carrier to do so, on its behalf.**

3 (3) It is understood and agreed to by the parties hereto and the
4 insurance company(s) that the Certificate(s) of Insurance and
5 policies shall so covenant and shall, except on professional liability
6 policy, be construed as primary, and the COUNTY's insurance
7 and/or deductibles and/or self-insured retentions or self-insured
8 programs shall not be construed as contributory.

9 (4) DISTRICT shall pass down the insurance obligations contained
10 herein to all tiers of subcontractors working under this Agreement.

11 (5) The insurance requirements contained in this Agreement may be
12 met with a program(s) of self-insurance acceptable to the
13 COUNTY.

14 **SECTION 21. Toxic Materials.** During the term of this Agreement,
15 DISTRICT shall not violate any federal, state, or local law, ordinance, or regulation,
16 relating to industrial hygiene or to the environmental condition of including, but not
17 limited to, soil and ground water conditions. Further, DISTRICT shall not use, generate,
18 manufacture, produce, store or dispose of on, under or about the PROPERTY or PARK
19 or transport to or from the PROPERTY or PARK, any flammable explosives, asbestos,
20 radioactive materials, hazardous wastes, toxic substances or related injurious materials,
21 whether injurious by themselves or in combination with other materials (collectively,
22 "hazardous materials"). For the purpose of this Agreement, hazardous materials shall
23 include, but not limited to, substances defined as "hazardous substances", or "toxic
24 substances" in the Comprehensive Environmental Response Compensation and
25 Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous
26 Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource
27 Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances
28 defined as "hazardous wastes" in Section 25117 of the California Health and Safety

1 Code or as "hazardous substances" in Section 25316 of the California Health and
2 Safety Code; and in the regulations adopted in publications promulgated pursuant to
3 said laws. The DISTRICT shall not be liable for mitigation of any toxic materials located
4 on the PROPERTY or PARK prior to the Effective Date of this Agreement.

5 **SECTION 22. Signs.** DISTRICT shall not erect, maintain, or display any signs
6 or other forms of advertising upon any COUNTY property without first obtaining the
7 written approval of COUNTY.

8 **SECTION 23. Independent Contractor.** DISTRICT and its agents, servants,
9 employees and subcontractors shall act at all times in an independent capacity during
10 the term of this Agreement, and shall not act as, and shall not be, nor shall they in any
11 manner be construed to be, agents, officers or employees of COUNTY, and further,
12 DISTRICT, its agents, servants, employees and subcontractors, shall not in any manner
13 incur or have the power to incur any debt, obligation, or liability against the COUNTY.

14 **SECTION 24. Jurisdiction and Venue.** Any action at law or in equity arising
15 under this Agreement or brought by a party hereto for the purpose of enforcing,
16 construing or determining the validity of any provision of this Agreement shall be filed in
17 the consolidated Courts of Riverside County, State of California, and the parties hereto
18 waive all provisions of law providing for the filing, removal or change of venue to any
19 other court or jurisdiction.

20 **SECTION 25. Severability.** Each paragraph and provision of this Agreement is
21 severable from each other provision, and if any provision or part thereof is declared
22 invalid, the remaining provisions shall remain in full force and effect.

23 **SECTION 26. Waiver.** Failure by a party to insist upon the strict performance
24 of any of the provisions of this Agreement by the other party, or failure by a party to
25 exercise its rights upon the default of the other party, shall not constitute a waiver of
26 such party's right to insist and demand strict compliance by the other party with the
27 terms of this Agreement thereafter.

28 **SECTION 27. Authority to Execute.** The persons executing this agreement or

1 exhibits attached hereto on behalf of the parties to this Agreement hereby warrant and
2 represent that they have the authority to execute this Agreement and warrant and
3 represent that they have the authority to bind the respective parties to this Agreement to
4 the performance of its obligations hereunder.


5 **SECTION 28. Entire Agreement.** It is expressly agreed that this Agreement
6 embodies the entire agreement of the parties in relation to the subject matter hereof,
7 and that no other agreement or understanding , verbal or otherwise, relative to this
8 subject matter, exists between the parties at the time of execution.

9 **IN WITNESS WHEREOF,** COUNTY and DISTRICT have executed this
10 Agreement as of the date first above written.

11 **COUNTY**
12 **COUNTY OF RIVERSIDE**

DISTRICT
VALLEY-WIDE RECREATION
AND PARK DISTRICT

13
14 _____
15 Marion Ashley
Chairman, Board of Supervisors


16 _____
17 Jeff Leatherman, General Manager
18 Valley-Wide Recreation & Parks District

16 **APPROVED AS TO FORM:**
17 PAMELA J. WALLS
18 COUNTY COUNSEL

ATTEST:
KECIA HARPER-IHEM
CLERK OF THE BOARD

19  5/24/10
20 **Deputy Michelle Clack**

By _____
Deputy

21
22
23 S:\RDACOM\DIS5\Romoland\Eller Park\3.0 Agreements\Valley-Wide Rec District\Valley-Wide Agreement Eller Park 5-14-09 Dom CoCo 8-12-09 Dom 1-27-

24 10(1)Clean.doc
25
26
27
28

Exhibit "A"

