

Agreement between
FRIENDS OF BIG MORONGO CANYON PRESERVE
and
SAN BERNARDINO COUNTY

A. BACKGROUND

This Agreement (AGREEMENT) is made between the Friends of Big Morongo Canyon Preserve (ASSOCIATION) and San Bernardino County (COUNTY), a political subdivision of the State of California (COUNTY). These premises are depicted on Exhibit which consists of 185.12 acres of the Southeast 1/4 of Section 28, Township 1 South, Range 4 East, SBB&M, together with existing improvements, but excepting therefrom the well and its appurtenances and pipelines, which the COUNTY has leased to the Morongo Valley Community Services District (DISTRICT).

The ASSOCIATION will serve to keep the Big Morongo Canyon Preserve in good order for the public. ASSOCIATION will assist the COUNTY with park operations, bird watching and identification, education, volunteer programs, and trail maintenance.

B. PURPOSE

The purpose of this PERMIT is to provide for continuing management of sensitive wildlife habitats and the education programs and visitor services at Big Morongo Canyon Preserve.

As a National Watchable Wildlife site and as a preserve of regional, national, and international recognition for its birdwatching values, Big Morongo Canyon requires a manager to maintain facilities and grounds, manage visitor use at proper levels, regulate appropriate visitor uses within a sensitive habitat, manage wildlife habitat, and monitor sensitive species within the oasis and canyon areas. ASSOCIATION and the COUNTY, therefore, agree to work cooperatively for the common purpose of managing Big Morongo Canyon Preserve for continued public visitation and resource protection in the manner and to the extent outlined below.

c. OBJECTIVES

The objectives of this PERMIT are as follows:

1. To provide for the management of and resources to the Preserve for the purpose of protecting, preserving, and enhancing its desert, riparian, woodland, and marsh communities, sensitive wildlife species, and other natural resources.
2. To manage the Preserve as a natural area and carry out such activities as are necessary for COUNTY's reasonable judgment to maintain the premises in a natural state, such as controlling weeds and exotic plants and birds, planting native vegetation, etc.

3. To provide for safe and appropriate viewing of wildlife and wildlife habitat by the general public without endangering the safety or security of that wildlife.
4. To promote public awareness of the resource values within the Preserve as a natural area for wildlife and for humans, and to make visitors aware of the importance of protecting the natural resources within the Preserve and Areas of Critical Environmental Concern (ACEC).

D. STATEMENT OF WORK

1. The ASSOCIATION agrees to:

- a. Oversee the daily operation of the preserve.
- b. Provide necessary supplies and equipment for volunteers and Preserve Host to assist in the overall daily operations. This would include but is not limited to: cleaning supplies, paper products, and small tools for trail maintenance
- c. Conduct ongoing trail maintenance to the extent personnel and equipment can manage.
- d. Coordinate all volunteer program task assignments and training.
- e. Assist with proper signage
- f. Hire, supervise, and manage staff/employees of the Association.
- g. Hire, supervise, and manage the Preserve Host.
- h. Manage any cleaning service if this needs to be separate from host duties.
- i. Organize, staff, and manage educational programs
- j. Provide tours for youth and adult groups
- k. Offer regular bird walks
- l. Provide education and interpretive programs
- m. Provide educational and informative handouts
- n. Routine/regular trails maintenance - including the boardwalk.
- o. Provide routine maintenance and minor alterations and repair of buildings and facilities
- p. Provide routine cleaning of the bathrooms
- q. Coordinate plant debris removal that is beyond the skills of the volunteers, for fire abatement and guest safety.
- r. Provide utility service (Internet, Telephone, Porta Potties, and Trash Removal)

2. COUNTY agrees:

- a. Install and/or maintain fencing
- b. Provide training for volunteers that is beyond the ASSOCIATION's scope; to be negotiated between both parties.
- c. A yearly \$25, 000 grant See Exhibit B
- d. Maintain roads, driveway, parking lot, and trails beyond regular maintenance.
- e. Provide utility service (Water, Electricity, Gas, and Septic)

