

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

4-2-515



FROM: Regional Park and Open-Space District

SUBMITTAL DATE:
October 17, 2013

SUBJECT: Ten Year Lease Agreement between the County of Riverside and the Riverside County Regional Park and Open-Space District for the Perris Valley Aquatic Center; No Further CEQA Action Required – District 5/5 [\$10]

RECOMMENDED MOTION: That the Board of Directors:

1. Find that nothing further is required based on the findings incorporated in the Initial Study and Environmental Checklist No. RIVCO/CEQA 2013-04 prepared by the County of Riverside for the Lease Agreement between the County of Riverside and Riverside County Regional Park and Open-Space District for use of the Perris Valley Aquatic Center and the conclusion that the project will not have a significant effect on the environment;
2. Approve the attached ten year Lease Agreement and authorize the Chairman of the Board to execute four (4) copies of the Lease Agreement;
3. Direct the Clerk of the Board to return three (3) copies of the executed Lease Agreement to Riverside County Regional Park and Open-Space District; and
4. Direct the Clerk of the Board to file the Notice of Determination with the County Clerk within five (5) days of approval of the project.

BACKGROUND:
Summary



Scott Bangle
General Manager

2014-001D KB

| FINANCIAL DATA | Current Fiscal Year: | Next Fiscal Year: | Total Cost: | Ongoing Cost: | POLICY/CONSENT (per Exec. Office) |
|------------------------|-----------------------------|--------------------------|--------------------|----------------------|------------------------------------------------------------------|
| COST | \$ 1 | \$ 1 | \$ 10 | \$ 1 | Consent <input type="checkbox"/> Policy <input type="checkbox"/> |
| NET COUNTY COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 | |

| | |
|--------------------------------------------------|-----------------------------------|
| SOURCE OF FUNDS: Recreation Fund 25420 | Budget Adjustment: No |
| | For Fiscal Year: 2013-2014 |

C.E.O. RECOMMENDATION:

APPROVE

BY: 

Alex Gann

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
BY:  MARSHAL VICTOR
DATE: 10/21/13

Positions Added
 Change Order

A-30
 4/5 Vote

Prev. Agn. Ref.:

District: 5/5

Agenda Number:

13-1 D

SUBMITTAL TO THE BOARD OF DIRECTORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Ten Year Lease Agreement between the County of Riverside and the Riverside County Regional Park and Open-Space District for the Perris-Menifee Valley Aquatic Center – District 5/5 [\$10]

DATE: October 17, 2013

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BACKGROUND:

Summary (continued)

Riverside County Regional Park and Open-Space District (District) desires to lease the Perris Valley Aquatic Center, located at 2167 Trumble Road between Vista and the Perris Valley Big League Dreams Sports Park in Romoland Area, in Riverside County as depicted on Exhibit "A," to conduct recreational services to the community.

The District Advisory Commission considered this item at its meeting on November 8, 2012, and recommended approval [by a vote of 8-2] by your Board. The Commission requested that additional funding be provided to cover gaps between estimated operating revenue and expenditures which were identified to be approximately \$600,000 per year. District staff resolved estimated shortfalls in the first operational budget by eliminating Net County Cost (NCC) contributions to all non-recreation programs and raising user fees. Additional revenue streams include a \$100,000 allocation from District 5, a CDGB commitment of \$40,000 to the Recreation Fund and \$120,000 annual contribution from EDA. Additionally, many local partners have committed to providing additional funding when full operations begin.

The District wishes to operate the facility to provide aquatic programming, fitness, and leisure opportunities for the region. The District is well-equipped to successfully operate the Perris-Menifee Valley Aquatic Center as demonstrated by the safety, customer satisfaction, and successful operation of Jurupa Aquatic Center. Staff is well-respected in the field of aquatics and remains on the cutting edge of best practices in aquatic safety, programming, and operations.

