



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

412



FROM: Regional Park & Open-Space District

SUBMITTAL DATE:
April 11, 2013

SUBJECT: Approval of First Amendment to Sublease and Concession Agreement for the Jurupa Valley Aquatic Center with Lickin' Good, Inc., dba Backyard Grille – District 2/2

RECOMMENDED MOTION: That the Board of Directors approves and:

1. Authorizes the First Amendment to the Sublease and Concession Agreement for the Jurupa Valley Aquatic Center between Riverside County Regional Park and Open-Space District (District) and Lickin' Good, Inc. dba Backyard Grille (Sub-Lessee) and authorizes the Chairman to execute three (3) copies of the same on behalf of the District;
2. Authorizes the General Manager, or designee, to execute future ministerial amendments and renewals to this Agreement, when the required documents have been approved by County Counsel; and
(continued on page 2)

BACKGROUND: (continued on page 2)



 Scott Bangle, General Manager

2013-023D KB/NVW

FINANCIAL DATA N/A	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:
	Annual Net County Cost:	\$ 0	For Fiscal Year:

SOURCE OF FUNDS:

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

C.E.O. RECOMMENDATION:

APPROVE

BY: 
 Steven C. Horn, MPA

County Executive Office Signature

- Policy
- Consent
- Policy
- Consent

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

APR 11 2013 10:30 AM
 RECEIVED CLERK OF THE BOARD
 COUNTY OF RIVERSIDE

Prev. Agn. Ref.: ATTACHMENTS FILED **District:** 2/2 **Agenda Number:**

ATTACHMENTS FILED
 WITH THE CLERK OF THE BOARD

13-1

FORM APPROVED COUNTY COUNSEL
 BY: 
 SYNTHIA M. GUNZEL
 DATE: 4-24-13
 Departmental Concurrence

SUBJECT: Approval of First Amendment to Sublease and Concession Agreement for the Jurupa Valley Aquatic Center with Lickin' Good, Inc., dba Backyard Grille – District 2/2

RECOMMENDED MOTION: (continued from page 1)

3. Directs the Clerk of the Board to return two (2) executed copies of the First Amendment to Sublease and Concession Agreement to the District for further transmittal; and

BACKGROUND:

On January 11, 2011, M.O. 13.1, the Board approved the Sublease and Concession Agreement for Jurupa Valley Aquatic Center, which allows the Sub-Lessee, Backyard Grille, to equip, operate, and maintain the concession complex for an initial five (5) year period.

The proposed First Amendment to the Sublease and Concession Agreement provides for a pro-rated lease amount, rental rate adjustments according to use, as well as adjustments for gross percentage of revenue and are outlined in the First Amendment to the Sublease and Concession Agreement. All other terms and conditions of the Agreement shall remain the same.

County Counsel has approved the First Amendment to Agreement as to form.

First Amendment to Sublease and Concession Agreement Jurupa Aquatic Center- District II/II

This FIRST AMENDMENT TO SUBLEASE AND CONCESSION AGREEMENT ("1st Amendment"), dated as of _____, is entered into by and between the Riverside County Regional Park and Open-Space District, ("District"), a park and open-space district, and Lickin' Good, Inc, A Nevada corporation dba Backyard Grille ("Sub-Lessee"),.

A. District, and Sub-Lessee, entered into that certain Sublease and Concession Agreement dated January 11, 2011, ("Original Agreement"), pursuant to which District leased to Sub-Lessee and Sub-Lessee leased from District that certain properties, known as the Jurupa Aquatic Center, as described in the Original Agreement and for the provision of concession services by Sub-Lessee, at this location, for an initial term of five years.

B. The Original Agreement and this 1st Amendment as heretofore, currently, or hereafter amend, shall hereafter by referred to as the "Agreement".

