

**COUNTY OF SAN BERNARDINO**  
**OPERATION AND MANAGEMENT AGREEMENT**

**REGIONAL PARK:** Lake Gregory Regional Park  
24171 Lake Drive  
Crestline, CA

**COUNTY:** County of San Bernardino

**COUNTY'S NOTICE ADDRESS:** County of San Bernardino  
Regional Parks Department  
777 E. Rialto Avenue  
San Bernardino, California 92415-0831

**OPERATOR:** Lake Gregory Community Recreation Company

**OPERATOR'S NOTICE ADDRESS:** Lake Gregory Community Recreation Company  
359 Thousand Pines Road  
Crestline, Ca 92325

**OPERATOR'S TELEPHONE NO.:** 559-273-4667

**OPERATOR'S FACSIMILE NO.:**

**PREMISES:** The entirety of Lake Gregory Regional Park, exclusive of the County's lease with Crest Forest Senior Citizens at the Leisure Shores building and 36 dedicated parking spaces associated with the building use, as those areas are delineated on Exhibit "A" Premises-Legal Description and Plat.

**USE:** The purpose of this Agreement is to establish a contractual relationship whereby Lake Gregory Community Recreation Company will manage for the County the day to day operations on the majority of Lake Gregory Regional Park ("Management Area")

**COMMENCEMENT DATE:** Upon mutual execution of this Agreement

**MANAGEMENT FEE  
COMMENCEMENT DATE:** Upon mutual execution of this Agreement

**TERM**

Commencing on the Commencement Date and expiring fifteen (15) years thereafter with two five year options unless earlier terminated in accordance with this Agreement

**OPTION TO EXTEND  
TERM:**

Two (2) options to extend the Term for two (2) periods of five (5) years each

**EXHIBITS**

- "A" Premises – Legal Description and Plat
- "B" Prevailing Wage Requirements
- "C" List of Permitting Agencies
- "D" List of Former County Officials
- "E" Existing Encumbrances
- "F" County Equipment

The Reference Pages are incorporated into and made a part of the Agreement. In the event of any conflict between any terms on the Reference Pages and the terms in the Agreement, the terms in the Agreement shall control. This Agreement includes the foregoing Exhibits all of which are made a part of this Agreement.

IN WITNESS THEREOF, the parties executed this Agreement.

**COUNTY:** County of San Bernardino

**OPERATOR:** Lake Gregory Community  
Recreation Company

By: \_\_\_\_\_  
Curt Hagman, Chairman  
Board of Supervisors

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

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  
of the County of San Bernardino

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

APPROVED AS TO LEGAL FORM

MICHELLE D. BLAKEMORE, County Counsel  
San Bernardino County, California

By: \_\_\_\_\_  
Dawn Martin, Deputy County Counsel

Dated: \_\_\_\_\_

**SAN BERNARDINO COUNTY  
LAKE GREGORY REGIONAL PARK  
OPERATIONS AND MANAGEMENT AGREEMENT**

1. **PURPOSE.** The purpose of this Operations and Management Agreement ("Agreement") is to establish a contractual relationship whereby Lake Gregory Community Recreation Company ("OPERATOR") will manage for the County of San Bernardino ("COUNTY") the day to day operations of the Lake Gregory Regional Park ("Park") exclusive of the County's lease with Crest Forest Senior Citizens at the Leisure Shorts building and 36 dedicated parking spaces associated with the building use ("Management Area"), as those areas are delineated on Exhibit "A" Premises-Legal Description and Plat. COUNTY and OPERATOR may be collectively referred to herein as "Parties."

2. **TERM.**

A. **Term.** The obligations of the Parties pursuant to this Agreement shall commence for a period of 15 years on the Commencement Date and shall expire on upon the expiration or earlier termination of the Term as set forth in the Reference Pages.

B. **Option to Extend Term.** With regards to the two five year options that OPERATOR is given to extend the Agreement Term ("Agreement Term Extension Option"), the following provisions shall apply:

i. **Operator's Option Notice.** OPERATOR shall notify COUNTY of OPERATOR's intention to exercise OPERATOR's Agreement Term Extension Option by giving written notice of the exercise of each said option ("Agreement Term Extension Notice") to COUNTY, which notice must be received by COUNTY by no later than six (6) months prior to the expiration of the then current Agreement Term.

ii. **Options Personal to Original OPERATOR.** Each Agreement Term Extension Option granted to OPERATOR in this Agreement is personal to the original OPERATOR and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original OPERATOR, unless prior written consent is granted by the COUNTY.

iii. **Effect of Default on Extension Options.** If OPERATOR has committed a Non-curable Default at any time during the Term of this Agreement or any extended Agreement Term or has committed a material curable Default on more than two (2) occasions during the Term of this Agreement or any extended Agreement Term, requiring notice from the COUNTY, OPERATOR shall have no right to exercise any Agreement Term Extension Option and the Agreement Term Extension Notice, if given by OPERATOR, shall be totally ineffective. If OPERATOR is in material Default on the date the extended Agreement Term is to commence, the extended Agreement Term shall not commence and this Agreement shall automatically expire at the end of the then current Agreement Term.

iv. **Multiple Options.** Each Agreement Term Extension Option shall only be exercised individually and sequentially and a later Extension Option cannot be exercised unless the prior Agreement Term Extension Option has been validly exercised. Any lapse in the sequential exercise of the Agreement Term Extension Options shall void any and all remaining Agreement Term Extension Options.

v. **Provisions of Agreement on Extension Options.** If OPERATOR exercises an Agreement Term Extension Option, the Term of the Agreement shall be extended on the same terms and conditions as this Agreement, except that any payment for the operation and management services to the OPERATOR by the COUNTY and/or by payment by OPERATOR to the COUNTY, including but not limited to, any Management Fee amount and Improvement Fund amounts (as defined herein) for each extended term shall be adjusted by good faith negotiation of the parties. If the parties have been unable to agree to said amounts within five (5) months after COUNTY's timely receipt of OPERATOR's Agreement Term Extension Notice, the COUNTY has the right to terminate the Agreement by giving termination notice to the OPERATOR no less than thirty (30) days prior to the end of the current Agreement Term.

C. **Renegotiation.** Should OPERATOR, during the first 60 months of the Term hereof conclude, in its reasonable business judgment, that OPERATOR cannot realize a reasonable profit (as herein defined) in operation of the Park pursuant hereto, OPERATOR shall give written notice thereof to the County. Within 30 days of the date of such notice, OPERATOR and COUNTY will meet and will use their mutual good faith efforts to negotiate such revisions to this Agreement as will permit the OPERATOR to operate the Park while realizing a reasonable profit therefrom. If, despite such good faith efforts, OPERATOR and COUNTY cannot reach agreement of revisions hereto which, in the reasonable determination of OPERATOR, do not permit OPERATOR to realize a reasonable profit from operation of the Park, OPERATOR may give written notice to the COUNTY of OPERATOR's election to terminate this Agreement, in which case this Agreement shall terminate 180 days following the giving of such Notice; provided, however, that if such date of termination will occur between Memorial Day and Labor Day, the date of termination will be the first weekday following Labor Day. For purposes of this section 2-C, a reasonable profit shall mean an annual profit of not less than \$75,000. Additionally, and without limiting the foregoing, if at any time during the Term hereof, the property and/or possessory interest taxes to be paid by OPERATOR pursuant to section 3-W below exceed, or are increased so that they will exceed, for any fiscal year, the sum of Twenty Thousand Dollars (\$20,000), OPERATOR shall give written notice thereof to the County. Within 30 days of the date of such notice, OPERATOR and COUNTY will meet and will use their mutual good faith efforts to negotiate such revisions to this Agreement as will limit OPERATOR's annual responsibility for such taxes to \$20,000.00. If, despite such good faith efforts, OPERATOR and COUNTY cannot reach agreement of revisions hereto to achieve such limit, OPERATOR may give written notice the COUNTY of OPERATOR's election to terminate this Agreement, in which case this Agreement shall terminate at the latter of: (i) 90 days following the giving of such Notice; or (ii) the last day of the fiscal year immediately preceeding the fiscal year for which such increase in taxes takes effect.

### 3. OPERATOR RESPONSIBILITIES.

The OPERATOR is, at minimum, responsible for the following items:

- A. Manage the day to day operation of the Management Area of the Park, ensuring public access to all core services (as defined in subsection C below).
- B. Maintain all proper permitting and insurance for the Management Area of the Park.
- C. Subject to Section 11 below, retain and effectively operate successfully all core services, which include camping (once in operation), swimming and waterpark facility, fishing, watercraft rentals, snack bar concessions, maintenance of trails and open space areas, maintenance of amenities such as skate park and dog park, and all services currently carried on and associated with San Moritz Lodge.
- D. Maintain hours of operation for the Park areas open to the public as follows:
  - i. San Moritz Lodge to be open daily, excluding Christmas day.
  - ii. Parking lots to remain open year-round.
  - iii. Boat docks shall be accessible March 1<sup>st</sup> through December 31<sup>st</sup> annually.
  - iv. Swim Area shall be in operation Memorial Day through Labor Day annually.
  - v. Camp Switzerland shall be in operation year-round once development and construction is completed.
  - vi. Trails and fishing shall be offered year-round.
  - vii. Senior ~~Breakfast-Lunch~~ Program shall operate year-round at the Moritz Lodge.
- E. Subject to Section 11 below, pay all costs associated with maintenance and repair of all facilities, utility repairs, amenities, and equipment used in the day to day operation of the Management Area of the Park. The County would not be responsible for any maintenance except for what is specifically called out later in this agreement. Additional tasks are identified below:
  - i. Trail maintenance.
  - ii. Snow removal.
  - iii. Trash pickup.
  - iv. Routine maintenance and repairs to all facilities and amenities including sewage/sanitation system and water.