The County of Riverside prepared an Initial Study/Environmental Checklist No. RIVCO/CEQA 2013-04 and made the determination that nothing further was required. The potential environmental effects of the Perris Valley Aquatics Center Project were fully studied in Initial Study/Mitigated Negative Declaration (IS/MND) (SCH#2011041046). Based upon the findings incorporated therein, the Board of Supervisors adopted a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program and approved the Perris Valley Aquatics Center Project on June 28, 2011 by Board Agenda Item 3.113. The District has determined, based on the Initial Study/Environmental Checklist No. RIVCO/CEQA 2013-04 and MND adopted by the County, that although the Lease Agreement between the County of Riverside and the Riverside County Regional Park and Open-Space District could have a significant effect on the environment, nothing further is required because all potentially significant effects have been fully analyzed in Initial Study/Environmental Checklist No. RIVCO/CEQA 2013-04 and the earlier adopted IS/MND prepared by the County of Riverside and all potential impacts have been avoided or mitigated to less than significant pursuant to that MND. Entering into this Lease Agreement will not result in any new significant environmental effects not identified in the Initial Study and Environmental Checklist No. RIVCO/CEQA 2013-04; the actions will not substantially increase the severity of the environmental effects identified in the MND; no considerably different mitigation measures have been identified; and no mitigation measures found infeasible have become feasible. As a result, no further environmental documentation is required for CEQA purposes.

Impact on Citizens and Businesses

The Perris Valley Aquatic Center will have a positive impact on the surrounding businesses by drawing increased patronage to the area. The facility will draw in customers who will spend money in local eateries, shopping centers, and hotels. The facility will have a minimal impact on citizens, as there are few houses immediately near the site. Based upon the proposed business model and projected labor needs as outlined in Exhibit "B," the citizens will benefit with the creation of over 100 new jobs.

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FORM 11: Ten Year Lease Agreement between the County of Riverside and the Riverside County Regional Park and Open-Space District for the Perris-Menifee Valley Aquatic Center – District 5/5 [\$10]

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SUPPLEMENTAL:
Additional Fiscal Information

The County Economic Development Agency shall pay District \$120,000 annually to assist in offsetting operational cost of the property. In addition, the District has included \$1,166,613 within the FY 13/14 budget to operate the facility.

In 2011, PROS Consulting completed an Impact report (Exhibit “B”) analyzing the operations and feasibility of the project, based on the Jurupa Aquatic Center projections. Since concluding the third summer season of Jurupa Aquatic Center, it has been determined that some of the financial projections included in the PROS consulting Impact report need to be adjusted. While PROS projected that Season Pass visitors would comprise 21% of the overall attendance, it is now being projected to comprise approximately 60% of waterpark attendance. Due to the regional nature of the facility, most attendees will visit numerous times per season and will invest in a season pass, which offers increased savings for the pass-holder, but reduced revenue for the facility. For the competition pool operations, the monthly lap swim pass projection should be decreased, as most swimmers elect to pay per day. With recent experience at Jurupa Aquatic Center, the swim lesson registration number and revenue projection should be increased, as it is one of the main revenue sources for the competition pool.

Contract History and Price Reasonableness

The District shall lease the center from the County for the purpose of providing needed recreational amenities to the community. The term of the Lease shall be for a period of ten years commencing on completion of construction and may be extended by mutual agreement by a written amendment executed by both parties. The District shall pay \$1.00 per year to the County for the term of the Lease which shall constitute rent under this Lease.

ATTACHMENTS (if needed, in this order):

A. **BUDGET ADJUSTMENT N/A**

B. **CHANGE ORDER REPORT N/A**

| NUMBER | AMOUNT | PERCENT | DESCRIPTION |
|--------|--------|---------|-------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

(Additional description and details of new change order(s) – one or two paragraphs for each.)

C. **PERSONNEL CHANGE and ORDINANCE 440 REPORT N/A**

1 **WHEREAS**, the DISTRICT and COUNTY have determined that there is a great
2 need to provide a recreational amenity such as an aquatic center in the Romoland
3 Area; and

4 **WHEREAS**, the PROPERTY will provide needed recreational amenities and
5 programs to the community for social, health and welfare benefits;

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

9 **SECTION 1. PROPERTY DESCRIPTION.** The PROPERTY, known as the
10 Perris-Menifee Valley Aquatic Center, located at 2167 Trumble Road, Perris, on the 12
11 western acres of the 22-acre parcel within Assessor's Parcel Number 327-190-029,
12 which lies on Trumble Road between Vista and the Perris Valley Big League Dreams
13 Sports Park in the Romoland Area, as depicted on Exhibit "A," attached hereto and
14 incorporated herein by reference.

