



SUBMITTAL TO THE BOARD OF DIRECTORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

776



FROM: Regional Park & Open-Space District

SUBMITTAL DATE:
July 29, 2010

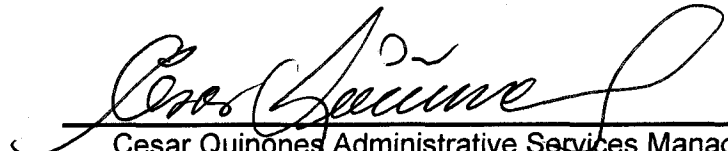
SUBJECT: Resolution No. 2010-04 Delegation of Authority for Certain Real Property
Agreements Concerning Park District Owned Land

RECOMMENDED MOTION: That the Board of Directors:

1. Adopts Resolution No. 2010-04, Delegation of Authority for Certain Real Property Agreements; and
2. Approves the attached Lease Agreement substantially in form;
3. Approves the attached Right of Entry Agreement substantially in form;
4. Authorizes the General Manager, or his designee, to negotiate and execute such agreements on behalf of the Board; and
5. Directs the General Manager to file a quarterly report with the Board attaching any such agreements for final acknowledgment signature by the Chairman.

BACKGROUND: (continued on page 2)

803-Del of Auth for Real Property Agreements


 Cesar Quinones Administrative Services Manager II for
 Scott Bangle, General Manager

FINANCIAL
DATA n/a

Current F.Y. Total Cost: \$
 Current F.Y. Net County Cost: \$
 Annual Net County Cost: \$


In Current Year Budget:
 Budget Adjustment:
 For Fiscal Year:

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30
 Requires 4/5 Vote

C.E.O. RECOMMENDATION:

APPROVE

BY: 
 Alex Gann

County Executive Office Signature

Consent Policy
 Consent Policy

Dept's Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.:

District: All
 ATTACHMENTS FILED
 WITH THE CLERK OF THE BOARD
 Agenda Number:

13.1

FORM APPROVED COUNTY COUNSEL
 BY:  CYNTHIA M. GUNZEL
 DATE: 7-29-10
 Concurrence

SUBJECT: Resolution No. 2010-04 Delegation of Authority for Certain Real Property Agreements Concerning Park District Owned Land

The Riverside County Regional Park and Open-Space District (District) at times has the need to enter into right of entry, license/use or lease agreements with a person, organization or corporation, public or private, to facilitate and carry out the purposes of the District. In an effort to provide for a more efficient and cost-effective manner to facilitate District business as it involves real property owned by the District, it desires to establish the attached agreements as the form to be used for these real property transactions by requesting Board approval of said agreement and to delegate the authority to the General Manager, or his designee, to negotiate, process, finalize and approve these right of entry, license/use or lease agreements. The material terms and conditions of each respective agreement are set forth in the forms with only the particular details of the real property, the contracting party, the duration and rental amount to be entered into the documents. The District has the power to lease or license its own real property, necessary to the full exercise of its powers. Delegating the authority to execute the above-referenced agreements would expedite the processing of such documents and reduce costs in connection therewith. This expedited process would be granted subject to limitations to the duration of up to ten years and maximum monthly rental amounts of \$7,500 for any agreements and a quarterly report would need to be submitted to the Board to get them apprised of the various transactions.

2 RESOLUTION NO. 2010-04
3 DELEGATION OF AUTHORITY FOR GENERAL MANAGER
4 TO EXECUTE CERTAIN REAL PROPERTY AGREEMENTS
5 CONCERNING PARK DISTRICT OWNED LAND

6 WHEREAS, the District may lease or license its own real property necessary to the full exercise of
7 its powers; and

8 WHEREAS, the Riverside County Regional Park and Open-Space District (District) at times has
9 the need to enter into right of entry, license/use or lease agreements with a person, organization or
10 corporation, public or private to facilitate and carry out the purposes of the District; and

11 WHEREAS, delegating the authority to execute the above referenced agreements would expedite
12 the processing of such documents and reduce costs in connection therewith; and

13 WHEREAS, the District desires to establish the attached agreements as the form to be used for
14 these real property transactions by requesting Board approval of said agreement and to delegate the
15 authority to the General Manager, or his designee, to negotiate, process and execute right of entry,
16 license/use or lease agreements; now, therefore,

17 BE IT RESOLVED, DETERMINED, AND ORDERED by the Board of Directors of the
18 Riverside County Regional Park and Open-Space District, in regular session assembled on
19 _____, that the attached right of entry, license and lease agreements substantially in form and
20 subject to limitations are approved by the Board and the General Manager of the District is hereby
21 authorized to negotiate, process, and approve such agreements.