San

v. Mowing and landscaping.

F. Camp Switzerland Development

i. Develop design for Camp Switzerland by January 2, 2022. Final design must be mutually approved by the OPERATOR and the Director of Regional Parks.

ii. Complete design and construction of Camp Switzerland by March 1, 2023; so long as the Capital Investment Improvement Fund and the provided for in section 6 below contains, taking into account other improvements required or contemplated hereby, adequate funds for completion of such design and construction.

G. Pay all utility use costs including telephone, internet, solid waste tipping fees, metered electrical, gas, water and sewer.

H. Notify COUNTY of any fee changes. All fees and recommended changes must be submitted to the Director of Regional Parks Department at least sixty (60) days in advance to allow for COUNTY review, consideration and approval prior to OPERATOR implementing such fees, rates and charges. Rates and charges approval shall apply to services provided including Park entrance, building and related facility use, parking, fishing access fees and related passes and will be determined by a meet and confer process between OPERATOR and COUNTY. Fees for Special Events and access, Food sales, Catering, Retail sales and rental rates for equipment shall be excluded from COUNTY review as such purchases represent willing seller willing buyer transactions. COUNTY shall not unreasonably disapprove any fee changes after taking into account the cost to the OPERATOR of carrying out the OPERATOR's obligations hereunder and OPERATOR's ability to achieve a reasonable profit from such activities.

I. Comply, subject to the terms hereof with regard to payment of the cost of rehabilitation and replacement of buildings, improvements and facilities contained in and/or comprising the Park, with all regulatory agencies as required for all day to day operations and to maintain and repair all shelters, restrooms, play park apparatuses, water slides, fountains, docks and trails. Notwithstanding the foregoing, or any other provision of this Agreement to the Contrary, OPERATOR shall have no obligations, of any type whatsoever, to maintain, repair, replace or otherwise be responsible (except as to taking no action to damage) the Lake Gregory Dam or any portion or part thereof, or any equipment or facility, such as gates, bypasses and spillways, which are a part of or operated in support of the Lake Gregory Dam

J. Administer the fishing access program including the ability to stock approved fish from both private and California Department of Fish and Wildlife sources under a Cooperative Fisheries Program maintained by the COUNTY. Such program shall also include a Fishing Access Pass fee collected at the point of use on the premises which shall be used to offset the cost of private stocking and which when collected shall not be considered revenue to the OPERATOR for the purposes of Gross Income as defined herein under Paragraph 5.C. The fund shall be maintained in a separate deposit account and shall be used for specific

expenditures including the cost to stock fish, public education regarding fishery and related subjects and the administrative cost for managing the program and collecting the Fishing Access Pass by fee tube collections, hand collections and advanced sales over the counter. OPERATOR will be responsible for any out-of-State stocking fees.

K. Not cause and use its best efforts to prevent, within the scope of the services hereby called for by OPERATOR, the degradation of the water quality of Lake Gregory. OPERATOR shall continue not to permit the use of gas-powered motorcraft on Lake Gregory for patron use. OPERATOR further recognizes that pollution and/or water quality damage may occur to Lake Gregory due to swimming, boating and other related water activities on Lake Gregory. Therefore, OPERATOR shall be held responsible for any pollution and/or water quality damage caused by its employees, volunteers, agents, members, guests, and patrons, which may include, but not be limited, to remedial action to remedy the water quality of Lake Gregory,. Nothing in this section 3-K or elsewhere in this Agreement is intended or shall be interpreted to make OPERATOR responsible or liable for any pollution, discharge of toxic or controlled substances or water quality damage or degradation at Lake Gregory not resulting from the activities of OPERATOR hereunder or caused by persons not under OPERATOR's reasonable control.

L. OPERATOR shall guarantee the COUNTY five (5) days annually for COUNTY purposes at the San Moritz Lodge. COUNTY shall provide a minimum of sixty (60) days' notice in advance of such day to the OPERATOR.

M. Permit the Air Quality Management District (AQMD) trailer to remain on the Premises.

N. Develop and implement a marketing plan to promote Park use and activities.

O. Provide Point of Sale system for all transactions.

P. Develop and implement a capital development plan for the Park.

Q. Develop and implement overnight camping/glamping in the Camp Switzerland portion of the Park to be finalized by year three.

R. Host and coordinate weddings, receptions and other special events.

S. Book services, catering and concession services, decorating services, maintenance services and all other services in connection with the management, promotion and operation of the Park.

T. Ensure that the San Moritz Lodge is available for the following Senior Center activity, providing senior lunches a minimum of two days a week and coordinating special events in collaboration with the Crest Forest Senior Citizens' Club; provided, however, that OPERATOR's obligations shall be limited to making the San Moritz Lodge available for such activities, and OPERATOR shall have no



obligation to conduct or assure such activities are conducted and shall have no liability arising therefrom.

U. Set aside \$150,000 to the Capital Investment Improvement Fund pursuant to section 6 below, for construction, modernization and improvement projects to the Park as may become necessary or appropriate.

V. Annually, contribute Fifty Thousand Dollars (\$50,000) to the Capital Investment Improvement Fund established pursuant to section 6 below.

W. Subject to section 2-C above, pay any property and/or possessory interest taxes imposed based upon a determination that the Agreement herein granted constitutes a taxable interest.

#### **4. COUNTY RESPONSIBILITIES**

The COUNTY will be responsible for the following items:

A. Management of Lake Gregory Dam and Lake to include the spraying of aquatic weeds, dredging of lake, water testing, dam related maintenance and testing, but excluding OPERATOR Responsibilities to Lake Gregory as specified under Paragraph 3, subsection K;

B. All other obligations and duties with respect to the Lake Gregory Regional Park not specifically assigned to OPERATOR by this Agreement

#### **5. OPERATIONS AND MANAGEMENT FEES.**

A. OPERATOR shall be responsible for collection and retention of all fees and revenues generated within the Management Area. COUNTY agrees that OPERATOR shall retain all monies obtained from fees.

B. The COUNTY will pay the OPERATOR a management fee of \$50,000 annually for the period of January 1, 2021 through December 31, 2021, January 1, 2022-December 31, 2022, and January 1, 2023-December 31, 2023 based on the gross income level received by the OPERATOR if the annual gross income level is below \$1,250,000. If the gross income level is above \$1,250,000, COUNTY will not pay OPERATOR.

C. GROSS INCOME: The term "Gross Income", as used in this Agreement, is defined as all money, cash, receipts, assets, property or other things of value, including, but not limited to, gross charges, sales, rentals, sponsor payments, fees and commissions made, or earned, and all gross sums received by OPERATOR, its suboperators, assignees, or successors in interest, when collected or accrued, from any business, use or occupation, or any combination thereof, originating, transacted or performed, in whole or in substantial part, on the Management Area, including, but not limited to, rental, the rendition or supplying of services, and the sale of goods, wares or merchandise, coin machines or devices of any nature. Gross Income in credit card transactions shall include only the actual amount received by OPERATOR from the credit card issuer. Gross Income shall not include returns, refunds and exchanges.

i. There will be no deduction from Gross Income of any overhead or expense of operation, such as, but without limitation to, salaries, wages, cost of goods, advertising, interest, debt amortization, discount, collection, maintenance, repairs, insurance and taxes, except as specifically provided for herein.

ii. Gross Income will include the amount of any manufacturers or importer's excise tax included in the prices of any property or material sold, even though the manufacturer or importer is also the retailer thereof; and it is immaterial whether the amount of such excise tax is stated as a separate charge.

iii. Gross Income, however, will not include:

(a). Federal, State of California ("State"), Municipal sales, use and excise taxes, required to be collected by OPERATOR, its suboperators, assignees or successors in interest in connection with the rendering or supplying of services, goods, wares or merchandise, or other taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid periodically by OPERATOR to a governmental agency, accompanied by a tax return or statement. But, the amount of such taxes will be shown on the books and records elsewhere herein required to be maintained.

(b). Receipts from the administration of the fishing access program as detailed herein under Paragraph 3(J).

(c). The Management Fee as that term is defined herein in Paragraph 5.B.

