



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

187



FROM: Regional Park & Open-Space District

SUBMITTAL DATE:
December 20, 2010

SUBJECT: Second Amendment to Well Site #26 Lease Agreement and First Amendment to Well Site #27 Lease Agreement between the Regional Park & Open-Space District and Idyllwild Water District and - Idyllwild Nature Center Area - District III

RECOMMENDED MOTION: That the Board of Directors:

- 1. Approve the attached Second Amendment to Idyllwild Well Site #26 Lease Agreement between the Riverside County Regional Park and Open-Space District and the Idyllwild Water District; and
2. Approve the attached First Amendment to the Idyllwild Well Site #27 Lease Agreement between the Riverside County Regional Park and Open-Space District and the Idyllwild Water District; and

BACKGROUND: (Continued on page 2)

Handwritten signature of Scott Bangle

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
Alex Gann

County Executive Office Signature

Consent Policy checkboxes

Dept Recomm. Per Exec. Ofc. labels

Prev. Agn. Ref.: 2/15/05 13.1; 5/18/04 13.2; 07/31/07 13.4

District: III

Agenda Number:

13.2

FORM APPROVED COUNTY COUNSEL BY: Cynthia J. Ginter DATE: 12/20/10 SYBILIA M. GUNZEL

SUBJECT: Second Amendment to Well Site #26 Lease Agreement and First Amendment to Well Site #27 Lease Agreement between the Regional Park & Open-Space District and Idyllwild Water District and -Idyllwild Nature Center Area - District III

RECOMMENDED MOTION: (continued from page 1)

3. Authorize the Chairman to execute four (4) copies of each lease amendment; and
4. Direct the Clerk of the Board to return the four (4) copies of each amendment to the Regional Park and Open-Space District for further processing.

BACKGROUND:

On May 18, 2004, by Minute Order 13.2, the Board approved a Lease Agreement between the Riverside County Regional Park & Open-Space District (Park District) and Idyllwild Water District (Idyllwild) for a portion of real property located in the Idyllwild Nature Center Area for Idyllwild to lease, develop and use a well site known as Well Site #26 in the event its primary sources of water were insufficient or unavailable. The Lease Agreement includes an option to extend the term of the lease in increments of five years, commencing June 1, 2004, for a total term of fifty (50) years. The Lease Agreement was amended on February 15, 2005 to reduce the monthly rent to \$25 for each acre-foot of water pumped from the wells.

The proposed Second Amendment to Lease Agreement between Idyllwild and the Park District updates the terms and conditions of the Idyllwild Well Site #26 Lease Agreement, including the term of the lease, insurance and indemnification provisions. The monthly rent will be increased from \$25. to \$55. for each acre-foot of water pumped from the well for this extended term of five (5) years only.

On July 31, 2007, by Minute Order 13.4, the Park District and Idyllwild entered into that certain Lease Agreement for an additional well site on another portion of real property located in the Idyllwild Nature Center Area also known as Well Site #27. This Lease contained the same terms and conditions as the Well Site #26 Lease Agreement, except that the term was only a maximum of twenty-five (25) years.

The Parties desire to amend both Lease Agreements for the purpose of synchronizing the term periods for consistency purposes and to enable the Parties to monitor these Leases more efficiently. The renewals of both Lease Agreements will occur at the same time in the future. The Insurance and indemnification provisions are updated in both Lease Agreements as well.

County Counsel has approved as to form.

Enclosure: Second Amendment to Well Site #26 Lease Agreement (4)
First Amendment to Well Site #27 Lease Agreement (4)

FIRST AMENDMENT TO WELL #27 SITE LEASE

THIS FIRST AMENDMENT TO WELL SITE #27 LEASE ("1st Amendment") is made as of the _____, by and between Riverside County Regional Park and Open-Space District, a park and open-space district, ("District") and Idyllwild Water District, a water district, ("Lessee"), hereinafter sometimes collectively referred to as the Parties.

RECITALS

A. The District, as Landlord, and Idyllwild Water District, as Lessee, have entered into that certain Idyllwild Well Site #27 Lease Agreement dated July 31, 2007, ("Original Lease"), whereby District agreed to lease to Lessee and Lessee agreed to lease from District a portion of real property in the County of Riverside, California, commonly known as the Idyllwild Nature Center, 25225 Hwy 243, Idyllwild, CA 92549, as more particularly described in the Original Lease, for a well site together with ingress and egress rights to and from the well site, referred to as "Well Site #27".

B. On May 18, 2004, the District and Lessee entered into a well site lease known as the Idyllwild Well Site #26 Lease Agreement for another portion of the Idyllwild Nature Center real property.