22 BE IT FURTHER RESOLVED, DETERMINED AND ORDERED that any agreements entered
23 into for District owned real property shall not exceed ten (10) years in duration, is not renewable and rent
24 shall not exceed \$7,500 per month.

25 BE IT FURTHER RESOLVED, DETERMINED AND ORDERED that all such agreements have
26 been approved as to form or prepared by County Counsel.

27 BE IT FURTHER RESOLVED, DETERMINED AND ORDERED that the General Manager
28 shall prepare and submit a quarterly report of all such agreements to the Board.

FORM APPROVED COUNTY COUNSEL
BY: *Syn Hiam M. Gunzel 7-29-10*
DATE: _____
SYNHIA M. GUNZEL

1 Riverside County Regional Park and Open-Space District, a special district, ("Grantor"), and
2 Insert name(s) of Grantee(s), ("Grantee")

3
4 APN:
Address:

5 RIGHT OF ENTRY AGREEMENT

6 This Right of Entry ("ROE") Agreement is made and entered into this ___ day of ____, 200__,
7 between the Riverside County Regional Park and Open-Space District ("Grantor") and _____,
("Grantee"). Grantor and Grantee are sometimes collectively referred to as "Parties".

8 RECITALS

9 A. Grantor is the owner of certain real property known as: [insert address, if there is one]
10 (APN: - -), and legally described in Exhibit "A" attached hereto and incorporated herein by
reference ("Property") and has the right to grant to Grantee permission to enter upon and use the Property.

11 B. Grantee desires to obtain Grantor's permission to enter upon and use the Property, on a
12 temporary basis, for the purpose of [insert purpose for entry].

13 C. Grantor desires to accommodate Grantee's request for permission to enter upon Grantor's
14 Property, on a temporary basis, for [state purpose and if it is in furtherance of working on a particular
project] the project limits and scope of which are shown on Exhibit "B" attached hereto and incorporated
by reference.

15 NOW, THEREFORE, Grantor and Grantee do hereby agree as follows:

16 AGREEMENT

17 1. Right of Entry Grantor hereby grants to Grantee and its agents, employees and contractors
18 the temporary right to enter onto the Property for the purpose of evaluation more particularly described in
Exhibit "B" attached and for no other purpose.

19 2. Term The term of this Right of Entry shall commence on the date this ROE
20 Agreement is executed by all Parties hereto ("Effective Date"). This ROE shall terminate twelve (12)
months from the Effective Date of this Agreement or until completion of said project, whichever shall be
21 sooner. The term may be extended by written notice to Grantee in the sole and absolute discretion of
Grantor. This ROE is subordinate to all prior or future rights and obligations of Grantor in the Property,
22 except that Grantor shall grant no rights inconsistent with the reasonable exercise by Grantee of its rights
under this ROE.

23 3. Consideration Grantee agrees to pay Grantor the sum of [insert amount] dollars and no
24 cents (\$XXX.00) as consideration for the rights granted by this right of entry.

25 4. Notice of work Prior to any entry upon the Property for any of the purposes
26 hereinabove set forth, Grantee shall notify the authorities in charge named below by written and/or oral
notice at least forty-eight (48) hours prior to commencement of entry and work. Grantee shall also notify
authorities in charge at least forty-eight (48) hours prior to cessation of work.

27 Name:
28 Address:
Phone:
Fax:

1
2 4. Liens Grantee shall not permit to be placed against the Property, or any part
3 thereof, any design professionals', mechanics', material man's contractors' or subcontractors' liens with
4 the regard to Grantee's actions upon the Property. Grantee agrees to hold Grantor harmless for any loss
5 or expense, including reasonable attorneys' fee, arising from any such liens which might be file against
6 the Property.

7 5. Indemnification Grantee shall defend, indemnify and hold harmless Grantor, its
8 Agencies and Departments, their respective directors, officers, Board of Directors, elected and appointed
9 officials, employees, agents and representatives from all actions, claims, suits, penalties, obligations,
10 damages and liabilities of whatsoever kind and nature arising from death, personal injury, property
11 damage or other cause asserted or based upon any act or omission of Grantee, its employees, agents, or
12 any subcontractors, agents or representatives of Grantee, or the obligations contemplated by this
13 agreement, to or in any way connected with the use of the property. Such indemnification shall include
14 all costs and attorneys fees. The obligations set forth in this paragraph shall survive the termination of
15 this agreement.

16 6. Insurance As a condition of this ROE Agreement, Grantee will provide, and/or cause
17 its contractors to provide, a policy or policies of insurance as follows: A certificate of insurance naming
18 the Grantor as additional insured in the amount of \$1,000,000.00 general liability policy as well as
19 verifying \$1,000,000.00 of automobile and workers compensation insurance. Such insurance shall be
20 primary and all endorsements shall be provided. Maintaining and showing proof of insurance shall not
21 limit or restrict Grantee's indemnification of the County.