## **6. CAPITAL INVESTMENT IMPROVEMENT FUND.**

A. The COUNTY agrees to contribute one time monies in an amount of \$1,650,000 into a "Capital Investment Improvement Fund" intended for the purpose of paying for construction, modernization and improvements to the Park and its facilities, including necessary rehabilitation, rebuilding and replacement of buildings, structures, facilities and improvements in the Park, as well as such other uses as COUNTY and OPERATOR may mutually agree. The Parties shall meet and confer to discuss such uses prior to the expenditure of monies from the Capital Investment Improvement Fund. However, to the extent the Parties cannot agree as to how the expenditures of such funds are to be allocated, the COUNTY shall have the final determination and approval. In the event that the COUNTY fails to approve expenditures from the Capital Improvement Fund for, or there are insufficient monies in such Fund for, any improvement called for hereby which are stated or contemplated to be paid for from the Capital Improvement Fund including, without limitation, any additional monies to contributed thereto by COUNTY as provided for in section 11 below, OPERATOR shall not be in default hereunder by failing to complete such improvements.

B. The Capital Investment Improvement Fund shall be maintained by the COUNTY as separate interest bearing funds and are subject to the COUNTY procurement process and, if necessary, approval by the Board of Supervisors, for expenditure of funds.

C. If, upon completion of the Term of this Agreement which occurs 15 years or more following the Commencement Date and which occurs for any reason other than a default by OPERATOR, there is more than One Hundred and Fifty Thousand Dollars (\$150,000.) in the Capital Investment Improvement Fund which has not been set aside or earmarked for specific projects in the Park by mutual agreement of the OPERATOR and COUNTY ("Excess Fund Amount"), such Excess Fund Amount shall be returned to OPERATOR within 30 days of the date of such completion of the Term hereof; provided, however that the Excess Fund Amount returned to OPERATOR pursuant to this 6-C shall in no event exceed the aggregate of the OPERATOR's contributions to the Capital Investment Improvement Fund made pursuant to section 3-V above.

**7. BUDGET.**

A. OPERATOR will prepare a proposed annual operating budget and annual cash flow budget for each fiscal year for the OPERATOR's operation of the Park as herein contemplated using the historical budgetary data and consistent with the budget escalation provisions of this Section. OPERATOR shall submit each Fiscal Year's budget to the Director of Regional Parks Department by March 15 of each year. The proposed annual operating budget prepared by OPERATOR shall include projected Operating Expenses and Operating Revenues on a line item basis. The line items shall include, but not be limited to, the following categories:

i. Projected Operating Expenses:

- (a) Employee payroll, benefits, 401(k) contribution, relocation costs, bonus and related costs;
- (b) Operating supplies (including general office supplies);
- (c) Advertising, marketing, group sales, and public relations;
- (d) Cleaning;
- (e) Data processing and storage and other related information technology;
- (f) Dues, subscriptions and memberships;
- (g) Printing and stationary;
- (h) Postage and freight;
- (i) Equipment and rental;
- (j) Repairs, maintenance, and equipment servicing
- (k) Security;
- (l) Telephone and communication;
- (m) Travel and entertainment;
- (n) Employee uniforms and identification;
- (o) Exterminator and trash removal;

- (p) Training;
- (q) Utilities;
- (r) Professional fees, including accounting and legal fees (including audit expenses);
- (s) Commissions and other fees payable to third parties;
- (t) Insurance; and
- (u) Taxes, but excluding any possessory interest tax arising from any determination by the County of San Bernardino Assessor that the license granted herein under constitutes a taxable interest, except any possessory use tax as a result of OPERATOR's self-promoting activities (e.g., booking an event for OPERATOR, whereby OPERATOR benefits beyond the consideration provided hereunder for its services).
- (v) A reasonable allocation of costs directly associated with OPERATOR and its affiliate companies providing human resources, legal, and finance services for Facility operations.
- (w) Costs associated with providing Food and Beverage Services, e.g. inventory, labor, licenses, and the like.

ii. Projected Operating Revenues:

- (a) Advertising;
- (b) Telephone and fax;
- (c) Parking;
- (d) Rentals;
- (e) Equipment charges;
- (f) Food and beverage;
- (g) Retail sales;
- (h) Electrical;
- (i) Catering;
- (j) Box Office fees;
- (k) Advertising and naming rights;
- (l) Interest;
- (m) Leases; and
- (n) Other miscellaneous forms of revenue.

A. Operating Revenues do not include applicable excise, sales, occupancy and use taxes, or similar governmental taxes, duties, levies or charges collected directly from patrons or guests, or as a part of the sales price of any goods, services, or displays, such as gross receipts, admission,

cabaret, or similar or equivalent taxes, nor any gratuities collected (or to be collected) for the benefit of and paid to any of OPERATOR's personnel. Furthermore, Operating Revenues do not include (i) monies collected (or to be collected) for the benefit of and paid to third parties such as event promoters. The annual budgets referred to in subparagraph (a) that are submitted each year shall only contain (i) increases in the Operating Expenses to the extent consistent with projected cost increases; or (ii) the percentage increase represented by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- West Region -- All Items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, whichever is greater. Any proposed operating budget showing increases in Operating Revenue shall be substantiated with sufficient documentation. The Director of Regional Parks Department shall receive all relevant data and documentation required at his/her sole discretion to substantiate Operating Revenue or projected cost increases in any submitted budget.

B. Within thirty (30) days before the end of each Fiscal Year, COUNTY shall notify OPERATOR of any changes to the annual operating budget and the annual cash flow budget for the succeeding Fiscal Year proposed by OPERATOR. Any such changes shall be accompanied by good faith rationale for the changes, taking into account the anticipated required revenues and costs of meeting the OPERATOR's obligations hereunder. The budgets shall be subject to approval by the County Administrative Office, which approval shall not be unreasonably withheld and shall be the Approved Budget for the following Fiscal Year.

## **8. INSURANCE.**

a. **Basic Insurance Requirements.** Without in any way affecting OPERATOR's obligation to defend and indemnify COUNTY as herein provided, and in addition thereto, OPERATOR shall secure and maintain the following types of insurance, with the following minimum limits throughout the Term of this Agreement:

i. 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 OPERATOR and all risks to such persons under this Agreement.

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

ii. Commercial/General Liability Insurance. OPERATOR shall carry General Liability Insurance covering all operations performed by or on behalf of OPERATOR 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. Contractual liability.
7. \$2,000,000 general aggregate limit.

iii. Commercial Property Insurance providing all risk coverage for the premises building, fixtures, equipment and all property constituting a part of the premises. Coverage shall, subject to a deductible or self insured retention not exceeding \$25,000., be sufficient to insure One Hundred percent (100%) of the replacement cost,

Or

Fire Insurance-Standard fire and extended peril coverage insurance adequate to cover OPERATOR's personal property and improvements located on the premises,

And/or

Fire Legal Liability Insurance-Adequate, subject to a deductible or self insured retention not exceeding \$25,000., to cover the full replacement cost value of the COUNTY's structures and property.

iv. 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 OPERATOR is transporting one or more non-employee passengers in the OPERATOR's use of the Premises or OPERATOR'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 OPERATOR owns no autos, a non-owned auto endorsement to the general liability policy described above is acceptable.

v. Environmental Liability Insurance. Environmental liability insurance with a combined single limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence..

vi. Umbrella Liability Insurance. An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

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

i. 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 OPERATOR's use of the Park and OPERATOR'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.

ii. Waiver of Subrogation Rights. OPERATOR 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 OPERATOR and OPERATOR'S employees or agents from waiving the right of subrogation prior to a loss or claim. OPERATOR hereby waives all rights of subrogation against COUNTY.

iii. 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.

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

v. Proof of Coverage. OPERATOR 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 OPERATOR shall maintain such insurance until this Agreement is terminated. Within fifteen (15) days of approval of this Agreement, OPERATOR 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.

vi. 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".

vii. 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.

viii. 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. OPERATOR 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.

ix. Failure to Procure Insurance. All insurance required must be maintained in force at all times by OPERATOR. Failure to maintain said insurance, due to expiration, cancellation, or other reasons shall be cause for COUNTY to give notice to immediately suspend OPERATOR'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 OPERATOR to COUNTY upon demand but only for the pro rata period of non-compliance.

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

xi. OPERATOR 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 OPERATOR'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. OPERATOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

9. **INDEMNIFICATION.** OPERATOR 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) OPERATOR's breach of this Agreement; and (ii) the negligent, grossly negligent, reckless or intentional misconduct of OPERATOR, its employees agents and subcontractors in carrying out OPERATOR's obligations hereunder; provided, however, that OPERATOR'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.