15 **SECTION 2. USE.**

16 **A.** The PROPERTY is leased to DISTRICT for the purpose of providing
17 needed recreational amenities to the community.

18 **B.** DISTRICT may provide additional services or modify the implementation
19 of their programs to ensure that the needs of the community are being met.

20 **C.** DISTRICT shall use the PROPERTY for the purpose as designated
21 herein.

22 **D.** COUNTY, or its assigns or successors-in-interest, consents to DISTRICT
23 collecting fees for public use of the facilities.

24 **SECTION 3. ACCEPTANCE OF PREMISES.** DISTRICT shall accept the
25 PROPERTY in its condition suitable for use as of December 31, 2013, or upon receipt
26 of an approved and official Notice of Completion ("NOC") whichever is later
27 ("EFFECTIVE DATE"), subject to all applicable restrictions of record, zoning and other
28 laws regulating the use of the PROPERTY. The premises shall also include all fixtures,

1 signage and other appurtenances required to operate the facility as approved by the
2 Parks Director or his designee. DISTRICT'S beginning performance of services under
3 this LEASE on the EFFECTIVE DATE and failing to object to any condition of the
4 PROPERTY in writing on or before thirty (30) days after the EFFECTIVE DATE shall
5 be conclusive evidence that DISTRICT accepts the PROPERTY and that it was in
6 good condition as of the EFFECTIVE DATE.

7 **SECTION 4. TERM.**

8 **A.** The term of this LEASE shall be for a ten (10) year period commencing on
9 the EFFECTIVE DATE as set forth in Section 3.

10 **B.** Notwithstanding subsection "C" below, any holding over by DISTRICT at
11 the expiration of said term shall be deemed a month-to-month tenancy upon the same
12 terms and conditions of this LEASE.

13 **C.** The term of this LEASE may be extended by mutual agreement of the
14 COUNTY and the DISTRICT and shall be incorporated by an amendment executed by
15 both the COUNTY and the DISTRICT.

16 **SECTION 5. RENT.** DISTRICT shall pay \$1.00 per year to COUNTY for the
17 term of this LEASE which shall constitute "Rent" under this LEASE. Such rent shall be
18 prepaid for the entire term upon execution of this LEASE and sent to COUNTY'S
19 address as set forth in Section 12 below.

20 **SECTION 6. DISTRICT OBLIGATIONS.**

21 **A. OPERATIONS.** The PROPERTY, at a minimum, shall be open to the
22 public during the months of June through August for recreational services to the public.
23 The PROPERTY shall remain open year-round for use of the competition pool in
24 accordance with Joint Use Agreements. The DISTRICT shall determine the operating
25 schedule suitable to meet the needs of the community and any public parties who have
26 entered into Joint Use Agreements.

27 **B. UTILITIES.** DISTRICT shall pay all costs for all utility services used in
28 connection with the operation of the PROPERTY throughout the term of this LEASE.

1 **C. MAINTENANCE.** DISTRICT shall pay all costs to maintain the
2 PROPERTY including, but not limited to air conditioning equipment, heating
3 equipment, plumbing, electrical wiring and fixtures, windows and structural parts in
4 good working condition and repair, and in compliance with federal, state, and local
5 laws, ordinances, rules and regulations relating to fire, health and safety, and
6 DISTRICT shall pay all cost to fully maintain the exterior and the interior of the
7 PROPERTY using choice of custodial services. DISTRICT shall pay all cost to
8 maintain the PROPERTY's landscaping and irrigation in good condition. Any dead or
9 dying plants, turf or trees shall be replaced or removed in a timely fashion. The
10 PROPERTY shall be maintained in a clean and safe state at all times.