22 7. Compliance with Laws Grantee shall, in all activities undertaken pursuant to this
23 ROE, comply and cause its contractors, agents, and employees to comply with all federal, state, and local
24 laws, statutes, orders, ordinances, rules, regulations, plans, policies, and decrees. Without limiting the
25 generality of the foregoing, Grantee, at its sole cost and expense, shall obtain any and all permits which
26 may be required by any law, regulation or ordinance for any activities Grantee desires to conduct or have
27 conducted pursuant to this ROE.

28 8. Inspection Grantor and its representatives, employees, agents or independent
contractors may enter and inspect the Property or any portion thereof or any improvements thereon at any
time and from time to time at reasonable times to verify Grantee's compliance with the terms and
conditions of this ROE.

9. Not Real Property Interest It is expressly understood that this ROE is not exclusive and
does not in any way whatsoever grant or convey any permanent easement, lease, fee or other real property
interest in the Property to Grantee.

10. Protection and Restoration of the Property Grantee shall protect the Property, including
all improvements and the natural resources thereon, at all times at Grantee's sole cost and expense, and
Grantee shall strictly adhere to the following restrictions:

a. Grantee may not place or dump garbage, trash or refuse anywhere upon or within the
Property, except for self-contained trash receptacles that are maintained to Grantor's
satisfaction by Grantee;

b. Grantee may not commit or create, or suffer to be committed or created, any waste,
hazardous condition and/or nuisance to occur upon the Property;

c. Grantee may not cut, prune or remove any native trees or brush upon the Property, except
for the elimination of safety hazards without first obtaining written permission by the
Grantor;

1 d. Grantee may not disturb, move or remove any rocks or boulders upon the Property except
2 for the elimination of safety hazards without first obtaining written permission by the
Grantor;

3 e. Grantee must exercise due diligence in the protection of the Property against damage or
4 destruction by fire, vandalism or other cause.

5 Upon the termination or revocation of this ROE, but before its relinquishment to Grantor, Grantee
shall, at its own cost and expense, remove any debris generated by its use and Property shall be left in a
6 neat condition. Grantee agrees not to damage Property in the process of performing the permitted
activities.

7 11. Public safety Grantee shall, or cause its contractors or subcontractors to take any and all
8 other necessary and reasonable steps to protect the public from harm due to the work.

9 12. Entire agreement This ROE Agreement is the result of negotiations between the
Parties hereto. The Parties further declare and represent that no inducement, promise or agreement not
10 herein expressed has been made to them and this ROE contains the entire agreement of the Parties, and
that the terms of this agreement are contractual and not a mere recital. Any ambiguity in the Agreement
11 or any of its provisions shall not be interpreted against the Party drafting the agreement.

12 13. Warranty of Authority The undersigned represents that it has the authority to, and
does, bind the person or entity on whose behalf and for whom it is signing this ROE and the attendant
13 documents provided for herein, and this agreement and said additional documents are, accordingly,
binding on said person or entity.

14 14. Assignment This ROE shall not, nor shall any interest herein be assigned, mortgaged,
hypothesized, or transferred by Grantee, whether voluntary or involuntary or by operation of law, nor
15 shall Grantee let or sublet or grant any license of permit with respect to the use and occupancy of the
Property or any portion thereof.

16 15. Choice of Law This Right of Entry Agreement will be governed and construed by
17 the laws of the State of California.

18 16. Modification The agreement shall not be changed, modified, or amended except upon the
19 written consent of the Parties hereto.

20 ///
21 ///
22 ///

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1 IN WITNESS WHEREOF, the Parties hereto have executed this Right of Entry Agreement on the date as
2 indicated below each Party's signature.

3
4 Dated this _____ day of _____, 200__

5
6 GRANTOR:
7 RIVERSIDE COUNTY REGIONAL PARK
8 AND OPEN-SPACE DISTRICT, a special district

9 By: _____
10 Scott Bangle
11 General Manager

12 Acknowledgment:

13 By: _____
14 Chairman, Board of Directors

15 GRANTEE:

16
17
18
19 By: _____
20 Name:
21 Its:

22
23
24
25
26
27 FORM APPROVED COUNTY COUNSEL
28 BY: Synthia M. Gunzel
SYNTHIA M. GUNZEL DATE

GROUND LEASE
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Subject/Property:
Parties:
Date:

GROUND LEASE

THIS GROUND LEASE ("Lease") is made as of the _____, by and between Riverside County Regional Park and Open-Space District, a park and open-space district, ("District") and [name and capacity of Lessee] ("Lessee").

