



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

731



FROM: Regional Park & Open-Space District

SUBMITTAL DATE:
1/5/10

SUBJECT: First Amendment to Ground Lease between Riverside County Regional Park and Open-Space District and Jeff and Ossie Torgimson

RECOMMENDED MOTION: That the Board of Directors approves and:

1. Authorizes the attached First Amendment to Ground Lease between Jeff and Ossie Torgimson and the Riverside County Regional Park and Open-Space District (Park District);
2. Authorizes the Chairman to executive three (3) copies of the First Amendment to Ground Lease and directs the Clerk of the Board to return two (2) executed copies of the First Amendment to Ground Lease to the Park District for transmittal and filing; and
3. Authorizes the General Manager or his designee to perform all duties necessary to administer the agreement.

BACKGROUND: On June 2, 2009, M.O. 13.2, the Park District entered into a ground lease agreement with Jeff and Ossie Torgimson to lease property located within the Jones Ranch in the Jurupa area of Riverside County, California, consisting of approximately 12.39 acres of land, APN 181-220-005, for one year commencing in June 1, 2009 and terminating May 31, 2010. As provided for in the Lease, Lessee is exercising the option to extend the term of the Lease for one (1) separate and consecutive period from June 1, 2010 and terminating May 31, 2011.

755-1st Amendment to Ground Lease Jones Ranch with Torgimson

[Signature]
Scott Bangle, General Manager

FINANCIAL DATA

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

MINUTES OF THE REGIONAL PARK AND OPEN SPACE DISTRICT

On motion of Commissioner Buster, seconded by Commissioner Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione
Date: January 26, 2010
xc: Parks

Kecia Harper-Ihem
Clerk of the Board
[Signature]
Deputy

Prev. Agn. Ref.: 6/2/09 13.2

District: II

Agenda Number:

13.1

ATTACHMENTS FILED

FORM APPROVED COUNTY COUNSEL
BY: *Sybil M. Gann* DATE: 1/13/10
SYBIL M. GANN, Departmental Concurrence

Dep't Recomm.: ☐ Consent ☒ Policy
Per Exec. Ofc.: ☐ Consent ☒ Policy

SUBJECT: First Amendment of Ground Lease between Riverside County Regional Park and Open-Space District and Jeff and Ossie Torgimson

The District and Lessee desire to amend the Lease to provide for, among other things, issues involving the land and obligations relating to utilities on the leased premises. The original lease, together with this First Amendment, are collectively referred to herein as the "Ground Lease."

Except as amended or modified in the First Amendment, all the terms of the original Ground Lease shall remain in full force and effect and shall apply with the same force and effect to this First Amendment.

The approval of this First Amendment to Ground Lease ("Amendment") is not a project under CEQA. In the event that it is judicially determined to be a project, the Amendment would be exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment.

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE ("1st Amendment"), dated as of JAN 26 2010, is entered by and between the Riverside County Regional Park and Open-Space District, a park and open-space district, ("DISTRICT"), and Jeff and Ossie Torgrimson, a proprietorship, ("LESSEE").

Recitals

A. DISTRICT and LESSEE have entered into that certain Ground Lease, dated as of June 2, 2009, ("Original Ground Lease") pursuant to which DISTRICT has agreed to lease to LESSEE and LESSEE has agreed to lease from DISTRICT real property located within APN 181-220-005, known as Jones Ranch in the Jurupa Area of Riverside County, State of California, consisting of approximately 12.39 acres of land, ("Leased Premises"), as more particularly described in the Original Ground Lease.

B. DISTRICT and LESSEE desire to amend the Lease to provide for, among other things, issues involving the land and obligations relating to utilities on the Leased Premises with the terms and conditions set forth herein. The Original Ground Lease together with this 1st Amendment are collectively referred to herein as the "Ground Lease."

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

Section 1. Term.

- a. The option to extend the Lease for one year has been exercised; therefore, the term of the Lease and Section 3. subsection (a) is hereby amended as follows: The term of this Lease is extended for one year and shall terminate on May 31, 2011, unless terminated earlier by mutual consent of the parties.
- b. Section 3. subsection (b) of the Original Ground Lease is hereby deleted in its entirety and shall not have any further effect or force.

Section 2. Rent. Section 5. Subsection (a) of the Original Ground Lease is hereby amended and subsection (c) is added as follows:

1 “(a) LESSEE shall pay DISTRICT the sum of seven percent (7%) of the total monthly
2 gross receipts or three-hundred-twenty two dollars (\$322.00) (“the Base Rent”) per acre
3 per year in monthly payments, whichever is greater. Upon DISTRICT’S request, the
4 LESSEE shall make available and provide the DISTRICT access to all accounting
5 records for review and determination of total monthly gross receipts.”

6 “(c) In the event this Ground Lease is renewed, the Base Rent shall be increased on each
7 anniversary of the Lease by an amount equal to three (3%) percent of such monthly
8 rental.”

9 Section 3. Section 6. of the Original Ground Lease is hereby deleted in its entirety and
10 replaced with the following:

11 “Section 6. Land Designation. The premises leased have been designated as
12 Public/Quasi-Public (P/QP) Land. With that designation requires certain obligations on the
13 owner of the land or any person occupying and using the land. Any requirements mandated on
14 the DISTRICT to mitigate due to LESSEE’S activities, including, but not limited to, the farming
15 activities conducted on the land, shall pass to the LESSEE and LESSEE shall be obligated to
16 satisfy mandatory mitigation measures. The Parties acknowledge that the DISTRICT is
17 currently in process of attempting to remove the P/QP designation, but the removal is not
18 guaranteed nor required by DISTRICT. The DISTRICT makes no representations or guarantees
19 that additional obligations may not be imposed due to the P/QP designation.”

