

FORM APPROVED COUNTY COUNSEL  
BY: GREGORY P. PRIAMOS DATE 6/27/16

Departmental Concurrence



SUBMITTAL TO THE BOARD OF DIRECTORS  
REGIONAL PARK AND OPEN SPACE DISTRICT  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



FROM: Regional Park and Open-Space District

SUBMITTAL DATE:  
June 30, 2016

SUBJECT: Concession Agreement between the Riverside County Regional Park and Open-Space District and The Friends of the San Jacinto Mountain County Parks; \$0; District 3

RECOMMENDED MOTION: That the Board of Directors:

1. Approve the Concession Agreement between the Riverside County Regional Park and Open-Space District (DISTRICT) and The Friends of the San Jacinto Mountain County Parks (FRIENDS).

BACKGROUND:  
Summary

(page 2)

Scott Bangle  
General Manager

2017-009D

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

SOURCE OF FUNDS:

Budget Adjustment:

For Fiscal Year:

C.E.O. RECOMMENDATION:

APPROVE

BY:

Steven C. Horn

County Executive Office Signature

MINUTES OF THE BOARD OF DIRECTORS

DISTRICT

13-1

Prev. Agn. Ref.:

District: 3

Agenda Number:

- ☐ A-30  
☐ 4/5 Vote  
☐ Positions Added  
☐ Change Order

**SUBMITTAL TO THE BOARD OF DIRECTORS, REGIONAL PARK AND OPEN SPACE DISTRICT,  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.**

**FORM 11:** Concession Agreement between the Riverside County Regional Park and Open-Space District and  
The Friends of the San Jacinto Mountain County Parks; \$0; District 3

**DATE: June 30, 2016**

**PAGE: 2 of 2**

**BACKGROUND:**

**Summary (continued)**

FRIENDS is the designated support group for DISTRICT parks in the mountain area. FRIENDS operates a gift shop at the Idyllwild Nature Center to generate funds for support activities. This concession agreement establishes the processes and procedures for retail operations and financial responsibilities of both FRIENDS and DISTRICT as relates to the gift shop.

**Impact on Citizens and Businesses**

There is no anticipated impact on citizens or businesses.

**Attachments:**

Concession Agreement

General Cooperative Agreement

## **CONCESSION AGREEMENT**

**Between**

### **RIVERSIDE COUNTY REGIONAL PARK AND OPEN-SPACE DISTRICT and THE FRIENDS OF THE SAN JACINTO MOUNTAIN COUNTY PARKS**

This Agreement ("Agreement") is entered into by and between the Riverside County Regional Park and Open-Space District ("DISTRICT"), a special district, and the FRIENDS OF THE SAN JACINTO MOUNTAIN COUNTY PARKS, a non-profit organization ("FRIENDS").

WHEREAS, the DISTRICT owns and is responsible for preservation and operation of Hurkey Creek Park, Idyllwild Park, Idyllwild Park Nature Center, Lawler Lodge and Alpine Cabins, and McCall Memorial Park (collectively "COUNTY MOUNTAIN PARKS"); and

WHEREAS, it is the mission of the FRIENDS to promote the preservation, interpretation, and enjoyment of the COUNTY MOUNTAIN PARKS through program support that seeks to support, promote, advance, and develop the historical, scientific, educational, and cultural aspects pertaining to the San Jacinto Mountain County parks, and acquire acquisitions appropriate to the mission of the museum; and

WHEREAS, the parties desire to make available to the public the COUNTY MOUNTAIN PARKS and to promote interest in them, educate the public about the cultural, historical and natural resources and promote the COUNTY MOUNTAIN PARKS through special events, public programs and other activities; and

WHEREAS, the FRIENDS is established as a nonprofit 501(c)(3) organization under the U.S. Internal Revenue Code and as a nonprofit public benefit corporation under the California Corporations Code;

WHEREAS, The DISTRICT considers the FRIENDS to be a designated support organization for the COUNTY MOUNTAIN PARKS, and the parties agree to work cooperatively to further the goals and visions of both organizations; and

WHEREAS, the FRIENDS are currently operating a Gift Shop within the Idyllwild Nature Center for the purpose of raising money for FRIENDS' operations and services to visitors. The Gift Shop accepts payment from customers for the District's Day Use Fees, purchases of gift items, donations for the annual Idyllwild Lemon Lily Festival, donations for art installations, and other revenues; and

WHEREAS, the FRIENDS are currently receiving all customer payments utilizing the point of sale software system owned by the DISTRICT and depositing collections directly to the FRIENDS bank account, reconciling and remitting weekly to the DISTRICT the amounts collected for day use fees; and

WHEREAS, the DISTRICT has determined that the this cash handling procedure represents a commingling of funds between the two organizations, and the inherent risk level is not acceptable to the DISTRICT; so

THEREFORE, the FRIENDS will continue to manage all operational aspects of the Idyllwild Nature Center Gift Shop, while the DISTRICT will maintain ownership of all financial activities of the gift shop. The FRIENDS' access to DISTRICT property is strictly limited as stated in this Agreement and subject at all times to the oversight and control of the DISTRICT.

1. This Agreement shall be effective upon the date it has been signed by both parties and will terminate one year later. Thereafter, the Agreement will automatically renew on an annual basis unless otherwise requested via written amendment signed by both parties.