11 **D. IMPROVEMENTS.** DISTRICT agrees to submit any construction and
12 capital improvement plans for the PROPERTY to COUNTY for review and approval
13 prior to installation or construction. DISTRICT understands and agrees that such
14 improvements, alterations and installation of fixtures are subject to County of Riverside
15 Ordinances No. 348 and 457, applicable Fire Codes, the Americans with Disabilities
16 Act, as well as other applicable County of Riverside ordinances. All alterations and
17 improvements to be made and fixtures installed or caused to be made and installed, by
18 DISTRICT shall become the property of COUNTY with the exception of trade fixtures
19 as such term is used in Section 1019 of the Civil Code.

20 At or prior to the expiration of this LEASE, DISTRICT may remove such
21 trade fixtures, provided, however, that such removal does not cause injury or damage
22 to the PROPERTY, or in the event it does, DISTRICT shall restore the PROPERTY to
23 its original shape and condition. In the event such trade fixtures are not removed,
24 COUNTY may at its own discretion either: 1) remove and store such fixtures and
25 restore the PROPERTY for the account of DISTRICT, and in such event, DISTRICT
26 shall within thirty (30) days after billing and accounting reimburse COUNTY for the
27 costs so incurred, or 2) take and hold such fixtures as its sole property.

28 **E. WATER QUALITY MANAGEMENT PLAN.** DISTRICT shall be

1 responsible for the operation and maintenance of all best management practices
2 (BMPs) associated with the PROPERTY's Water Quality Management Plan for the
3 term of the LEASE. DISTRICT shall be responsible for any fine, penalty, or any other
4 civil, administrative or criminal liability resulting from the DISTRICT's failure to maintain
5 the BMPs.

6 **F. JOINT USE AGREEMENTS.** With assistance from the COUNTY as
7 described in Section 7.A. herein, District shall be the party to procure and enter into
8 Joint Use Agreements from outside agencies, school districts, and municipalities or
9 other related entities ("USER GROUPS") whereby such public agencies will jointly use
10 the PROPERTY and pay the respective proportionate share of costs as designated in
11 the approved fee schedule for maintenance and operations, or as otherwise
12 documented within the Joint Use Agreements.

13 **SECTION 7. COUNTY OBLIGATIONS.**

14 **A.** COUNTY shall assist DISTRICT by providing Real Estate Services to
15 draft subleases, licenses, real estate documents and Joint Use Agreements with USER
16 GROUPS for the PROPERTY and to obtain the proper approvals in connection with
17 these agreements.

18 **B.** COUNTY Economic Development Agency shall pay DISTRICT \$120,000
19 annually for fiscal years 2013-14 and 2014-15 to assist in offsetting operational costs of
20 the PROPERTY. Thereafter, funding shall be provided from the operation of the Field
21 of Dreams in Perris in the amount of \$120,000 annually.

22 **C.** In the event that USER GROUPS, as a party to the Joint Use
23 Agreements referenced in Section 6F, fail to provide any funds pursuant to that Section
24 or funds are otherwise unavailable, DISTRICT shall not be responsible for such entity's
25 proportionate share of costs as defined in the Joint Use Agreement. DISTRICT shall
26 not be responsible for operating the PROPERTY to the standards provided herein if the
27 costs that would have been funded by other entities are not paid to DISTRICT.
28 DISTRICT shall be entitled to reduce services and operation hours accordingly. In the

1 event that funding from said other entities ceases for greater than 90 days, COUNTY
2 or its successors-in-interest and DISTRICT, shall have the right to amend or terminate
3 this LEASE with thirty (30) days written notice.

4 **SECTION 8. OVERSIGHT BY COUNTY.** The COUNTY may visit the
5 PROPERTY for the purpose of reviewing the uses being conducted at the PROPERTY
6 by DISTRICT. The COUNTY shall provide at least 24 hour notice to DISTRICT prior to
7 visit which shall be done during normal business hours.

8 **SECTION 9. NONDISCRIMINATION.** DISTRICT herein covenants by and for
9 himself or herself, his or her heirs, executors, administrator, and assigns, and all
10 persons claiming under or through them, that there shall be no discrimination against
11 or segregation of any person or group of persons on account of race, color, creed,
12 religion, disability, sex, sexual orientation, marital status, familial status, source of
13 income or disability in the sale, ancestry or national origin in the LEASE, sublease,
14 transfer, use, occupancy, tenure or enjoyment of the PROPERTY, nor shall the
15 DISTRICT, or any persons claiming under or through him or her, establish or permit
16 any such practice or practices of discrimination or segregation with reference to the
17 selection, location number, use or occupancy of tenants, districts, subtenants,
18 subleases or vendees in the PROPERTY herein conveyed. The foregoing covenants
19 shall run with the land.