RECITALS

A. District is the owner of that certain real property ("Property") situated in County of Riverside, California, commonly known as [address of premises or APN] and more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein.

B. District wishes to lease the Property to Lessee, together with all rights, privileges, and easements appurtenant to the Property, and to convey title to all buildings, structures, and other improvements thereon to Lessee. The Property, such appurtenant rights, privileges and easements and such buildings and improvements, if any, are collectively referred to as the "Leased Premises."

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, District and Lessee hereby agree as follows:

Section 1. Lease of Premises

District hereby leases to Lessee, and Lessee hereby leases from District, the Leased Premises for the terms and upon the agreements, covenants and conditions set forth in this Lease.

Section 2. Term

The term of this Lease shall be [number] year(s) ("Term") commencing on [date] ("Commencement Date"), and, unless sooner terminated or extended as herein provided, shall terminate on [date].

(a) Any holding over by Lessee after the expiration of this Lease shall be on a month-to-month basis strictly, and continuing tenancy rights shall not accrue to Lessee.

(b) Lessee may have an option to extend the term of this Lease provided it is or remains consistent with the District's business plan.

(c) The option shall be exercised in the following manner:

- (i) District would provide written notice to Lessee at least three (3) months prior to the expiration of the Term of the Lease; and
- (ii) Lessee shall respond on whether it will exercise the option to extend; and
- (iii) The exercise of the option could occur only if Lessee is still in possession

Subject/Property:
Parties:
Date:

of the Leased Premises and is not in default or breach of any term or condition of the Lease.

Section 3. Minimum Rent and Percentage Rent

Lessee shall pay to District as rent, a Minimum Rent or Percentage Rent, whichever is greater, for the use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided, the following sums of money:

(a) Minimum Rent. Lessee shall pay to District minimum rent ("Minimum Rent") in the amount of [insert amount], tendered in whole or in part in U.S. Dollars or In Kind Consideration (value for service or crops), per acre per year in monthly payments; or

(b) Percentage Rent. In the alternative, Lessee shall pay to District the percentage rent ("Percentage Rent") equal to seven percent (7%) of the total monthly amount received ("Gross Receipts") in its operations while occupying the Leased Premises.

(c) In the Event Lessee fails to pay Rent in a timely manner, Lessee shall pay to District an additional amount of eighteen percent (18%) of such Rent due as an administrative charge.

(d) Payment. Minimum and Percentage Rent shall be computed and paid on a monthly basis, with subsequent annual 3% increase adjustments.

(e) Operating Statements. Lessee shall keep complete, accurate and appropriate books and records of monthly Gross Receipts. Such books and records, as well as all other relevant documents as District shall reasonably require, shall, upon reasonable written notice, be open for inspection by District, its auditors or other authorized representatives. District shall have the right, at District's expense, to audit and examine such books, records and documents and other relevant items in the possession of Lessee, but only to the extent necessary for a proper determination of Gross Receipts, and all such books, records, documents and other items shall be held available for such audit and examination. Lessee shall preserve such books, records, documents, and other items for a period of three calendar years after such statement is rendered.

(f) Location for Payment. All Rent (and all other moneys and charges payable by Lessee to District hereunder) shall be paid by Lessee to District in lawful money of the United States of America at District's address for notices hereunder, or to such other person or at such other place as District may from time to time designate by notice in writing to Lessee.

(g) Change of Use. Notwithstanding the provisions of this Section ____, in the event that Lessee ceases to utilize the Leased Premises for the primary purpose of _____, District and Lessee hereby agree to revise the rental provisions of this Lease.

Section 4. Taxes and Assessment

Lessee recognizes and understands that this Lease may create a Possessory interest subject to

Subject/Property:
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Date:

property taxation and that the Lessee may be subject to the payment of property taxes levied on such interest. Lessee agrees to pay, before delinquency, all lawful taxes, assessments, water charges, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term, including taxes on Possessory interest, which, during the term hereof, may be or become a lien, charge or assessment, or may be levied or imposed, upon the leasehold estate created hereby, or upon the subject matter of this Lease, Lessee's improvements or personal property situated upon the Leased Premises, or upon the subject matter of this Lease, now or hereafter located thereon.

Section 5. Use

Lessee shall have the right to use the Leased Premises for [insert purpose of lease]; provided, however, in no event shall the Leased Premises be used for any purpose or use (nor shall any activity be carried on upon the Leased Premises) which in any manner causes, creates or results in a public or private nuisance.

Section 6. Quiet Enjoyment

District covenants that upon payment by Lessee of the Rent herein reserved and upon performance and observance by Lessee of all of the agreements, covenants and conditions herein contained on the part of Lessee to be performed and observed, Lessee shall peaceably hold and quietly enjoy the Leased Premises during the entire Term without hindrance, molestation or interruption by District. Lessee, in turn, agrees to quit and to return the Leased Premises to the original state and deliver up possession of Leased Premises peaceably and quietly at the expiration of said term or any sooner termination as contained within this Lease.