#### 10. **IMPROVEMENTS.**

A. OPERATOR may construct buildings or other improvements on the Management Area ("Improvements"), provided that said Improvements shall be approved in writing by COUNTY prior to the commencement of any work and provided further that all Improvements are completed in: (i) accordance with the plans and specifications approved by COUNTY, (ii) a good and workmanlike manner, (iii) conformity with all county, city, state and



federal regulations, any and all applicable permits for the Regional Park. OPERATOR shall provide COUNTY with not less than ten (10) days' notice prior to the commencement of any work in, on, or under the Management Area for the approved Improvements so that COUNTY, at COUNTY'S option, may post a Notice of Non Responsibility as provided by law. All work shall be completed by duly licensed and insured contractors, which contractors shall be acceptable to COUNTY. COUNTY makes no representation with respect to the applicability of public bidding procedures or requirements for the payment of prevailing wages hereunder. In the event OPERATOR contracts for the construction of any Improvements or portion thereof, OPERATOR shall comply with the applicable provision of the California Public Contract Code 22000 through 22045 regarding bidding procedure and Labor Code Section 1720.2 and 1170 et seq. regarding general prevailing wages, including the provisions set forth in Exhibit "B", Prevailing Wage Requirements. OPERATOR shall indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents, and volunteers from any claims, actions, losses, damages, and/or liability arising out of the obligations set forth in this section 10-A. OPERATOR's indemnity obligation shall survive the OPERATOR's tenancy and shall not be limited by the existence or availability of insurance. All approvals required by COUNTY in this paragraph, including all sub-paragraphs, shall be granted or denied in COUNTY's sole discretion.

**B. Plans and Specifications.** Prior to the commencement of any construction at the Management Area, OPERATOR shall provide COUNTY with a complete set of Working Plans and Specifications for the proposed Improvements to the Management Area and a proposed schedule for the construction of said improvements. COUNTY's review of OPERATOR's plans and specifications, as well as COUNTY's consent to the construction of the proposed Improvements, shall not constitute a representation of the adequacy of the plans or specifications or expose COUNTY to any liability.

**C. Performance and Payment Bonds.** As a condition of COUNTY's consent to OPERATOR's proposed construction of any Improvements at the Management Area, OPERATOR shall furnish a performance bond and a labor and material (payment) bond (if applicable to OPERATOR's requested improvements) to COUNTY prior to the commencement of any construction. The bonds shall be issued by a surety qualified to do business in the State of California and shall be in an amount equal to one hundred percent (100%) of the estimated cost of construction. The bonds shall also name COUNTY as obligee and shall provide that in the event OPERATOR does not complete the proposed construction in accordance with the Construction Plans and/or Construction Schedule, the surety shall complete the construction or at COUNTY's option and upon COUNTY's demand shall return the Management Area to grade. The COUNTY's Director of the Regional Parks Department is authorized, but not required, to accept substitute security under such terms and conditions as the Director determines, in lieu of the above performance, and labor and material bonds described in this paragraph.

**D. Cost of Construction.** Subject to section 11 herein below, all costs of construction shall be the sole responsibility of OPERATOR and shall be paid by OPERATOR when due. For all construction within the Management Area, the OPERATOR shall conduct any construction program in such a manner so that no mechanic's liens or materialmen's liens shall be asserted, or purportedly asserted, against the Park, or any improvements thereon. If any such lien shall be asserted, and except as to the portion of any such lien that arises from the portion of the costs of construction for which County is responsible hereunder, OPERATOR shall indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and the Park in accordance with Paragraph 9, INDEMNIFICATION, of this Agreement. If such liens are asserted, and except as to the portion of any such lien that arises from the unpaid portion of the

costs of construction for which County is responsible hereunder. OPERATOR shall promptly remove said liens within thirty (30) days after its occurrence and if requested by COUNTY, in COUNTY's sole discretion, OPERATOR shall post a surety bond to release the Management Area or the Park, as applicable, from any mechanic's liens recorded against the Management Area or the Park except to the extent that any such lien arises from any unpaid portion of the costs of construction for which County is responsible hereunder. Said bond shall be issued by a surety qualified to do **Ownership of Improvements and Alterations**. All Improvements and alterations constructed by OPERATOR on, in, under or about the Premises shall be considered the property of COUNTY at the termination of this Agreement, the expiration of the current term of the Agreement, or as otherwise provided herein. COUNTY may require the OPERATOR to remove, at any time and at OPERATOR's sole cost, all or any part of any alterations or improvements made without COUNTY's consent.

**E. Additional Requirements.**

i. OPERATOR shall apply for and obtain all applicable local, county, state, federal permits and authorizations for any Improvements. OPERATOR shall obtain and complete all necessary approvals for any Improvements, including but not limited to, approval from any other applicable agency or authority; approvals for all necessary environmental documents; and all insurances required under this Agreement. OPERATOR shall obtain all necessary approvals, including , but not limited to, completion of applicable environmental review processes, including but not limited to compliance with the California Environmental Quality Act, building permits and insurance before undertaking construction activity related to that improvement and any breach of this requirement shall be material, giving COUNTY the right at any time during the term of this Agreement to immediately terminate the Agreement upon notice, to the extent the OPERATOR does not demonstrate to COUNTY's satisfaction that OPERATOR is using commercially reasonable efforts to cure such default within one hundred twenty (120) days of COUNTY's notice.

ii. All construction will meet the building code requirements of any other governmental jurisdiction having authority over the Improvements. All construction will be carried out and completed in strict compliance with the plans and specifications approved in writing by COUNTY. OPERATOR is solely liable for the development and operation of the Improvements. OPERATOR is solely responsible for filing plans with the applicable Building and Safety Department and any other applicable governmental entity, seeking approval, paying such fees and securing appropriate inspection(s). All stockpiling of excavated material, construction screening and the storage of materials, tools or equipment shall be to the satisfaction of the County's Director of the Regional Parks Department or his/her designee

iii. OPERATOR agrees that the COUNTY may have on the Management Area at any time during the construction period a representative, at no cost to OPERATOR, who will have the right to access the Management Area and the construction work. OPERATOR understands that this representative's presence on the Management Area in no way constitutes approval of the Improvements being constructed. OPERATOR must, at the commencement of the construction work, notify the COUNTY in writing of the identity, place of business, and telephone number of OPERATOR's on-the-job construction representative. Said construction representative will be OPERATOR's prime consultant for the representatives of the COUNTY. OPERATOR shall, prior to the commencement of construction of the Improvements at the Management Area, install adequate signage on the Management Area identifying OPERATOR as the operator of the construction site and the Improvements to manage site operations and traffic flow, which sign shall also provide a OPERATOR contact (with phone number) to call in case of emergency. The foregoing signage must be approved by COUNTY prior to installation

## **11. MAINTENANCE OF PREMISES.**

A. OPERATOR shall, at OPERATOR's sole cost and expense and except as set forth herein, and at all times (subject to reasonable time to complete necessary maintenance and repairs) , keep the Management Area and every part thereof in good order, condition and repair. Without limiting the generality of the foregoing, OPERATOR shall maintain all buildings, structures, and grounds of the Management Area, including all equipment or facilities serving the Management Area, including but not limited to restrooms, plumbing, heating, air conditioning, ventilating, electrical, lighting, utility systems and facilities, floors, walls, office space, interior and exterior improvements, boilers, fired or unfired pressure vessels, fire sprinkler or suppression systems, fire extinguishers, fire hose connections, doors, windows, roofs, foundations, parking, landscaping, pest control, and janitorial services. Subject to the provisions hereof providing for contributions by the County to the cost of such maintenance and repairs, OPERATOR's obligations shall include restorations, replacements or renewals when necessary to keep the Management Area and all improvements thereon in good order, condition and state of repair. OPERATOR, in keeping the Management Area in good order, condition and repair, shall exercise and perform good maintenance practices. As provided in Section 3-E(iv) herein, OPERATOR shall be responsible for all routine maintenance and repair of the sewer lines and water lines serving the Management Area. However, in the event there are unusual and unforeseen circumstances beyond the costs of normal routine maintenance and repairs of such water and sewer lines and there are not adequate monies in the Capital Investment Improvement Fund which are not earmarked or set aside for other projects in the Park to pay for maintenance and repair of such sewer and water lines, and if COUNTY and OPERATOR are not able to reach agreement on the contribution of additional funds to complete such water and sewer line maintenance and repair, as contemplated in section 11-B below, COUNTY shall pay the portion of the costs of such maintenance and repair as exceeds the available funds for such purpose in the Capital Investment Improvement Fund subject to the COUNTY's availability of funds and, if necessary, approval by the Board of Supervisors.

If any repairs are of an emergency nature, OPERATOR shall immediately contact the Director of Regional Parks Department to inform him/her of the emergency. An emergency repair is defined herein as the repair of a condition which, if not performed immediately, creates an imminent danger to persons or property or would, in OPERATOR's reasonable judgment, significantly impacts the operational functions of the Management Area (including without limitation the holding of any scheduled event on the Management Area) and was not the result of lack of preventative maintenance, improper operation, or the negligence or willful misconduct of OPERATOR or any of its officers, employees or agents.