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

Agreement

1. Rental. Section 4. of the Agreement shall be deleted in its entirety and replaced with the following: Sub-Lessee shall pay rent "Base Rent", without demand, in the amount of four hundred dollars (\$400) per month from May through September, herein called "Operating Year". During October through April, Sub-Lessee shall pay Base Rent for any month that Sub-Lessee shall occupy and

provide concession services for any contracted special events. In addition to the Base Rent, Sub-Lessee shall pay ten percent (10%) accumulated gross sales in year one, eleven percent (11%) accumulated gross sales in year two, and twelve percent (12%) accumulated gross sales in year three ("Additional Rent"), as described on Exhibit "C", attached hereto and by this reference incorporated herein. The accumulated gross sales percent will remain at twelve percent (12%) for the remainder of the five (5) year Sublease and any extension terms. "Sub-Lessee shall pay the District a pro-rated lease amount according to their use during off-season months of October-April. If the total kitchen use (including preparation, operations, and cleanup) is less than 7 days in the calendar month, the rent will be reduced to \$100 + gross % of revenue that is standard for that operating year. If the total kitchen use is greater than 7 days in a calendar month, the Sub-Lessee shall pay the District the standard \$400 rent for the month as previously stated in addition to the gross % of revenue standard for that operating year. Beginning the 15th of the month following the commencement of operations, and on the 15th of each month thereafter, the Sub-Lessee shall furnish to the District a verified statement of its cumulative total gross sales receipts as defined herein through the close of the preceding month. Together with such monthly statement, the Sub-Lessee shall pay to the District, the rental fee for the preceding calendar month and the percentage of accumulated gross sales. Sub-Lessee shall make such timely rental payments and failure to do so when due shall be deemed in default if not made within fifteen (15) days of the due date and a material breach of the terms and conditions hereof. Sub-Lessee shall be assessed a late payment fee of five percent (5%) upon default which is due and payable on any rental not paid within such time, and an additional fee of five percent (5%) will be assessed every thirty (30) days thereafter until payments are received and rent is current. Payments to the District shall be made to the order of the Riverside County Regional Park and Open-Space District, 4600 Crestmore Road, Jurupa Valley, California 92509.

2. Utilities and Services. Section 8.. of the Agreement shall be deleted in its entirety and replaced with the following: The District shall be responsible for providing one (1) telephone line, included in the previously stated rental fee, basic utilities and services (gas, water, electric) to the Premises at no additional cost to Sub-Lessee. The rental amount, set forth in Section 4 of the Sublease and Concession Agreement paid by the Sub-Lessee has been calculated to be inclusive of these costs.

3. Quality of Service and Control of Rates and Charges. Section 11.E. of the Agreement shall be deleted in its entirety and replaced with the following: With District approval of a standard catering menu and pricing options prior to the start of the season, Sub-Lessee shall have exclusivity for food and beverage service (including vending) on the premises during operating hours between May-September District will request a written quote via email, which the Sub-Lessee will use to contact the customer within 72 hours, copying District designee on all communication. District and Sub-Lessee understands the cooperative efforts of its partnership in providing affordable options to the patrons of the waterpark. Related to off-season events, Sub-Lessee is entitled to first right of refusal, and will contact District designee within 72 hours of initial request with a catering quote similar in price to comparable area catering organizations. Sub-Lessee's failure to agree with a customer on a price within a one calendar week period of the original request will result in a forfeiture of the Sub-Lessee's first right of refusal for that event. Off-season is defined as between the closing day of the waterpark to the opening day of the waterpark.

4. Quality of Service and Control of Rates and Charges. Section 11.G. of the Agreement shall be deleted in its entirety.

5. All other provisions of the Original Lease Agreement shall remain the same and continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first written above.

Backyard Grille
(Sub-Lessee)

By: 
Mike Holtzman, President

Riverside County
Regional Park & Open-Space District

By: _____
Chairman, Board of Directors

APPROVED AS TO FORM:

Pamela J. Walls

County Counsel

By: 
Synthia M Gunzel
Deputy County Counsel

Sublease Exhibit "C"
COST DETAIL

I.	Operating Year Monthly Lease Payment:	<u>\$ 400.00</u>
II.	Percentage of accumulated gross sales:	<u>\$ Year One at 10%</u>
	a. Operating Year One at ten percent (10%)	
	b. Operating Year Two at eleven percent (11%)	
	c. Operating Year Three at twelve percent (12%)	
	d. Operating Year Four at twelve percent (12%)	
	e. Operating Year Five at twelve percent (12%)	
III.	Total Monthly Payment in Operating Year One:	<u>\$ 400.00 + 10%</u>