Section 7. Compliance

(a) Lessee shall secure, at its sole expense, all necessary permits and licenses at it may be required to obtain to perform any of the permitted uses provided hereunder this Lease or to occupy the Leased Premises.

(b) In the event that any of the following provisions apply to the Leased Premises and are checked and initialed by the parties, these provisions shall be in full force and effect and Lessee shall comply with all the applicable terms and conditions contained hereunder:

_____ District Initials _____ Lessee Initials Planting/Improvements. Any planting of crops or improvements to be undertaken by LESSEE, his employees, agents, contractors or representatives, on the Leased Premises shall have the prior written approval by District General Manager or his designee after Lessee has first submitted to District proposed plans and specifications thereof, in writing. The use of all fertilizers and synthetic pesticides, plant growth regulators, livestock feed additives, and genetically modified organisms are strictly prohibited. Lessee will provide an annual Agricultural Commissioner report to District as the summary for this Section 7.

_____ District Initials _____ Lessee Initials Compliance with Public/Quasi-Public (P/QP) Land Requirements. Lessee will locate, acquire, otherwise encumber and transfer to the Western

Subject/Property:
Parties:
Date:

Riverside County Regional Conservation Authority (RCA), P/QP replacement acreage at a minimum ratio of 1:1 replacement for the proposed development and any appurtenant facilities or structures. Said P/QP replacement acreage must be biologically equivalent or superior to the Leased Premises. The biological equivalency or superior analysis shall address the effects on habitats, Covered Species (as defined in the MSHCP), core areas (as identified on the MSHCP Core and Linkage Map), MSHCP Conservation Area configuration and management (such as increases or decreases in edge), and ecotones (defined as areas of adjoining Vegetation Communities, generally characterized by greater biological diversity) and other conditions affecting species diversity (such as invasion by exotic species). Prior to execution of this Lease, Lessee shall prepare, and District shall submit, the equivalency analysis in narrative and graphic form to the U.S. Fish and Wildlife Service and the California Department of Fish and Game for review and concurrence. Prior to the execution of this Lease and transfer of the PQ/P replacement acreage to RCA, District must make findings that the replacement acreage is biologically equivalent or superior to the Leased Premises only if such P/QP replacement acreage is biologically equivalent or superior. Lessee will be responsible for all costs associated with the equivalency analysis preparation and determination. It is understood by the parties that the obligations of this section will be completed prior to execution of this Lease and that this Lease will not be in effect until such time as the obligations of this section have been completed.

[] _____ **District Initials** _____ **Lessee Initials** Compliance with Federal and California Endangered Species Acts. District and Lessee intend that, in the event development of the Leased Premises requires incidental take authorization for take of listed species pursuant to the federal Endangered Species Act or the California Endangered Species Act, Lessee shall obtain such authorization from the appropriate governing authority as a participating special entity prior to any ground disturbance activities. Any mitigation obligation to obtain take authorization as a participating special entity shall be in addition to Lessee's obligation to transfer replacement P/QP land to the RCA.

Section 8. Lessee's Inspection of Leased Premises and District's Reserved Rights.

Lessee represents that it/he/she has inspected the Leased Premises and accepts them in the present condition and is subject to any and all existing easements or other encumbrances, and Lessee agrees that District shall have the right to enter upon the Leased Premises and to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water, sewers, pipelines, and telephone and telegraph power lines and such other facilities and appurtenances as may be deemed necessary or convenient by District to use in connection therewith, over, in, upon, through, across and along the Leased Premises or any part thereof.

Section 9. Lessee's Obligations.

Lessee shall, during the Term, at its own cost and expense and without any cost or expense to District, have the following obligations:

(a) **Maintenance of Leased Premises.** Lessee, at Lessee's sole cost and expense, shall maintain the Leased Premises in good order and repair during the term of this Lease, reasonable use and wear thereof and damage by Acts of God and force majeure excepted. Lessee shall have the full obligation of making all repairs and all reconstruction and restoration work of any kind

Subject/Property:
Parties:
Date:

whatsoever. District shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Leased Premises. If Lessee fails to keep the Leased Premises in good order and repair, District has the right, but not the obligation, to enter upon the Leased Premises to perform the needed maintenance or repair after District has provided written notice to Lessee. Lessee shall reimburse the District for all costs incurred by District in the event it exercises the right to maintain or repair.

(b) Good Management. Lessee shall observe and obey, and compel its employees, agents, invitees, and those doing business with the Lessee to observe and obey, all applicable laws, ordinances, rules, and regulations of regulatory agencies and local governments that are now in effect or that may hereafter be promulgated with respect to the Leased Premises.