B. Whenever, pursuant to this Agreement, OPERATOR is required to either construct a new building, facility or improvement within the Park ("Construction"), or to conduct such Rehabilitation (as herein defined) of an existing building structure or improvement in the Park, the cost thereof shall be paid from monies in the Capital Investment Improvement Fund. If, taking into account monies in such Fund as are already set aside or earmarked for other projects in the Park, there are not sufficient monies to pay the cost of such Construction or Rehabilitation, COUNTY and OPERATOR shall meet and confer and shall use their best efforts to agree on the amounts of additional contribution(s) by them, including the amount, if any, to contributed each by COUNTY and OPERATOR to pay the cost of such construction and/or Rehabilitation or, in the alternative, the portion of the Construction and/or Rehabilitation for which monies in the Capital Investment Improvement Fund are available and which OPERATOR will complete. If, County and OPERATOR cannot agree on the contribution of additional monies to pay for such Construction or Rehabilitation then, notwithstanding any provision hereof to the contrary,

OPERATOR shall not be obligated to conduct such Construction and/or Rehabilitation, except such portion thereof as the OPERATOR and COUNTY agree to be conducted using available monies in the Capital Investment Improvement Fund.

For purposes of this section 11, "Rehabilitation" shall mean, as to any building, structure, or facility in the Park, work on or with respect thereto which is in excess of normal repair and/or maintenance and which involves the replacement, rehabilitation, or expansion thereof or to major or multiple elements thereof.

**12. SURRENDER AND RESTORATION OF MANAGEMENT AREA.** OPERATOR shall surrender the Management Area at the end of the last day of the Term or any earlier termination date, clean and free of debris and in as good a condition as existed on the commencement date, ordinary wear and tear (including age related wear and tear) excepted. OPERATOR shall further surrender all Improvements on the Premises at the end of the last day of the Term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear (including age related wear and tear) excepted. Ordinary wear and tear shall not include any damage or deterioration that could have been prevented by good maintenance practice or by OPERATOR performing all of its obligations under this Agreement (subject to the allocation of applicable costs pursuant to section 11 above). OPERATOR's obligation shall include the repair of any damage occasioned by the installation, maintenance or removal of OPERATOR's trade fixtures, furnishings, equipment, as well as the removal of any storage tank installed by or for OPERATOR, and the removal, replacement, or remediation of any soil, material or ground water contaminated caused by OPERATOR, all as may then be required by any applicable law, ordinance or regulation and/or good practice.

COUNTY is providing equipment to the OPERATOR as shown on Exhibit "F" County Equipment for its operation and management of the Management Area, and the parties shall meet and confer as to the current condition of the equipment. Additionally, OPERATOR shall provide at least five (5) days' advance written notice to the COUNTY regarding any equipment as itemized on Exhibit "F" that it determines is no longer useful or deemed obsolete for its purposes, and the COUNTY shall determine whether it desires the equipment be returned to its possession. Upon the parties' agreement, Exhibit "F" County Equipment will be updated when necessary to reflect any changes, which would include any equipment purchased using monies from the Capital Investment Improvement Fund and any equipment deemed obsolete or otherwise reached the end of its useful life. OPERATOR must, upon termination for any reason, surrender such equipment as shown on Exhibit "F" County Equipment to the COUNTY in a condition equal to that when received, normal wear and tear and obsolescence excepted. If OPERATOR fails to surrender such equipment upon termination as shown on Exhibit "F", OPERATOR shall be responsible for the depreciated replacement value at the date of such termination.

**13. ASSIGNMENT AND SUBLETTING.** OPERATOR shall not voluntarily or by operation of law, assign OPERATOR's interest in this Agreement, in the Management Area or in any options contained in this Agreement, nor sublease, all or any part of the Management Area, nor allow any other person or entity (except OPERATOR's authorized representatives) to occupy or use all or any part of the Management Area, without first obtaining COUNTY's written consent

**14. COUNTY'S ENTRY ON PROPERTY.**

A. COUNTY and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

- i. To inspect the Management Area. This will include an annual inspection performed by the County, the date and time of which will be mutually agreed upon by both parties;
- ii. To determine whether the Management Area is in good condition and whether OPERATOR is complying with its obligations under this Agreement;
- iii. To do any necessary maintenance or perform any auditing, testing or sampling and to make any restoration to the Management Area that COUNTY has the right to perform;
- iv. To serve, post, or keep posted any notices required or allowed under the provisions of this Agreement.

15. **DAMAGE OR DESTRUCTION OF PREMISES.** With the exception of emergency repairs as that term is defined herein under Paragraph 11 MAINTENANCE OF PREMISES, in the event any of the buildings, structures or improvements erected on the Premises are damaged or destroyed during the term of this Agreement, OPERATOR shall repair and restore such buildings, structures or improvements to the original condition prior to said damage or destruction, subject to the allocation of costs thereof set forth in section 11 above. Where insurance covers the cost of such repairs and restoration, costs shall be allocated between COUNTY and OPERATOR as set forth in section 11 only to the extent such costs exceed the proceeds of such insurance. Subject to section 11, OPERATOR shall commence the repair and restoration of the Premises within forty-five (45) days of the event causing such damage or destruction and shall diligently prosecute such work until completion. All proceeds of any property insurance maintained by OPERATOR pursuant to this Agreement shall be used to repair and restore the Management Area, and for no other purpose, without COUNTY's express written consent. OPERATOR shall comply with all the procedures set forth in Paragraph 10, IMPROVEMENTS as part of OPERATOR's repair and restoration work. If, subject to section 11 above, OPERATOR fails to commence the repair or restoration work in a timely manner, or fails to diligently prosecute such work, or fails to comply with the requirements of Paragraph 10, IMPROVEMENTS, COUNTY shall have the right to terminate this Agreement under Paragraph 19, DEFAULT AND RIGHT TO TERMINATE.

16. **CONDUCT OF EMPLOYEES.** OPERATOR shall be responsible for the conduct of its employees, volunteers, and agents, on the entire Regional Park property. In addition, OPERATOR agrees to abide by, and use its best reasonable efforts to ensure that all such persons abide by the rules and regulations of the COUNTY while on the Park.

17. **ERECTION OF SIGNS.** OPERATOR may erect signs on the Management Area or the structures on the Management Area, but erection or application of said signs shall be allowed only with the prior written permission of the COUNTY. All signs shall be approved by COUNTY, in its reasonable discretion, and if approved, shall be erected in conformity with the County and City codes, ordinances, and policies with regard to signage.

18. **SPECIAL USE COVENANTS AND RESTRICTIONS.**

**Hazardous Substances.**

A. **Definitions.** The following terms shall have the meanings set forth in this paragraph:

i. **Applicable Requirements** shall mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of COUNTY's engineers and/or consultants, relating in any manner to the Premises now in effect or which may hereafter come into effect.

ii. **Hazardous Substance** shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, or the environment, the Premises, or the Regional Park; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of COUNTY to any governmental agency or third party under any Applicable requirements or common law theory. Hazardous Substance shall include, but not be limited to fuel, hydrocarbons, petroleum products, gasoline, crude oil or any products or by-products thereof.

iii. **Reportable Use** shall mean the installation or use of any above or below ground (i) storage tank; (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority; and (iii) the presence in, on, under or about the Premises or Regional Park of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises, the Regional Park, or neighboring properties.

B. **OPERATOR's Covenants.** OPERATOR, at its sole cost, shall comply with any and all the Applicable Requirements with respect to Hazardous Substances, including but not limited to the following:

i. California Health & Safety Code, Division 20, Chapters 6.5, Hazardous Waste Control (inclusive); 6.7, Underground Storage of Hazardous Substances (inclusive); and 6.95, Hazardous Materials Release Response Plans and Inventory (inclusive);

ii. California Code of Regulations Title 22, Division 4.5; Title 23, Division 3, Chapter 16, Underground Storage Tank Regulations; and

iii. Title 2, Division 3, entitled "Fire Protection and Explosives and Hazardous Materials", and Title 3, Division 3, Chapter 8, entitled "Waste Management" of the San Bernardino County Code.

OPERATOR shall not engage in any activity in, on, under or about the Management Area or at the Park which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of COUNTY, in its sole discretion, and compliance in a timely manner (at OPERATOR's sole cost and expense) with all Applicable Requirements. Notwithstanding the foregoing, OPERATOR may, without COUNTY's prior consent, but upon notice to COUNTY and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by OPERATOR in the normal course of the Use set forth on the Reference Pages, so long as such use is not a Reportable Use and does not expose the Management Area, the Park, or neighboring properties to any meaningful risk of contamination

or damage or expose COUNTY to any liability therefore. COUNTY may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by OPERATOR upon OPERATOR's giving COUNTY such additional assurances as COUNTY, in the reasonable discretion of the COUNTY's Director of Risk Management, deems necessary to protect itself, the public, the Management Area, the Park, and the environment against damage, contamination or injury and/or liability therefore, including, but not limited to, the installation (and, at COUNTY's option, and OPERATOR's sole cost and expense) of reasonably necessary protective modifications to the Management Area and the Park. OPERATOR shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Management Area (including, without limitation, through the plumbing or sanitary sewer system) or the Park.