20 **SECTION 10. DEFAULT.**

21 **A.** The DISTRICT shall be deemed in default of this LEASE if DISTRICT
22 uses the PROPERTY for any purpose other than that authorized in the LEASE, fails to
23 maintain the PROPERTY or the improvements in the manner provided for in the
24 LEASE, fails to pay any installment of rent or other sum when due as provided for in
25 the LEASE, fails to comply with or perform any other covenant, condition, provision or
26 restriction provided for in the LEASE, abandons the PROPERTY, allows the
27 PROPERTY to be attached, levied upon, or seized under legal process, or if the
28 DISTRICT files or commits an act of bankruptcy, has a receiver or liquidator appointed

1 to take possession of the PROPERTY, or commits or permits waste on the
2 PROPERTY.

3 **B.** The COUNTY shall provide DISTRICT with a thirty (30) day written notice
4 to remedy any and all defaults. Upon the failure of DISTRICT to properly address
5 default or commencement of curing the default within thirty (30) days, COUNTY shall
6 have the right to terminate this LEASE and retake possession of the PROPERTY
7 together with all additions, alterations, and improvements thereto by providing
8 DISTRICT notice of its intent to terminate in thirty (30) days for a total of sixty (60) days
9 from the initial notice of default. In the event that DISTRICT cures the default within the
10 sixty (60) days or is diligently pursuing to cure the default, COUNTY shall not have the
11 right to terminate upon the expiration of the sixty (60) days. COUNTY shall also retain
12 all rights to seek any and all remedies at law or in equity available in the event of
13 DISTRICT's default.

14 **SECTION 11. TERMINATION.**

15 **A.** DISTRICT and/or COUNTY shall have the option to terminate this LEASE
16 If the PROPERTY is destroyed or damaged to the extent that it cannot be repaired
17 within sixty (60) days, or if more than twenty-five percent (25%) of the PROPERTY is
18 destroyed. This LEASE can be terminated by either the DISTRICT and/or the COUNTY
19 with a thirty (30) day written notice.

20 **B.** If DISTRICT desires to continue with this LEASE despite partial damage
21 or destruction of the PROPERTY, then DISTRICT shall provide advance written notice
22 to COUNTY to seek COUNTY approval. Upon approval by the COUNTY of the
23 continuance of the LEASE and the plans for the repairs. The DISTRICT, at its sole
24 expense, shall make all approved repairs needed to the PROPERTY as the result of
25 said damage or destruction. The DISTRICT reserves the right to determine what, if
26 any, portions of the PROPERTY are usable. The DISTRICT shall remain responsible
27 for the operations of the PROPERTY as they are provided herein.

28 **C.** The DISTRICT or COUNTY may terminate this LEASE for cause, by

1 giving thirty (30) days written notice to the other party and the Parties have been
2 unable to come to an agreement or resolution regarding the cause for termination.

3 **SECTION 12. NOTICES.** Any notices required or desired to be served by
4 either party upon the other shall be deemed delivered if sent by certified mail, return
5 receipt requested to the following, or to such other addresses as from time to time shall
6 be designated by the respective parties:

| 7 <u>COUNTY</u> | 8 <u>DISTRICT</u> |
|-------------------------------------------|----------------------------------------|
| 9 Robert Field | 10 Scott Bangle |
| 11 Assistant County Executive Officer/EDA | 12 General Manager/Director |
| 13 County of Riverside | 14 Regional Park & Open Space District |
| 15 3403 10 th St | 16 4600 Crestmore Rd. |
| 17 Riverside, CA 92501 | 18 Riverside, CA 92509 |
| 19 (951) 955-8916 | 20 (951) 955-4398 |
| 21 (951) 955-6685 FAX | |

22 **SECTION 13. ASSIGNMENT & SUBLEASES.** DISTRICT shall not assign
23 this LEASE, or sublease the PROPERTY without the written consent of COUNTY.
24 Such consent shall not be unreasonably withheld, delayed or conditioned by the
25 COUNTY and takes into account all relevant circumstances and both parties' legitimate
26 interests.