C. The Parties desire to amend the term periods for both leases to coincide with each other for the purpose of coordinating lease term extension cycles and rental payments for more efficient tracking and to maintain consistency between the Lease Agreements.

D. The Original Lease, together with this 1st Amendment as heretofore, currently, or hereafter amended, shall hereafter be referred to as the "Lease".

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. Capitalized Terms: First Amendment to Prevail. Unless defined herein or the context requires otherwise, all capitalized terms herein shall have the meaning defined in the Lease, as heretofore amended. The provisions of this First Amendment shall prevail over any inconsistency or conflicting provisions of the Lease, as heretofore amended, and shall supplement the remaining provisions thereof. The Lease remains in full force and effect except to the extent amended by this First Amendment.

Section 2. Term. Section 2 of the Original Lease shall be amended to amend as follows:

a. The amended term of this Lease ("Amended Term") shall be for five (5) years commencing on January 1, 2011 ("Commencement Date"), and ending on December 31, 2015, unless sooner terminated according to this Lease.

b. Lessee shall have eight (8) options to extend the term of this Lease for five (5) year cycles ("Extended Term"), following the expiration of the Amended Term, on all of the

terms and conditions in this Lease, pursuant to the procedures provided herein. Each such option shall be deemed automatically exercised at the conclusion of the Amended Term and each Extended Term without notice unless Lessee gives written notice to District of its election not to extend such Term. If, however, Lessee is in default under this Lease or has committed or failed to perform acts that would constitute a default under this Lease ("Potential Default"), the automatic extension shall be totally ineffective. If Lessee is in default under this Lease, or if a Potential Default has occurred, and that default or Potential Default remains uncured as of the expiration of the Amended Term or an Extended Term, this Lease shall, at the election of the District, terminate as of the expiration of the Amended or Extended Term.

c. 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.

Section 3. Base Rent and Costs. Section 3 of the Original Lease shall be renamed as "Base Rent and Costs." and amended as follows:

Lessee shall pay an administrative cost currently in the amount of Two Thousand Seven Hundred Dollars (\$2,700) for each District Board of Directors' action plus District attorneys' fees at a rate of One Hundred Forty-Three and Eighteen Cents (\$143.18) an hour to process any Amendments or documents for the Lease, or as these aforementioned costs shall be amended by the District periodically.

Section 4. Additional Rent. Section 4 of the Lease shall be amended as follows:

Effective upon the date the First Amendment to the Lease is fully executed by the Parties, Lessee shall pay monthly to District the sum of \$55.00 for each acre-foot of water pumped from the wells. At the commencement of each extended Five (5) year term beginning on _____, the amount of additional rent to be paid to District by Lessee shall be increased by ten percent (10%) for each five (5) year increment.

Section 5. Lessee's Obligations. Section 7 shall be amended to add subsections c. and d. as follows:

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

i. Maintenance of Leased Premises. 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.

ii. 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.

d. Within sixty (60) days after the close of each fiscal year, Lessee shall submit to District an annual report providing details concerning usage of the well and activities performed on the Leased Property ("Annual Well Report"). A fiscal year begins on July 1 and ends on June 30. The Annual Well Report shall at least include the amount of water produced from the well, the amount of water sold, any activities performed or occurred on the Leased Property, including but not limited to, maintenance or safety activities/incidents) during the reporting period. Lessee shall submit an Annual Well Report even in the event that no water was sold.

Section 6. Insurance. Section 11 of the Original Lease shall be replaced in its entirety as follows:

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, 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 Insured. 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 Insured.

d. 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 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 7. Indemnification. Section 12 of the Original Lease shall be replaced in its entirety as follows:

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 from its use and responsibilities in connection therewith of the Leased Premises or this Lease, the conduct of Lessee's business, or conduct that may be permitted by Lessee on or about the Leased Premises, 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.

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

IDYLLWILD WATER DISTRICT

By: _____
Chairman, Board of Directors

By: _____

Name:
Its:

CLERK OF THE BOARD
Kecia Harper-Ihem

By: _____
Deputy

APPROVED AS TO FORM:
COUNTY COUNSEL
Pamela J. Walls

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

SECOND AMENDMENT TO WELL #26 SITE LEASE

THIS SECOND AMENDMENT TO WELL SITE LEASE ("2nd Amendment") is made as of the _____, by and between Riverside County Regional Park and Open-Space District, a park and open-space district, ("District") and Idyllwild Water District, a water district, ("Lessee"), hereinafter sometimes collectively referred to as the Parties.