**C. Duty to Inform COUNTY.** If OPERATOR knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Management Area or the Park, other than as previously consented to by COUNTY, OPERATOR shall immediately give COUNTY notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including, but not limited to, all such documents as may be involved in any Reportable Use involving the Management Area or the Park to be followed up in writing within two (2) days. OPERATOR will provide to COUNTY, prior to the termination of this Agreement, a soil test and a fuel tank test that will indicate if any leakage has occurred from any tank located on or under the Management Area or at the Park and used by OPERATOR. If any leakage is found, OPERATOR shall repair the tanks and remove any contaminated soil at OPERATOR's sole cost and expense.

**D. Indemnification.** OPERATOR shall indemnify, protect, defend (with counsel reasonably approved by COUNTY) and hold COUNTY, its officers, agents, employees, and volunteers and the Management Area and the Park, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and loss of permits (including COUNTY's attorneys' and consultants' fees) arising out of or involving any Hazardous Substance generated, possessed, stored, used, transported, or disposed in, on, upon, or at the Management Area or the Park by or for OPERATOR or by anyone under OPERATOR's control. OPERATOR's obligations under this paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by OPERATOR, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Agreement. No termination, cancellation or release agreement entered into by COUNTY and OPERATOR shall release OPERATOR from its obligations under this Agreement with respect to Hazardous Substances, unless specifically so agreed by COUNTY in writing at the time of such agreement.

**E. COUNTY's Right to Perform Tests.** At any time prior to the expiration of the term of the Agreement, COUNTY shall have the right to enter upon the Management Area in order to conduct tests of water and soil. OPERATOR shall have no right to conduct any tests of water or soil at the Management Area or the Park without the prior written consent of COUNTY, at its sole discretion.

**F. Continuous Use.** The OPERATOR covenants and agrees that OPERATOR shall operate and conduct in compliance with minimum standards that may be reasonably promulgated by COUNTY within the Management Area, continuously and uninterruptedly, during normal business hours to be agreed by the parties,.

G. **Licenses and Certifications.** OPERATOR agrees that before commencing any use of or business operations at the Management Area, OPERATOR will acquire, provide and maintain those notices, certifications, licenses, approvals and permits required by any federal, state or local jurisdiction or authority for carrying out the purpose of this Lease. Failure to comply with this provision will constitute a default and right to terminate by COUNTY under Paragraph 19, DEFAULT AND RIGHT TO TERMINATE of this Agreement.

H. **Rules and Regulations.** OPERATOR agrees to abide by, keep and observe all minimum standards, reasonable rules and regulations which COUNTY may reasonably make from time to time and as are consistent with the terms of this Agreement for the management, safety, care, cleanliness of the grounds, parking areas, and the preservation of good order, as well as for the convenience of other OPERATORS, occupants, or visitors to the Regional Park.

## 19. **DEFAULT AND RIGHT TO TERMINATE.**

A. **DEFAULT:** In the event that OPERATOR violates any of the terms and conditions of this Agreement, COUNTY may give OPERATOR notice of specific violation and demand for correction. There are two types of default:

1. Curable – is defined as a default that can be corrected either (a) through the payment of money or the performance of an obligation or (b) where the event of default cannot be technically cured, but can be remedied by OPERATOR through other actions sufficient to ensure that no material harm comes to COUNTY as a result of such default. Examples of a “curable” default include the failure to make a payment required under this Agreement, the failure to maintain insurance, or any other default that can be cured through remedial action sufficient to ensure that the default does not cause material harm to COUNTY. This type of default will incur a notice to “Pay or Quit” or “Cure or Quit”.

2. Non-curable – is defined as a default that cannot be corrected for example being non-operational in conflict with the terms of the Agreement or being shut down by a licensing or permitting agency. This type of default will incur a notice of “Termination”.

Both of these notices will have contractual time frames for compliance.

B. **OPERATOR** agrees that COUNTY may immediately suspend this Agreement, and further, OPERATOR agrees to immediately cease operations at the Management Area if OPERATOR fails to meet the insurance requirements, as stated herein..

C. **TERMINATION FOR DEFAULT:** If, at any time, COUNTY believes that OPERATOR is in a curable default of its obligations under this the Agreement, COUNTY shall provide to OPERATOR notice of the nature of the breach and demanding its cure, and unless the default is identified as non-curable, OPERATOR shall have the following periods to cure:

1. If the default relates to the payment of money, OPERATOR shall have up to thirty (30) days after the notice to cure the monetary breach; and

2. If the default relates to any other matter, except insurance, OPERATOR shall have a period of not less than thirty (30) days to cure the default or, if such default is curable but cannot reasonably be cured within such thirty (30) day period, shall be obligated to commence



the cure within thirty (30) days of the written demand from COUNTY and shall continue diligently to prosecute such cure, which cure must, in any event be completed within sixty (60) days, unless COUNTY otherwise agrees.

3. If the default relates to insurance, OPERATOR shall correct the default within ten (10) business days after notice and demand for correction. COUNTY has the right to terminate this Agreement on account of failure by OPERATOR to correct a default in insurance within ten business (10) days.

In the event of a non-cured or non-curable default, COUNTY has the right to immediately terminate this Agreement and pursue any and all remedies provided by law. In the event of a non-curable default, COUNTY shall give OPERATOR written notice of the violation and the effective date of termination of the Agreement.

**D. TERMINATION FOR CRIMINAL CONVICTION:** COUNTY may give OPERATOR notice of termination of this Agreement which will be effective upon delivery and the COUNTY may pursue any and all avenues provided by law to obtain proper compensation for all losses incurred or damages should OPERATOR or any of OPERATOR's officers be found guilty of any criminal activity related directly or indirectly to the use of the facilities or opportunities provided by this Agreement, and sentenced (whether actually served or not) to a jail term of ninety (90) days or more.

**E. LIABILITY FOR BREACH:** Termination for default will not excuse OPERATOR from any liability for breach of Contract as and to the extent permitted under equity or law.

1. On any termination of this Contract for default by OPERATOR, COUNTY may recover from OPERATOR all of the following:

a) Any amount necessary to compensate COUNTY for all the detriment proximately caused by OPERATOR's failure to perform obligations under this Agreement, including brokerage commissions and advertising expenses;

b) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law.

**20. PROVISIONS ARE COVENANTS AND CONDITIONS.** All provisions, whether covenants or conditions, on the part of either party, shall be deemed to be both covenants and conditions.

## **21. POTENTIAL FOR GEOPHYSICAL AND CLIMATE CHANGE HAZARDS**

**A.** OPERATOR acknowledges and agrees that the Management Area may be subject to hazards from natural geophysical phenomena including, but not limited to waves, earthquakes, fires, erosion and flooding. OPERATOR agrees to unconditionally waive any claim or damage or liability against the COUNTY, its officers, agents and employees for injury or damage from such hazards to OPERATOR, its agents, employees, contractors, permittees, invitees and guests.

**B.** OPERATOR acknowledges that the Management Area and adjacent upland are located in an area that may be subject to effects of climate change. To prepare for the potential effects of climate change, including flood damage, earthquake damage, fire damage, erosion damage, and damage from storm-created debris, OPERATOR acknowledges and agrees that hazards associated with climate change may require additional maintenance or protection

strategies regarding the improvements on the Management Area. In the event of significant damage from the effects of climate change described herein, OPERATOR agrees to obtain an estimate for the repair costs and provide such to the Director of the Regional Parks Department. The Parties shall meet and confer to determine how such repair costs shall be paid.

## **22. RECORDS AND ACCOUNTS**

A. **RECORDS AND ACCOUNTS:** OPERATOR covenants and agrees that it will, at all times during the term of this Contract, keep or cause to be kept at the Park or other place agreed upon by COUNTY, true and complete books, records, and accounts of all financial transactions. The records must be supported by documents from which the original entry of the transaction was made, including sales slips or cash register tapes, or both.

B. **RECORDATION OF SALES:** All sales and charges must be recorded by means of sales invoices, tickets or cash registers which display to the customer the amounts of the transactions and either physically or automatically issue receipts certifying the amounts recorded. The approved forms or devices used in the recording of cash or charge sale transactions are as follows:

1. **CASH REGISTERS:** Cash registers must be of a type that displays to the customer the amount of each transaction if space permits. The register must be equipped with devices, which lock in sales total, transaction records, and with counters which are not resettable and which record on tapes the transaction numbers and sales details. Cash register readings must be recorded by OPERATOR at the beginning and end of each business day.

2. **CASH RECEIPT AND CHARGE SALES BOOK:** Cash receipt and charge sales books must be of the type that is electronically printed progressively or pre numbered by the system or manufacturer of said books; and the amounts of each transaction, to include the sales tax amount, must be recorded on the original and all copies thereof. The customer must be given a copy of the sales receipt that clearly records the total amount of the transaction. Sales must be recorded consecutively; one after the other, and the beginning and ending number of the receipt books must be duly recorded at the end of each business day.

3. **CASH TICKETS:** Cash tickets may be used in conjunction with all admission charges, and must be of a type that is electronically printed progressively or pre-numbered by the manufacturer or system. The price of the tickets both for adults and children must be printed on each ticket. Tickets may be procured by the customer from a cashier's booth or station. OPERATOR must, at the end of each business day, record the tickets sold for that day's business. All tickets must be sold consecutively, in numerical order, one after the other. Alternatively, OPERATOR may utilize an electronic debit card system rather than printed tickets, duly recorded each day.