27 **SECTION 14. INSURANCE.** Without limiting or diminishing the DISTRICT's
28 obligation to indemnify or hold the COUNTY harmless, DISTRICT 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 LEASE.

A. Workers' Compensation: If the DISTRICT has employees as defined by
the State of California, the DISTRICT 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

1 to waive subrogation in favor of The COUNTY, and, if applicable, to provide a
2 Borrowed Servant/Alternate Employer Endorsement.

3 **B. Commercial General Liability:** Commercial General Liability Insurance
4 coverage, including but not limited to, premises liability, contractual liability, products
5 and completed operations liability, personal and advertising injury, and cross liability
6 coverage, covering claims which may arise from or out of DISTRICT'S performance of
7 its obligations hereunder. Policy shall name the COUNTY, its directors, officers,
8 employees, appointed officials, agents or representatives as Additional Insured.
9 Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined
10 single limit. If such insurance contains a general aggregate limit, it shall apply
11 separately to this agreement or be no less than two (2) times the occurrence limit.

12 **C. Vehicle Liability:** If vehicles or mobile equipment are used in the
13 performance of the obligations under this Agreement, then DISTRICT shall maintain
14 liability insurance for all owned, non-owned or hired vehicles so used in an amount not
15 less than \$1,000,000 per occurrence combined single limit. If such insurance contains
16 a general aggregate limit, it shall apply separately to this agreement or be no less than
17 two (2) times the occurrence limit. Policy shall name the COUNTY, its directors,
18 officers, employees, appointed officials, agents or representatives as Additional
19 Insured.

20 **D. General Insurance Provisions - All lines:**

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

26 2) The DISTRICT'S insurance carrier(s) must declare its insurance
27 self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence
28 such retentions shall have the prior written consent of the County Risk Manager before

1 the commencement of operations under this Agreement. Upon notification of self-
2 insured retention unacceptable to the COUNTY, and at the election of the COUNTY's
3 Risk Manager, LESSEE'S carriers shall either; 1) reduce or eliminate such self-insured
4 retention as respects this Agreement with the COUNTY, or 2) procure a bond which
5 guarantees payment of losses and related investigations, claims administration, and
6 defense costs and expenses.

7 3) DISTRICT shall cause DISTRICT'S insurance carrier(s) to furnish
8 the County of Riverside with either 1) a properly executed original Certificate(s) of
9 Insurance and certified original copies of Endorsements effecting coverage as required
10 herein, and 2) if requested to do so orally or in writing by the COUNTY Risk Manager,
11 provide original Certified copies of policies including all Endorsements and all
12 attachments thereto, showing such insurance is in full force and effect. Further, said
13 Certificate(s) and policies of insurance shall contain the covenant of the insurance
14 carrier(s) that thirty (30) days written notice shall be given to the COUNTY prior to any
15 material modification, cancellation, expiration or reduction in coverage of such
16 insurance. In the event of a material modification, cancellation, expiration, or reduction
17 in coverage, this Agreement shall terminate forthwith, unless the COUNTY receives,
18 prior to such EFFECTIVE DATE, another properly executed original Certificate of
19 Insurance and original copies of endorsements or certified original policies, including all
20 endorsements and attachments thereto evidencing coverage's set forth herein and the
21 insurance required herein is in full force and effect. LESSEE shall not commence
22 operations until the COUNTY has been furnished original Certificate (s) of Insurance
23 and certified original copies of endorsements and if requested, certified original policies
24 of insurance including all endorsements and any and all other attachments as required
25 in this Section. An individual authorized by the insurance carrier to do so shall sign the
26 original endorsements for each policy and the Certificate of Insurance on its behalf.

27 4) It is understood and agreed to by the parties hereto that the
28 DISTRICT'S insurance shall be construed as primary insurance, and the COUNTY'S

1 Insurance and/or deductibles and/or self-insured retention's or self-insured programs
2 shall not be construed as contributory.