3. Both parties mutually agree:

- a. To meet as needed to ensure effective management of Preserve facilities and habitat.
- b. To consult with the other party should any party determine that it cannot fulfill its obligations as specified herein.
- c. To negotiate subsequent agreements and/or memorandums of understanding as necessary relative to the procedural details for the law enforcement interface between the San Bernardino County Sheriff and Bureau of Land Management (BLM) Rangers.
- d. To share responsibility for major repairs, including but not limited to, damage resulting from fire, flood, earthquake, major vandalism, and infrastructure, subject to available funding.

E. INSPECTIONS

The COUNTY may enter and inspect the Preserve at any time, without notice, but will attempt, except in an emergency, to inform ASSOCIATION ahead of time.

F. NOTICES

Any notice or consent required or permitted to be given under this agreement shall be given to the respective parties in writing, by registered or certified mail, or otherwise delivered, as follows:

- (a) If to COUNTY: San Bernardino County
Regional Parks Department
268 W Hospitality Lane, Suite
302
San Bernardino, CA 92408
- (b) If to Friends of Big Morongo Preserve:
Friends of Big Morongo Preserve
PO Box 780
Morongo Valley, Ca 92256-0780

or at such other address or to such other persons as either of the parties may from time to time designate by written notice.

G. TERMS OF AGREEMENT/TERMINATION

This agreement shall become effective when signed by both parties hereto and shall remain in force unless terminated for 5 years. . Either party may terminate this agreement upon 60 days' written notice of its intention to terminate upon a specific date. The agreement shall be reviewed every five (5) years by both parties to determine the effectiveness of its provisions.

H. MODIFICATIONS

Modifications to this agreement may be accomplished by mutual agreement of both parties.

I. INSURANCE.

1. Basic Insurance Requirements. Without in any way affecting The ASSOCIATION's obligation to defend and indemnify COUNTY as herein provided, and in addition, thereto, The ASSOCIATION shall secure and maintain the following types of insurance, with the following minimum limits throughout the Term of this agreement:
2. Workers' Compensation/Employers Liability. A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of The ASSOCIATION and all risks to such persons under this Agreement. Right now, The ASSOCIATION does not have volunteers. The volunteers would be approved and authorized by COUNTY.

If The ASSOCIATION has no employees, it may certify or warrant to COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by COUNTY'S Director of Risk Management.

If, The ASSOCIATION is a non-profit corporation, organized under California or Federal law, volunteers for The ASSOCIATION are required to be covered by Workers' Compensation insurance.

- i. Commercial/General Liability Insurance. The ASSOCIATION shall carry General Liability Insurance covering all operations performed by or on behalf of The ASSOCIATION providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 1. Premises operations and mobile equipment.
 2. Products and completed operations.
 3. Broad form property damage (including completed operations).
 4. Explosion, collapse, and underground hazards.
 5. Personal injury
 6. \$2,000,000 general aggregate limit.

ii.

Or

Fire Insurance- The ASSOCIATION is responsible for their personal property and takes responsibility to replace anything lost in a fire.

iii. Automobile Liability Insurance. Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired, and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If The ASSOCIATION is transporting one or more non-employee passengers in The ASSOCIATION's use of the Premises or The ASSOCIATION's performance of its obligations under this Agreement, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If The ASSOCIATION owns no autos, a non-owned auto endorsement to the general liability policy described above is acceptable.

a. Required Policy Provisions. Each of the insurance policies which The ASSOCIATION is required to procure and maintain as part of this Agreement shall include the following provisions:

vi. Additional Insured. All policies, except for the Workers' Compensation, shall contain endorsements naming COUNTY and their officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out of The ASSOCIATION's use of the Preserve and The ASSOCIATION's performance of its obligations under this Agreement. The additional insured endorsements shall not limit the scope of coverage for COUNTY to vicarious liability but shall allow coverage for COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

vii. Waiver of Subrogation Rights. The ASSOCIATION shall require the carriers of required coverages to waive all rights of subrogation against COUNTY, their officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit The ASSOCIATION and The ASSOCIATION'S employees or agents from waiving the right of subrogation prior to a loss or claim. The ASSOCIATION hereby waives all rights of subrogation against COUNTY.