C. **MONTHLY REPORTS:** OPERATOR covenants and agrees to deliver to COUNTY, no later than the tenth (10th) day of each month, a true and correct statement of all Gross Income and Attendance figures for the preceding calendar month, certified as correct by OPERATOR, and showing separately the receipts from each business, service, or activity conducted pursuant to this Agreement. At the same time, OPERATOR shall remit a true and correct copy of any sales and use tax return as submitted from each business, to the Board of

Equalization (BOE), unless submitted quarterly to the BOE, in which case it shall be submitted quarterly.

D. YEARLY REPORT: OPERATOR covenants and agrees to deliver to COUNTY, no later than the last business day of July of each year of this Agreement, a true and correct statement of all Gross Income for the preceding twelve months, except in the case of the first report, which shall be from the commencement date of this Agreement, showing separately the receipts from each business, service, or activity conducted pursuant to this Agreement. Such statements shall be certified as correct by OPERATOR. OPERATOR must prepare and deliver to COUNTY a similar report within thirty (30) days of any termination of this Contract. After COUNTY's receipt of the annual report, the Parties shall meet to discuss said report unless COUNTY desires to cancel said meeting and notify the OPERATOR.

E. INVENTORY REPORT: OPERATOR covenants and agrees to deliver to the Regional Parks Director, no less often than yearly, no later than the last business day of January following the commencement date of this Agreement, a true and correct inventory report for the period closing on the last day of the prior year. Additional inventory reports may be requested, no more often than quarterly, at the discretion of the COUNTY. After COUNTY's receipt of the report, the Parties shall meet to discuss said report unless COUNTY desires to cancel said meeting and notify the OPERATOR.

F. INSPECTION OF RECORDS: All books, records, and accounts of every kind or nature kept by OPERATOR, agents, or licensees and arising from or related to the services of OPERATOR pursuant hereto, referred to herein as "Books and Records," must at all reasonable times be open and made available for inspection or audit by COUNTY, its agents or employees, upon prior request.

G. AUDIT: COUNTY has the right to during the term of this Agreement or within three (3) years after the expiration of this Agreement and/or any extensions, to audit, at no cost to OPERATOR except as hereinafter provided, the Books and Records for the purpose of verifying the payments required to be paid to COUNTY hereunder. In the event that such audit shows that OPERATOR understated Gross Income by more than ten percent (10%) and which has resulted in an underpayment of more than \$5,000, due from OPERATOR to COUNTY, the reasonable cost of the audit shall be paid by OPERATOR within ten (10) days after the audit report is furnished to OPERATOR. Additionally, within such ten (10) days, OPERATOR must pay to COUNTY the full amount of any underpayment demonstrated by such audit, together with interest on the amount of such underpayment at the rate of five hundredths percent (0.05%) per day from the original due date of the underpayment until the underpayment is paid in full. COUNTY reserves the right to install any accounting devices or machines, with or without personnel, for the purpose of accounting or audit. Books and Records must be maintained and safeguarded by OPERATOR for a period of three (3) years from and after the date of the latest entry into such book, record or account.

H. COMPLIANCE COVENANT: OPERATOR covenants that it will comply with, and require all its agents and employees to comply with the foregoing requirements.

23. **NOTICE.**

A. The parties consent and agree that all notices, approvals, consents or other communications required or permitted to be given under this Contract or under the unlawful detainer statutes of California will be given to the respective parties in writing, and may be delivered by registered or certified mail, postage prepaid or personally as follows:

1. If to COUNTY: San Bernardino County  
Regional Parks Department  
777 East Rialto Avenue  
San Bernardino, CA 92415-0763
2. If to OPERATOR: Lake Gregory Community Recreation Company  
359 Thousand Pines Road  
Crestline, Ca 92325

B. Notices may be given at such other address or to such other persons as either of the parties may from time to time designate by notice given as herein provided.

C. Notices, etc., given by registered or certified mail shall be deemed delivered three (3) COUNTY business days after being mailed.

D. OPERATOR is responsible to provide COUNTY with current addresses within ten (10) days of change.

24. **INDEPENDENT OPERATOR.** OPERATOR is, and shall be at all times deemed to be, an independent OPERATOR and shall be wholly responsible for the manner in which he/she performs the services required by the terms of this Contract. Nothing herein contained shall be construed as creating the relationship of employee and employer, or principal and agent, between the COUNTY and OPERATOR.

25. **OWNERSHIP OF DOCUMENT.** All reports, documents and other items generated or gathered in the course of providing services to the COUNTY for purposes of submittal to COUNTY under this Agreement are and shall remain the property of the COUNTY and shall be returned to the COUNTY upon full completion of all services by OPERATOR or termination of this Contract, whichever occurs first.

26. **SOLE AGREEMENT.** This Agreement contains the entire agreement of the parties relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

27. **AUTHORITY TO BIND COUNTY.** It is understood that OPERATOR, in OPERATOR's performance of any and all duties under this Agreement, except as otherwise provided for in this Contract, has no authority to bind the COUNTY to any agreements or undertakings.

28. **COMPLIANCE WITH LAW.** OPERATOR shall comply with all applicable local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

29. **CHOICE OF LAW/VENUE.** The parties hereto agree that the provisions of this Contract will be construed pursuant to the laws of the State of California. This Contract has been entered into and is to be performed in the COUNTY of San Bernardino, State of California. Accordingly, the parties agree that the jurisdiction and venue of any action relating to this Contract shall be in the COUNTY of San Bernardino, State of California.

30. **CONFIDENTIALITY.** OPERATOR shall not, without the consent of the Department's Director ("Director"), communicate confidential information, designated in writing or identified in this Contract as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Contract, the provisions of this paragraph shall continue to survive.

31. **NONDISCRIMINATION.** Neither OPERATOR, nor any officer, agent, employee, servant nor subcontractor of OPERATOR shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, or sex, either directly, indirectly or through contractual or other arrangements.

32. **FORMER COUNTY OFFICIALS.** OPERATOR agree to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent OPERATOR. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of OPERATOR. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Executive Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "D")

33. **COUNSEL.** By signing this document both parties acknowledge that they have had the opportunity to consult with independent legal counsel about the terms and conditions of this Contract.

34. **IMPROPER CONSIDERATION.** OPERATOR shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, services, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the COUNTY in an attempt to secure favorable treatment regarding this Agreement or any

Contract awarded by COUNTY. The COUNTY, by notice, may immediately terminate this Agreement or any COUNTY Contract if it determines that any improper consideration as described in the preceding sentence was offered to any officer, employee or agent of the COUNTY with respect to the proposal and award process of this Agreement or any COUNTY Contract. This prohibition shall apply to any amendment, extension or evaluation process once this Agreement or any COUNTY Contract has been awarded. OPERATOR shall immediately report any attempt by any COUNTY officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from OPERATOR. The report shall be made to the COUNTY Counsel, the supervisor or manager charged with supervision of the employee or to the COUNTY Administrative Office. In the event of a termination under this provision, the COUNTY is entitled to pursue any available legal remedies.

### **35. EASEMENTS, TRUSTS AND WARRANTIES**

A. **EXISTING ENCUMBRANCES:** It is expressly understood and agreed that this Agreement and all rights and privileges hereunder granted are subject to all easements and rights-of-way now existing in, to, under, or over the Management Area for any purposes whatsoever and which are either recorded in the real estate records of the Management Area or which have been specifically provided and disclosed by COUNTY to OPERATOR, in writing and prior to the date of this Agreement as listed on Exhibit "E" hereto. It is further understood and agreed that this Contract and any of the rights and privileges herein granted is subject to any and all grants, reservations, conditions, restrictions, and trusts upon which the Management Area is held by COUNTY and which are either recorded in the real estate records of the Management Area or which have been specifically provided and disclosed by COUNTY to OPERATOR, in writing and prior to the date of this Agreement; and OPERATOR covenants and agrees, any provision in this Agreement to the contrary notwithstanding, that it will not use or permit the Management Area to be used for any purpose inconsistent with any of the grants, reservations, conditions, leases, restrictions and trusts upon or under which said lands are held by COUNTY, the terms of which are hereby incorporated into this Agreement as if set forth in full. OPERATOR acknowledges there are underlying agreements between COUNTY and the United States Department of Interior, Bureau of Reclamation, and between the COUNTY and the CSLC and which are either recorded in the real estate records of the Management Area or which have been specifically provided and disclosed by COUNTY to OPERATOR, in writing and prior to the date of this Agreement as listed on Exhibit "E" hereto; OPERATOR agrees that the use restrictions in those agreements apply to OPERATOR under this Contract.

B. **DETRIMENTAL MANDATES:** Any changes in the operation of the Management Area which are or may be mandated by a court or government agency of competent jurisdiction, which operates to the substantial detriment of COUNTY or OPERATOR, and which are beyond the control of OPERATOR and COUNTY, will make the affected terms of this Agreement subject to renegotiation.