(c) Cleanliness. Lessee agrees to keep the Leased Premises clear and free of all litter, garbage, and weeds, to keep the Leased Premises in an orderly and sanitary condition, and to maintain landscaping on the Leased Premises at all times.

(d) Utilities. Lessee agrees to furnish at Lessee's expense and pay all charges for public utilities used by Lessee. Lessee agrees to provide ground lighting, refuse bins, and water to the developed drought tolerant (native species) landscaping on the Leased Premises, if necessary and every part thereof, including all improvements placed by the Lessee.

(e) Hazardous or Toxic Material and Environmental Impacts. Lessee shall not store or allow toxic or hazardous materials in areas that may affect the Leased Premises, including the surrounding County owned and riparian lands, except in quantities permitted by applicable law and in accordance with applicable law. If Lessee breaches the obligations stated herein, or if contamination by toxic materials otherwise occurs for which Lessee is legally liable to District for damage resulting there from, then Lessee shall indemnify, defend with counsel approved in writing by District, and hold District and County harmless from any and all claims, attorneys' fees, consultant fees, and expert witness fees that arise during or after the term of this Lease as a result of such contamination. This indemnification includes, without limitation, costs and penalties paid, if any, any cleanup, remediation, removal, or restoration work required by any federal, state, or local governmental entity because of toxic or hazardous materials being present in the soil or ground water and the presence of such materials in the soil or ground water is determined to be proximately caused by the acts or omissions of the Lessee, its indemnittees, licensees or guest. Lessee shall promptly take all actions at its sole cost and expense as are necessary to clean, remove and restore the Leased Premises to the condition prior to the introduction of such toxic or hazardous materials by Lessee, provided Lessee shall first have obtained District's approval and the approval of any necessary governmental entities.

(f) Compliance with Government Regulations. Lessee shall, at Lessee's sole cost and expense, comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Leased Premises, or any activity or condition on or in the Leased Premises.

(g) Lessee agrees that it will not commit or permit waste upon the Leased Premises.

Subject/Property:
Parties:
Date:

(h) Lessee shall obtain prior written approval by District before Lessee may (i) erect, maintain, or display any signs or other forms of advertising, or (ii) sell any items, food or otherwise, upon the Leased Premises.

Section 10. Damage or Destruction

No loss or damage by fire or other cause required to be insured against hereunder resulting in either partial or total destruction of anything, structure, or other improvement on the Leased Premises, shall operate to terminate this Lease, or to relieve or discharge Lessee from the payment of rents or amounts payable as rent as they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Lessee to be performed and observed. Lessee hereby waives the provisions of subsection 2 of section 1932 and subsection 4 of section 1933 of the California Civil Code, as amended from time to time.

Section 11. Assignment and Subletting

(a) Lessee may assign this Lease, or any interest therein, at any time provided that, (i) no default exists in the performance or observance of any agreement, covenant or condition of this Lease on the part of Lessee to be performed or observed as of the date of such assignment, (ii) the assignment shall be in writing, duly executed and acknowledged by Lessee and the assignee, in form satisfactory to District, providing that the assignee assumes and agrees to perform and observe all the agreements, covenants and conditions of this Lease on the part of Lessee to be performed and observed, and (iii) an executed original of such assignment shall be delivered to District for its consent.

(b) Lessee shall have the right, in the regular and ordinary course of its business of maintaining and operating the Leased Premises, to sublease any portion thereof for any use permitted by this Lease; provided, however, that each such sublease shall be subject and subordinate to this Lease and the rights of District hereunder.

Section 12. Insurance.

Without limiting or diminishing the Lessee's obligation to indemnify or hold the District harmless, Lessee shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement.

(a) **Workers' Compensation.** If the Lessee has employees as defined by the State of California, the Lessee shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The District, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

(b) **Commercial General Liability.** Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage,

Subject/Property:
Parties:
Date:

covering claims which may arise from or out of Lessee's performance of its obligations hereunder. Policy shall name the District, its directors, officers, employees, elected or appointed officials, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

(c) Vehicle Liability. If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Lessee shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the District, its directors, officers, employees, elected or appointed officials, agents or representatives as Additional Insureds.

(d) Professional Liability Insurance. If applicable, Lessee shall maintain Professional Liability Insurance providing coverage for the Lessee's performance of work included within this Lease, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Lessee's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and Lessee shall purchase at his sole expense either (i) an Extended Reporting Endorsement (also known as Tail Coverage); or (ii) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or (iii) demonstrate through Certificates of Insurance that Lessee has maintained continuous coverage with the same or original insurer. Coverage provided under items; (i), (ii) or (iii) will continue for a period of five (5) years beyond the termination of this Agreement.