3 5) If, during the term of this Agreement or any extension thereof,
4 there is a material change in the scope of services; or, there is a material change in the
5 equipment to be used in the performance of the scope of work which will add additional
6 exposures (such as the use of aircraft, watercraft, cranes, etc.); or, the term of this
7 Agreement, including any extensions thereof, exceeds five (5) years, then the
8 COUNTY reserves the right to adjust the types of insurance required under this
9 Agreement and the monetary limits of liability for the Insurance coverage's currently
10 required herein, if the COUNTY Risk Manager, in his reasonable judgment, has
11 deemed the amount or type of insurance carried by the DISTRICT is inadequate for the
12 material change in circumstances.

13 6) DISTRICT shall pass down the Insurance obligations contained
14 herein to all tiers of sublessees working under this Agreement.

15 7) The insurance requirements contained in this Agreement may be
16 met with a program(s) of self-insurance acceptable to the COUNTY.

17 8) DISTRICT agrees to notify COUNTY of any claim by a third party
18 or any incident or event that may give rise to a claim arising from the performance of
19 this Agreement.

20 **SECTION 15. INDEMNIFICATION.** DISTRICT shall indemnify and hold
21 harmless the COUNTY, its directors, officers, employees, appointed officials, agents
22 or representatives from any liability whatsoever, based or asserted upon any services
23 of DISTRICT, its officers, employees, agents or representatives arising out of or in any
24 way relating to this Agreement, including but not limited to PROPERTY damage, bodily
25 injury, or death or any other element of any kind or nature whatsoever arising from the
26 performance of DISTRICT, its officers, agents, employees, agents or representatives
27 from this Agreement. DISTRICT shall defend, at its sole expense, all costs and fees
28 including, but not limited, to attorney fees, cost of investigation, defense and

1 settlements or awards, the COUNTY, its directors, officers, employees, appointed
2 officials, agents or representatives in any claim or action based upon such alleged acts
3 or omissions.

4 With respect to any action or claim subject to indemnification herein by
5 DISTRICT, DISTRICT shall, at their sole cost, have the right to use counsel of their
6 own choice and shall have the right to adjust, settle, or compromise any such action or
7 claim without the prior consent of COUNTY; provided, however, that any such
8 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
9 DISTRICT'S indemnification to COUNTY as set forth herein.

10 DISTRICT'S obligation hereunder shall be satisfied when DISTRICT has
11 provided to COUNTY the appropriate form of dismissal relieving COUNTY from any
12 liability for the action or claim involved.

13 The specified insurance limits required in this Agreement shall in no way limit or
14 circumscribe DISTRICT'S obligations to indemnify and hold harmless the COUNTY
15 herein from third party claims.

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

20 **SECTION 16. HAZARDOUS SUBSTANCES.** For purposes of this LEASE,
21 Hazardous Substances shall mean any such materials or substances that may be
22 defined as or included in the definition of "hazardous substances" under applicable
23 federal or state laws or regulations.

24 **A.** DISTRICT agrees that any and all handling, transportation, storage,
25 treatment, disposal, or use of Hazardous Substances by DISTRICT in or about the
26 PROPERTY shall comply with all applicable Environmental Laws.

27 **B.** DISTRICT shall not use, handle, store, transport, generate, release, or
28 dispose of any Hazardous Substances on, under, or about the PROPERTY, except

1 that DISTRICT may use (i) small quantities of common chemicals such as adhesives,
2 lubricants, and cleaning fluids in order to conduct business at the PROPERTY; (ii)
3 other Hazardous Substances that are necessary for the operation of DISTRICT'S
4 business; and (iii) Other Hazardous Substances for which COUNTY gives written
5 consent prior to the Hazardous Substances being brought onto the PROPERTY.

6 **SECTION 17. BINDING ON SUCCESSORS.** The terms and conditions herein
7 contained shall apply to and bind the heirs, successors in interest, executors,
8 administrators, representatives, and assigns of all the parties hereto.

9 **SECTION 18. COMPLIANCE WITH LAWS AND REGULATIONS.** By
10 executing this LEASE, the DISTRICT hereby certifies that it will adhere to and comply
11 with all federal, state, and local laws, regulations and ordinances.