**36. LICENSES AND PERMITS.** OPERATOR shall ensure that it has all necessary licenses and permits required by the laws of Federal, State, COUNTY and municipal laws, ordinances, rules and regulations to perform the services under this Agreement. OPERATOR shall maintain these licenses and permits in effect for the duration of this Agreement. OPERATOR shall notify COUNTY immediately of loss or suspension of any such licenses and permits. Failure

to maintain required licenses and permits may result in immediate termination of this Contract. (See Exhibit "C" List of Permitting Agencies for a list of permitting agencies which both parties understand may not be a comprehensive list and may require continuous updating.)

37. **MATERIAL MISREPRESENTATION.** If during the course of the administration of this Agreement, the COUNTY determines that the OPERATOR has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY which information, if known correctly by COUNTY prior to the date of this Agreement, would have resulted in COUNTY declining to enter into this Agreement, this Agreement may be immediately terminated. Whether or not this Agreement is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies available by reason of such misrepresentation.

38. **ATTORNEYS' FEES AND COSTS.** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from OPERATOR's indemnity obligations with respect to any third party legal action against the COUNTY, including such costs and attorneys' fees payable under Paragraph 9, INDEMNIFICATION, Paragraph 10, IMPROVEMENTS, Paragraph 18, Hazardous Substances, and Paragraph 42, PUBLIC RECORDS DISCLOSURE.

39. **SEVERANCE.** If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

40. **SURVIVAL.** The obligations of the parties, which by their nature continue beyond the term of this Agreement, will survive the termination of this Agreement.

41. **REPRESENTATIONS AND AUTHORITY.** If OPERATOR is a corporation, each of the persons executing this Agreement on behalf of OPERATOR represents or warrants that OPERATOR has been and is qualified to do business in the State of California, that the corporation has full right and authority to enter into this Agreement, and that all persons signing on behalf of the corporation were authorized to do so by the appropriate corporate actions. If OPERATOR is a partnership, limited liability company, trust or other legal entity, each of the persons executing this Agreement on behalf of OPERATOR represents or warrants that OPERATOR has complied with all applicable laws, rules and governmental regulations relative to its right to do business in the State of California and that all persons signing on behalf of such entity were authorized to do so by any and all appropriate actions. OPERATOR agrees to furnish upon COUNTY's request a corporate resolution, or other appropriate documentation evidencing the authorization of OPERATOR to enter into this Agreement.

42. **PUBLIC RECORDS DISCLOSURE.** All information received by the COUNTY from OPERATOR or from any source concerning this Agreement, including the Agreement itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Sections 6250 et seq. (the "Public Records Act"). OPERATOR acknowledges and understands that although all materials received by the

COUNTY in connection with this Agreement are intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which OPERATOR has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall endeavor to notify the OPERATOR of the request and shall thereafter disclose the requested information unless the OPERATOR, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for the nondisclosure, and agrees to indemnify, defend (with counsel reasonably approved by COUNTY), and hold the COUNTY harmless in any/all actions brought to require disclosure. OPERATOR waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify OPERATOR of any such disclosure request and/or releases any information concerning the contract received from the OPERATOR or any other source.

43. **INTERPRETATIONS.** As this Agreement was jointly prepared by both parties, the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

44. **ENTIRE AGREEMENT.** This agreement, including recitals, constitutes a single, integrated contract, expressing the entire agreement and understanding of the parties concerning the subject matter of this agreement, and this agreement supersedes and replaces all prior understandings, negotiations, proposed agreements and agreements, whether oral or written, express or implied.

45. **AMENDMENT.** No waiver, modification or amendment of any term condition or provision of this Agreement shall be valid or shall have any force or effect unless made in writing and signed by all of the parties hereto.

46. **CONDITION of PREMISES.** OPERATOR has inspected the Premises, knows its condition, finds it fit for OPERATOR's intended use, subject to any hidden or latent defects or conditions, accepts the Premises AS-IS, except that COUNTY shall remove all trash, debris, and COUNTY's personal property located thereon, and has ascertained that it can be used for the limited purposes specified in the Use section on the Reference Pages.

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47. **SIGNATURES.** All parties to this Agreement represent that the signators executing this document are fully authorized to enter into this agreement.

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 THEREOF, the parties executed this agreement.

**COUNTY: County of San Bernardino**

**Lake Gregory Community Recreation  
Company**

By: \_\_\_\_\_  
Curt Hagman, Chairman  
Board of Supervisors

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

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  
of the County of San Bernardino

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

APPROVED AS TO LEGAL FORM

MICHELLE D. BLAKEMORE, County  
Counsel  
San Bernardino County, California

By: \_\_\_\_\_  
Dawn Martin, Deputy County Counsel

Dated: \_\_\_\_\_

**EXHIBIT "A"**

**PREMISES**

**Legal Description and Plat**

**EXHIBIT "B"**  
**PREVAILING WAGE REQUIREMENTS**

- A. All or a portion of the OPERATOR Improvements in the Agreement requires the payment of prevailing wages and compliance with the following requirements. As used in this exhibit, the term "Contractor" shall include OPERATOR and OPERATOR's contractor and/or subcontractors and the term "OPERATOR Improvements" shall include the improvements made by or on behalf of OPERATOR pursuant to the Agreement.**

**1. Determination of Prevailing Rates:**

Pursuant to Labor Code sections 1770, et seq., the OPERATOR will obtain from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the OPERATOR Improvements is to be performed. Copies of said rates are on file with the OPERATOR, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the OPERATOR Improvements, and are also available online at [www.dir.ca.gov](http://www.dir.ca.gov). The wage rate for any classification not listed, but which may be required to execute the OPERATOR Improvements, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

**2. Payment of Prevailing Rates**

Each worker of the Contractor, or any subcontractor, engaged in the OPERATOR Improvements, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

**3. Prevailing Rate Penalty**

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the OPERATOR Improvements. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

**4. Ineligible Contractors:**

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County.

The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the OPERATOR Improvements.

**5. Payroll Records:**

- a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the OPERATOR Improvements. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any OPERATOR Improvements performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
  - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
  - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
  - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
  - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
  - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the OPERATOR Improvements shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-

hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

**6. Limits on Hours of Work:**

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the OPERATOR Improvements or upon any part of the OPERATOR Improvements, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

**7. Penalty for Excess Hours:**

The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the OPERATOR Improvements by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**

a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:

- i. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
- ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
- iii. This project is subject to compliance monitoring and enforcement by the DIR.
- iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
- v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.

- 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.

- 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
  - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
- vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

b. Labor Code section 1725.5 states the following:

“A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal,

provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

c. Labor Code section 1771.1 states the following:

“(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.



(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at the address on file with either of the following:

(i) The Contractors' State License Board.

(ii) The Secretary of State.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The

appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

d. Labor Code section 1771.4 states the following:

“a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except

those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

## **B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

### **1. State Public Works Apprenticeship Requirements:**

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the OPERATOR Improvements shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the OPERATOR Improvements. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

### **2. Compliance with [California Labor Code section 1777.5](#) requires all public works contractors to:**

- a. Submit Contract Award Information (DAS-140):
  - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
  - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*
  - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.

- iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
  - v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. Employ Registered Apprentices
- i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
  - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
  - iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
  - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
  - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
  - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
  - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
  - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
  - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.

- v. The “training” contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

### **3. Exemptions to Apprenticeship Requirements:**

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
  - i. When the Contractor holds a sole proprietor license (“Owner-Operator”) and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
  - ii. Contractors performing in non-apprenticeable crafts. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
  - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
  - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
  - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

### **4. Exemption from Apprenticeship Ratios:**

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
  - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
  - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
  - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
  - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

### **5. Contractor's Compliance:**

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of

California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

**Exhibit "C"**  
**List of Permitting Agencies**

- Environmental Health Services (EHS), Jennifer Osorio, 909-387-5159
  
- State of California, Department of Industrial Relations Division of Occupational Safety and Health, Amusement Ride and Tramway Unit- 2 MacArthur Pl. Suite 700 Santa Ana, CA 92707, 714-567-7211
  
- Alcoholic Beverage Control (ABC), 916-419-2500
  
- Slide Engineering Specialist, Margulies Consulting Engineers, 17727 Chatsworth St, Suite 210, Granada Hills, CA 91344, 818-363-6303

**EXHIBIT "D"**  
**LIST OF FORMER COUNTY OFFICIALS**

**INSTRUCTIONS:** List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with the OPERATOR , the date the Official entered OPERATOR's employment and/or representation.

**OFFICIAL'S NAME:**

**REQUIRED INFORMATION**

OPERATOR hereby certifies that the information it has provided in this Exhibit "D" is true, complete and accurate.

**OPERATOR:**

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

(Name)

(Title)\_\_\_\_\_

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



**EXHIBIT "E"**  
**EXISTING ENCUMBRANCES**

**EXHIBIT "F"**  
**COUNTY EQUIPMENT**