(e) General Insurance Provisions - All lines.

(i) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the District's Risk Manager. If the District's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

(ii) The Lessee's insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of the District Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retention unacceptable to the District, and at the election of the District's Risk Manager, Lessee's carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the District, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

(iii) Lessee shall cause Lessee's insurance carrier(s) to furnish the District with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the District's Risk Manager, provide original certified copies of policies including all

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Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the District prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Lease shall terminate forthwith, unless the District receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *Lessee shall not commence operations until the District has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

(iv) It is understood and agreed to by the parties hereto that the Lessee's insurance shall be construed as primary insurance, and the District's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

(v) If, during the term of this Lease or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or, the term of this Agreement, including any extensions thereof, exceeds five (5) years the District reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the District's Risk Manager's reasonable judgment, the amount or type of insurance carried by the Lessee has become inadequate.

(vi) Lessee shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Lease.

(vii) The insurance requirements contained in this Lease may be met with a program(s) of self-insurance acceptable to the District.

(viii) Lessee agrees to notify District of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Lease.

Section 13. Mechanics' and Other Liens

Lessee shall not encumber, create a lien, mortgage or otherwise encumber the Leased Premises. Lessee shall promptly discharge or remove by bond or otherwise prior to foreclosure thereof, any and all mechanics', materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished to be used in or about the Leased Premises for or in connection with any operations of Lessee, any alterations, improvements, repairs or additions which Lessee may make or permit or cause to be made, or any work or construction by, for or permitted by Lessee on or about the Leased Premises, and to save and hold District and all of the Leased Premises and all buildings and improvements thereon free and harmless of and from any and all such liens and claims of liens and suits or other proceedings pertaining thereto.

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Section 14. Indemnification

Lessee shall indemnify and hold harmless the District, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any act or omission of Lessee, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to or in any way connected with or arising from its use and responsibilities in connection therewith of the Leased Premises or this Lease, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the acts or omissions of Lessee, its officers, agents, employees, subcontractors, agents or representatives from this Lease. Lessee shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the District, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

(a) With respect to any action or claim subject to indemnification herein by Lessee, Lessee shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of District; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Lessee's indemnification to District as set forth herein.

(b) Lessee's obligation hereunder shall be satisfied when Lessee has provided to District the appropriate form of dismissal relieving District from any liability for the action or claim involved.

(c) The specified insurance limits required in this Lease shall in no way limit or circumscribe Lessee's obligations to indemnify and hold harmless the District herein from third party claims.

(d) In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Lessee from indemnifying the District to the fullest extent allowed by law.

Section 15. Eminent Domain

(a) If the whole of the Leased Premises should be taken by any public or quasi-public authority under the power or threat of eminent domain during the Term, or if a substantial portion of the Leased Premises should be taken so as to materially impair the use of the Leased Premises contemplated by Lessee, and thereby frustrate Lessee's purpose in entering into this Lease, then, in either of such events, this Lease shall terminate at the time of such taking.

(b) If less than the whole of the Leased Premises should be taken by any public or quasi-public authority under the power or threat of eminent domain during the Term and this Lease is

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not terminated as provided in subsection (a) above, Lessee shall promptly reconstruct and restore the Leased Premises, with respect to the portion of the Leased Premises not so taken, as an integral unit of the same quality and character as existed prior to such taking. The Minimum Rent payable by Lessee following such taking shall be equitably reduced by agreement of District and Lessee.

Section 16. District's Right of Inspection

District may, at any reasonable time and from time to time during the Term, enter upon the Property for the purpose of inspecting the Leased Premises and for such other purposes as may be necessary or proper for the reasonable protection of its interests.

Section 17. Lessee's Defaults and District's Remedies

(a) It shall be an event of default hereunder (each an "Event of Default") if (i) default shall be made by Lessee in the punctual payment of any rent or other moneys due hereunder and shall continue for a period of ten (10) days after written notice thereof to Lessee; (ii) default shall be made by Lessee in the performance or observance of any of the other agreements, covenants or conditions of this Lease on the part of Lessee to be performed and observed and such default shall continue for a period of thirty (30) days after written notice thereof to Lessee, or, in the case of a default which cannot be cured by the payment of money and cannot be cured within thirty (30) days, shall continue for an unreasonable period after such written notice; (iii) Lessee shall abandon the Leased Premises; (iv) Lessee shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the federal government or any state government or any subdivision of either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to, or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Leased Premises; (v) a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Lessee or of the whole or any substantial part of the Leased Premises, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; (vi) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Lessee under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; or (vii) under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Lessee or of the whole or any substantial part of the Leased Premises, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control.