20 Section 4. Planting/Improvements. Section 7. Of the Original Ground Lease is hereby
21 amended as follows:

22 “(a) Any planting of crops undertaken by LESSEE, his employees, agents, contractors
23 or representatives, on the Leased Premises shall have the prior written approval by
24 DISTRICT General Manager or his designee after LESSEE has first submitted to
25 DISTRICT proposed plans and specifications thereof, in writing. The use of all
26 fertilizers and synthetic pesticides, plant growth regulators, livestock feed additives, and
27 genetically modified organisms are strictly prohibited. LESSEE will provide an annual
28 Agricultural Commissioner report to DISTRICT as the summary for this Section 7.”

Section 5. Utilities. Section 11. of the Original Ground Lease is hereby deleted in its entirety and replaced with the following:

“Section 11. Utilities.

- a. During the term of the Lease, LESSEE shall have the right to use water from the well situated within the Leased Premises.
- b. The DISTRICT agrees to pay meter installation to Southern California Edison (SCE) or a licensed contractor.
- c. The LESSEE agrees to provide the SCE or contractor’s invoices for installation to the DISTRICT within five (5) business days of receipt.
- d. The LESSEE agrees to maintain the account in his name for the length of the Lease.
- e. The LESSEE agrees to pay monthly utility bills related to that meter and for all other utility services that it may require in its use and maintenance of the Leased Premises.
- f. The DISTRICT shall not be liable for any damages or loss resulting from pump or utility failure.”

Section 6. Termination by DISTRICT. Section 15. of the Original Ground Lease is hereby amended by adding subsection (f) as follows:

“(f) DISTRICT shall have the right to terminate this Lease by providing a ninety (90) day notice to LESSEE to the address provided in this Lease under Section 29.”

Section 7. Insurance. Section 18. of the Original Ground Lease is hereby amended as follows:

- a. “Section 18. Insurance. Without limiting or diminishing the LESSEE’S obligation to indemnify or hold the DISTRICT harmless, LESSEE shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage’s during the term of this Agreement.”
- b. Subsection (a) is hereby replaced with the following: “(a) 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."

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

Section 8. Indemnification. Section 19. of the Original Ground Lease is hereby deleted in its entirety and replaced with the following:

"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 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 acts or omissions of Lessee, its officers, agents, employees, subcontractors, agents or representatives from this Agreement. 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

1 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and
2 representatives in any claim or action based upon such alleged acts or omissions.

3
4 With respect to any action or claim subject to indemnification herein by LESSEE, LESSEE shall,
5 at their sole cost, have the right to use counsel of their own choice and shall have the right to
6 adjust, settle, or compromise any such action or claim without the prior consent of DISTRICT;
7 provided, however, that any such adjustment, settlement or compromise in no manner
8 whatsoever limits or circumscribes LESSEE'S indemnification to DISTRICT as set forth herein.

9
10 LESSEE'S obligation hereunder shall be satisfied when LESSEE has provided to DISTRICT the
11 appropriate form of dismissal relieving COUNTY from any liability for the action or claim
12 involved.

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

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

21
22 Section 9. Miscellaneous. Except as amended or modified herein, all the terms of the Original
23 Ground Lease shall remain in full force and effect and shall apply with the same force and effect to this
24 1st Amendment. DISTRICT shall not be bound by this 1st Amendment until DISTRICT has executed and
25 delivered this 1st Amendment to LESSEE, notwithstanding LESSEE's execution and delivery of this
26 Amendment to DISTRICT. Time is of the essence in this 1st Amendment and the Lease and each and all
27 of their respective provisions. Subject to the provisions of the Lease as to assignment, the agreements,
28 conditions and provisions herein contained shall apply to and bind the heirs, executors, administrators,

1 successors and assigns of the parties hereto. If any provisions of this 1st Amendment or the Lease shall
2 be determined to be illegal or unenforceable, such determination shall not affect any other provision of
3 the Lease and all such other provisions shall remain in full force and effect. The language in all parts of
4 the Lease shall be construed according to its normal and usual meaning and not strictly for or against
5 either DISTRICT or LESSEE. Neither this 1st Amendment, nor the Original Ground Lease, nor any
6 notice nor memorandum regarding the terms hereof, shall be recorded by LESSEE. Any such
7 unauthorized recording shall give DISTRICT the right to declare a breach of the Lease and pursue the
8 remedies provided for therein.

9
10 IN WITNESS WHEREOF, the parties have executed this 1st Amendment as of the date first
11 written above.

12
13 RIVERSIDE COUNTY REGIONAL
14 PARK AND OPEN-SPACE DISTRICT

LESSEE
JEFF AND OSSIE TORGRIMSON

15 By: Marion Ashley
16 Chairman, Board of Directors

17 **MARION ASHLEY**

By: Jeff Torgrimson
Jeff Torgrimson

18 By: Ossie Torgrimson
Ossie Torgrimson

19 ATTEST:
20 CLERK OF THE BOARD
Kecia Harper-Ihem

21 By: Amie Lehmann
22 Deputy

23 APPROVED AS TO FORM:
24 COUNTY COUNSEL
25 Pamela J. Walls

26 By: Synthia M. Gunzel
27 Cynthia M. Gunzel
28 Deputy County Counsel