12 **SECTION 19. PERSONNEL.** DISTRICT represents that it has all the
13 personnel required to provide recreation services under this LEASE or will subcontract
14 for necessary services. DISTRICT personnel shall not be employed by, not have any
15 direct contractual relationship with the COUNTY. The DISTRICT, its employees or
16 personnel under direct contract with the DISTRICT shall perform all services required
17 hereunder. DISTRICT and its agents, servants, employees and shall act at all times in
18 an independent capacity during the term of this LEASE and shall not act as, and shall
19 not be, nor shall they in any manner be construed to be agents, officers or employees
20 of the COUNTY.

21 **SECTION 20. AMENDMENTS.** This LEASE shall not be amended unless
22 such changes are mutually agreed upon by the COUNTY and the DISTRICT and shall
23 be incorporated in written executed amendments to this LEASE.

24 **SECTION 21. ADMINISTRATION.** The Assistant County Executive Officer of
25 the Economic Development Agency, or his designee, has the authority to administer
26 the LEASE on behalf of the COUNTY. The General Manager of the DISTRICT, or his
27 designee, has the authority to administer the LEASE on behalf of the DISTRICT.

1 **SECTION 22. CONFLICT OF INTEREST.** No member, official or employee of
2 the COUNTY or DISTRICT shall have any personal interest, direct or indirect, in this
3 LEASE nor shall any member, official or employee participate in any decision relating
4 to this LEASE which affects his or her personal interests or the interests of any
5 corporation, partnership or association in which he or she is directly or indirectly
6 interested.

7 **SECTION 23. GOVERNING LAW; JURISDICTION.** This Agreement shall be
8 governed by and construed in accordance with the laws of the State of California. The
9 COUNTY and DISTRICT agree that this Agreement has been entered into at Riverside
10 County, California, and that any legal action related to the interpretation or
11 performance of the Agreement shall be filed in the Superior Court for the State of
12 California, in Riverside, California.

13 **SECTION 24. NO THIRD PARTY BENEFICIARIES.** This LEASE is made and
14 entered into for the sole protection and benefit of the parties hereto. No other person
15 or entity shall have any right of action based upon the provisions of this LEASE.

16 **SECTION 25. SEVERABILITY.** Each section and provision of this LEASE is
17 severable from each other provision, and if any provision or part thereof is declared
18 invalid, the remaining provisions shall remain in full force and effect.

19 **SECTION 26. WAIVER.** Failure by a party to insist upon the strict
20 performance of any of the provisions of this LEASE by the other party, or failure by a
21 party to exercise its rights upon the default of the other party, shall not constitute a
22 waiver of such party's right to insist and demand strict compliance by the other party
23 with the terms of this LEASE thereafter.

24 **SECTION 27. AUTHORITY TO EXECUTE.** The persons executing this
25 LEASE on behalf of the parties to this LEASE hereby warrant and represent that they
26 have the authority to execute this LEASE and warrant and represent that they have the
27 authority to bind the respective parties to this LEASE and to the performance of its
28 obligations hereunder.

1 **IN WITNESS WHEREOF**, the COUNTY and DISTRICT have executed this
2 LEASE as of the date first above written.

3
4 **COUNTY OF RIVERSIDE**

**RIVERSIDE COUNTY REGIONAL
PARK & OPEN-SPACE DISTRICT**

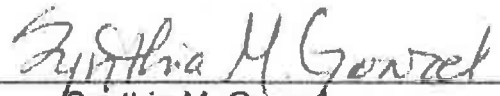
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7 _____
John J. Benoit, Chairman
Board of Supervisors

Kevin Jeffries
Chairman, Board of Directors

8
9
10 **APPROVED AS TO FORM:**
Pamela J. Walls
11 COUNTY Counsel

APPROVED AS TO FORM:
Pamela J. Walls
12 DISTRICT Counsel

13 By:  _____
14 Patricia Munroe
Deputy County Counsel

By:  _____
15 Synthia M. Gunzel
Deputy County Counsel

16 **ATTEST:**
17 Kecia Harper-Ihem
Clerk of the Board

18
19 By _____
20 Deputy

EXHIBIT A