(b) Upon the occurrence of any Event of Default by Lessee hereunder, District shall have the following rights and remedies, in addition to all other rights and remedies of District provided hereunder or by law: The right to terminate this Lease, in which event Lessee shall immediately surrender possession of the Leased Premises, and pay to District all rent and all other amounts payable by Lessee hereunder to the date of such termination.

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Section 18. District's Default and Lessee's Remedies

Lessee shall have the right to terminate this Lease in the event District fails to perform, keep or observe any of its duties or obligations hereunder; provided, however, that Lessee provided written notice and District shall have thirty (30) days opportunity to cure. In the event that District fails to cure the default, Lessee shall serve a thirty (30) notice on District of its election to terminate said Lease.

Section 19. Nonwaiver

If any action or proceeding is instituted or if any other steps are taken by District or Lessee, and a compromise part payment or settlement thereof shall be made, either before or after judgment, the same shall not constitute or operate as a waiver by District or Lessee of any agreement, covenant or condition of this Lease or of any subsequent breach thereof. No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder. No waiver of any provision hereof by District or Lessee shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by District or Lessee, as the case may be. The receipt by District of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default. Payment by Lessee or receipt by District of a lesser amount than the stipulated rent or other sums due District shall operate only as a payment on account of such rent or other sums. No endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by District, and District may accept such check, remittance or payment without prejudice to its right to recover the balance of any rent or other sums due by Lessee and pursue any remedy provided under this Lease or by law.

Section 20. Notices

Except as otherwise provided hereunder; any notice or communication to District or Lessee shall be in writing and be mailed by certified mail, postage prepaid. Notices or communications shall be addressed to the respective parties as set forth below:

DISTRICT
Riverside County Regional
Park & Open-Space District
4600 Crestmore Road
Riverside, CA 92509

LESSEE
[insert name and address]

or such other address or addresses as the parties shall from time to time designate, or to such agent of respective parties as may from time to time be designated, by notice in writing to the other party. Any notice mailed in the manner above set forth shall be deemed to have been

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received unless returned to the sender by the post office.

Section 21. No Partnership

It is expressly understood and agreed that District does not, in any way or for any purpose by executing this Lease, become a partner of Lessee in the conduct of Lessee's business, or otherwise, or a joint venturer or a member of a joint enterprise with Lessee.

Section 22. Employees and Agents of Lessee.

It is understood and agreed that all persons hired or engaged by Lessee shall be considered to be employees, representatives or agents of Lessee and not of District.

Section 23. Severability

In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

Section 24. Time of the Essence

Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.

Section 25. Integration

This instrument constitutes the entire agreement between District and Lessee with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by District and Lessee.

Section 26. Binding on Successors

Lessee, its assigns and successors in interest, shall be bound by all the terms and conditions contained in this Lease, and all of the parties thereto shall be jointly and severally liable hereunder.

Section 27. Governing Law and Venue

This Lease shall be governed by and construed in accordance with the laws of the State of California. Any action at law or in equity brought by either party hereto for the purpose of enforcing a right or rights provided for by this Lease shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

Section 28. Paragraph Headings

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The paragraph headings herein are for the convenience of the parties only and shall not be deemed to govern, limit, modify or, in any manner, affect the scope, meaning or intent of the provisions or language of this Lease.

Section 29. Construction of Lease Agreement

This Lease and each of the provisions hereof, has been reached as the result of the negotiations and mutual assent by the Parties. Each of the Parties hereto expressly acknowledges and agrees that this Lease shall not be deemed to have been prepared by, or drafted by, any particular Party or Parties, and that any rules of construction to the effect that any ambiguities are to be resolved against the drafting Party or Parties shall not be applied or employed in the interpretation of this Lease.

Section 30. District's Representative

District hereby appoints the General Manager, or his designee, as its authorized representative to administer this Lease.

Section 31. Entire Lease Agreement

There are no oral agreements between District and Lessee affecting this Lease, and this Lease supersedes and cancels all previous negotiations, arrangements, brochures, agreements, and understandings between District and Lessee with respect to the subject matter of this Lease. There are no representations between District and Lessee other than those contained in this Lease. All implied warranties, including implied warranties of merchantability and fitness, are excluded.

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[Signature Provisions on Following Page]

Subject/Property:
Parties:
Date:

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

DISTRICT:

LESSEE:

RIVERSIDE COUNTY REGIONAL
PARK & OPEN-SPACE DISTRICT

By: _____
Scott Bangle
General Manager

By: _____
Name:
Its:

Acknowledgment:

By: _____
Chairman, Board of Directors

APPROVED AS TO FORM:
COUNTY COUNSEL
Pamela J. Walls

By: Synthia M. Gunzel
Synthia M. Gunzel
Deputy County Counsel

[Attach exhibits]