viii. Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by COUNTY.

ix. Severability of Interests. The ASSOCIATION agrees to ensure that coverage provided to meet these requirements is applied separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between The ASSOCIATION and COUNTY or between COUNTY and any other insured or additional insured under the policy.

x. Proof of Coverage. The ASSOCIATION shall furnish Certificates of Insurance to the San Bernardino Regional Parks Department evidencing the insurance coverage, including

endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to San Bernardino Regional Parks Department and The ASSOCIATION shall maintain such insurance until this Agreement is terminated. Within fifteen (15) days of approval of this Agreement, The ASSOCIATION shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

xi. Acceptability of Insurance Carrier. Unless otherwise approved by COUNTY Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

xii. Deductibles: Any and all deductibles or self-insured retentions in excess of \$10,000.00 shall be declared to and approved by COUNTY's Risk Management.

xiii. Insurance Review. Insurance requirements are subject to periodic review by COUNTY. COUNTY'S Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever COUNTY'S Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of COUNTY. In addition, COUNTY'S Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against COUNTY, inflation, or any other item reasonably related to COUNTY'S risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. The ASSOCIATION agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of Regional Parks Department or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Regional Parks or COUNTY.

xiv. Failure to Procure Insurance. All insurance required must be maintained in force at all times by The ASSOCIATION. Failure to maintain said insurance, due to expiration, cancellation, or other reasons shall be cause for COUNTY to give notice to immediately suspend The ASSOCIATION'S use of the Management Area. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this Agreement, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by The ASSOCIATION to COUNTY upon demand but only for the pro rata period of non-compliance.

xv. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as an additional named insured is not intended to and shall not make a partner or joint venturer with The ASSOCIATION in The ASSOCIATION's use.

xvi. The ASSOCIATION agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of the Premises and the performance of The ASSOCIATION's obligations hereunder to provide insurance covering the contracted operation with the basic requirements in this Paragraph 8 (including waiver of subrogation rights) and naming COUNTY as an additional insured. The ASSOCIATION agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

3. INDEMNIFICATION. The ASSOCIATION agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents, and volunteers, from any and all claims, actions, losses, damages, and/or liability arising out of; (i) The ASSOCIATION's breach of this Agreement; and (ii) the negligent, grossly negligent, reckless or intentional misconduct of The ASSOCIATION, its employees' agents and subcontractors in carrying out The ASSOCIATION's obligations hereunder; provided, however, that The ASSOCIATION's indemnity obligations shall not extend to the extent that any claim, liability, action, loss or damage is caused or contributed to by the gross negligence or willful misconduct of COUNTY, its employees' agents and subcontractors.

K. MISCELLANEOUS

1. Nothing in this PERMIT will be construed as affecting the authorities of the participants or as binding beyond their respective authorities or to require any of the participants to obligate or expend funds in excess of available appropriations.

L. AUTHORIZED SIGNATORS

Both parties to this Permit represent that the signators executing this document are fully authorized to enter into this permit.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

/

/

/

/

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be subscribed by their respective proper officers hereto duly authorized.

SAN BERNARDINO COUNTY

►

Dawn Rowe, Chair, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____
Deputy

Friends of Big Morongo Preserve

(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address PO Box 780

Morongo Valley, Ca 92256-0780

FOR COUNTY USE ONLY

Approved as to Legal Form

►

Suzanne Bryant, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

►

Michael Jimenez, Deputy Executive Officer

Date _____

Reviewed/Approved by Department

►

Beahta R. Davis, Director, Regional Parks
Department

Date _____