## **2. Responsibilities of DISTRICT**

DISTRICT shall be responsible for the following:

- A. Designate a staff liaison to work with the FRIENDS to further the success of grants and fundraising in support of this Agreement. The DISTRICT staff liaison will be notified of and welcome to attend FRIENDS board or other meetings.
- B. Provide a copy of its annual report to the FRIENDS.
- C. Maintain the computer and point-of-sale software in use at Idyllwild Nature Center.
- D. Provide to the FRIENDS a verified statement of total gross gift shop sales by category for the prior calendar month by the 15<sup>th</sup> day of the following month.
- E. DISTRICT shall remit payment to FRIENDS for a percentage of gross sales for specific categories as follows:
  - a. 90% of gross retail gift sales.
  - b. Payments to the FRIENDS shall be made to the order of Friends of San Jacinto Mountain County Parks. DISTRICT shall reconcile all revenue and remit payment to FRIENDS for its share on no less than a monthly basis. The FRIENDS will not allow late payments and may immediately terminate this Agreement if the DISTRICT fails to make a payment when due.
- F. Keep true, accurate and complete financial records showing all of its business transactions related to this Agreement. The FRIENDS will have the right to audit the operations and financial records of the DISTRICT related to this Agreement.

## **3. Responsibilities of FRIENDS**

FRIENDS shall be responsible for the following:

- A. Ensure all FRIENDS staff and volunteers currently handling cash or working with the Point of Sale System at Idyllwild Nature Center complete the DISTRICT's employee/volunteer cash handling training and submit signed acknowledgement forms to DISTRICT within 30 days of acceptance of this Agreement. Any subsequent new FRIENDS staff/volunteers who begin handling cash or working with the Point of Sale System at the Nature Center must complete the training and submit a signed acknowledgement form before they perform any cash handling duties.
- B. Continue to manage all operational aspects of the Idyllwild Nature Center gift shop by purchasing and replenishing inventory, setting prices, maintaining product displays, and recording all sales and fee collections using the point of sale software system owned and maintained by the DISTRICT.
- C. FRIENDS accepts all premises used by the FRIENDS pursuant to this Agreement "as is" and in their present or future existing conditions. The DISTRICT shall not be obligated to make any alterations, additions or betterments to the premises. The FRIENDS shall not improve or modify any DISTRICT property.
- D. FRIENDS acknowledge that all permanently attached Nature Center and Gift Shop fixtures and improvements, i.e., cabinets, exhibits, furnishings, equipment, furnishings, etc. are property of the DISTRICT. However, all inventories for sale, portable fixtures such as small display cases, and self-contained cases and tables, shall be the property of FRIENDS.
- E. FRIENDS shall obtain liability insurance as the DISTRICT may require. The minimum insurance requirements are as provided in Exhibit A, attached hereto and by this

reference incorporated herein.

- F. FRIENDS shall indemnify and hold harmless the DISTRICT, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Directors, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of FRIENDS, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of FRIENDS, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. FRIENDS 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 Indemnitees in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by FRIENDS, FRIENDS 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 FRIENDS' indemnification to Indemnitees as set forth herein. FRIENDS'S obligation hereunder shall be satisfied when FRIENDS has provided to DISTRICT the appropriate form of dismissal relieving DISTRICT from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe FRIENDS'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims. 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 CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

4. This Agreement may be terminated with or without cause by either party prior to the termination date upon written notice to the other party of not less than 30 days.
5. All notices related to this Agreement shall be delivered to the parties as follows:

**DISTRICT:**

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

**FRIENDS:**

Friends of the San Jacinto  
Mountain County Parks  
P.O. Box 1522  
Idyllwild, CA 92549

6. The failure of DISTRICT to insist upon the strict performance of any provision of this Agreement by the FRIENDS shall not constitute a waiver of the DISTRICT's right to insist upon strict compliance with the terms of this Agreement thereafter.

7. This Agreement is intended by the parties as the full and final expression of their understanding of the terms and conditions with respect to the subject matter of this Agreement. This Agreement may not be assigned by the FRIENDS. This Agreement may be changed or modified only pursuant to a written amendment signed by authorized representatives of both parties.

(Signature provisions on following page)

IN WITNESS THEREOF, the parties have hereto have executed this Agreement on the date as indicated below:

RIVERSIDE COUNTY REGIONAL  
PARK AND OPEN-SPACE DISTRICT  
a special district

\_\_\_\_\_  
Kevin Jeffries, Chairman  
Board of Directors

Date: \_\_\_\_\_

ATTEST:  
Clerk of the Board  
Kecia Harper-Ihem

By: \_\_\_\_\_  
Deputy

THE FRIENDS OF THE SAN JACINTO  
MOUNTAIN COUNTY PARK  
a non-profit organization

\_\_\_\_\_  
George Ray  
President

Date: May 13, 2016

APPROVED AS TO FORM:  
Gregory Priamos  
County Counsel

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

**EXHIBIT A**  
**Insurance Requirements**

**1. Insurance**

Without limiting or diminishing FRIENDS' obligation to indemnify or hold the DISTRICT harmless, FRIENDS 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. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Regional Park and Open-Space District, its Divisions, Departments, their respective directors, officers, Board of Directors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

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

**B. Vehicle Liability:** If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then FRIENDS 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 as Additional Insureds.

**C. General Insurance Provisions - All lines:**

a. 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 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.

b. FRIENDS must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention 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, FRIENDS' 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.

c. FRIENDS shall cause FRIENDS' 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 Agreement 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. FRIENDS 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 shall sign the original endorsements for each policy and the Certificate of Insurance.

d. It is understood and agreed to by the parties hereto that FRIENDS' 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.

e. If, during the term of this Agreement 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; 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 and the monetary limits of liability required under this Agreement, if in the District Risk Manager's reasonable judgment, the amount or type of insurance carried by FRIENDS has become inadequate.

f. FRIENDS shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

g. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the DISTRICT.

h. FRIENDS 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 Agreement.