RECITALS

A. The District, as Landlord, and Idyllwild Water District, as Lessee, have entered into that certain Idyllwild Well Site Lease Agreement dated May 18, 2004, ("Original Lease"), whereby District agreed to lease to Lessee and Lessee agreed to lease from District a portion of real property in the County of Riverside, California, commonly known as the Idyllwild Nature Center, 25225 Hwy 243, Idyllwild, CA 92549, as more particularly described in the Original Lease, for a well site together with ingress and egress rights to and from the well site.

B. On July 31, 2007, the District and Lessee entered into a subsequent well site lease known as the Idyllwild Well Site #27 Lease Agreement for another portion of the Idyllwild Nature Center real property.

C. The Parties desire to amend the term periods for both leases to coincide with each other for the purpose of coordinating lease term extension cycles and rental payments for more efficient tracking and to maintain consistency between the Lease Agreements.

D. The Original Lease has been amended by that certain First Amendment to Lease dated February 15, 2005.

E. The Original Lease, together with the previous amendment and this 2nd Amendment as heretofore, currently, or hereafter amended, shall hereafter be referred to as the "Lease".

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. Capitalized Terms: Second Amendment to Prevail. Unless defined herein or the context requires otherwise, all capitalized terms herein shall have the meaning defined in the Lease, as heretofore amended. The provisions of this Second Amendment shall prevail over any inconsistency or conflicting provisions of the Lease, as heretofore amended, and shall supplement the remaining provisions thereof. The Lease remains in full force and effect except to the extent amended by this Second Amendment.

Section 2. Term. Section 2. of the Original Lease shall be amended as follows:

a. The amended term of this Lease ("Amended Term") shall be for five (5) years commencing on January 1, 2011 ("Commencement Date"), and ending on December 31, 2015, unless sooner terminated according to this Lease.

b. Lessee shall have eight (8) options to extend the term of this Lease for five (5) year cycles ("Extended Term"), following the expiration of the Amended Term, on all of the terms and conditions in this Lease, pursuant to the procedures provided herein. Each such option shall be deemed automatically exercised at the conclusion of the Amended Term and each Extended Term without notice unless Lessee gives written notice to District of its election not to extend such Term. If, however, Lessee is in default under this Lease or has committed or failed to perform acts that would constitute a default under this Lease ("Potential Default"), the automatic extension shall be totally ineffective. If Lessee is in default under this Lease, or if a Potential Default has occurred, and that default or Potential Default remains uncured as of the expiration of the Amended Term or an Extended Term, this Lease shall, at the election of the District, terminate as of the expiration of the Amended or Extended Term.

c. 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.

Section 3. Base Rent and Costs. Section 3 of the Original Lease shall be renamed as "Base Rent and Costs." and amended as follows:

Lessee shall pay an administrative cost currently in the amount of Two Thousand Seven Hundred Dollars (\$2,700) for each District Board of Directors' action plus District attorneys' fees at a rate of One Hundred Forty-Three and Eighteen Cents (\$143.18) an hour to process any Amendments or documents for the Lease, or as these aforementioned costs shall be amended by the District periodically.

Section 4. Additional Rent. Section 4 of the Lease shall be amended as follows:

Effective upon the date the Second Amendment to the Lease is fully executed by the Parties, Lessee shall pay monthly to Lessor the sum of \$55.00 for each acre-foot of water pumped from the wells. At the commencement of each extended Five (5) year term beginning on _____, the amount of additional rent to be paid to District by Lessee shall be increased by ten percent (10%) for each five (5) year increment.

Section 5. Lessee's Obligations. Section 7 shall be amended to add subsections c. and d. as follows:

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

i. Maintenance of Leased Premises. 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.

ii. 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 indemnitees, 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.

d. Within sixty (60) days after the close of each fiscal year, Lessee shall submit to District an annual report providing details concerning usage of the well and activities performed on the Leased Property ("Annual Well Report"). A fiscal year begins on July 1 and ends on June 30. The Annual Well Report shall at least include the amount of water produced from the well, the amount of water sold, any activities performed or occurred on the Leased Property, including but not limited to, maintenance or safety activities/incidents) during the reporting period. Lessee shall submit an Annual Well Report even in the event that no water was sold.

Section 6. Insurance. Section 11 of the Original Lease shall be replaced in its entirety as follows:

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, 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 Insured.

d. 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 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 7. Indemnification. Section 12 of the Original Lease shall be replaced in its entirety as follows:

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.

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

IDYLLWILD WATER DISTRICT

By: _____
Chairman, Board of Directors

By: _____

Name:
Its:

CLERK OF THE BOARD
Kecia Harper-Ihem

By: _____
Deputy

APPROVED AS TO FORM:
COUNTY COUNSEL
Pamela J. Walls

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