

NOTICE AND CALL OF
SPECIAL MEETING

NOTICE IS HEREBY GIVEN as provided by Government Code of the State of California Section 54956 that Mayor George Huntington called a Special Meeting of the Town Council of the Town of Yucca Valley for Wednesday, June 29, 2011, at 4:00 p.m. at the Yucca Valley Community Center, Mesquite Room, 57090 Twentynine Palms Highway, Yucca Valley, California, for the below stated purpose.

AGENDA

(Action may be taken on any of the items listed below)

ROLL CALL: Council Members Abel, Hagerman, Rowe and Mayor Huntington

DISCUSSION ITEMS

1. Selection of Mayor Pro Tem.

Mayor to take nominations for Mayor Pro Tem.

Recommendation: Nominate a Council Member to serve as Mayor Pro Tem

Action: Move _____ 2nd _____ Voice Vote _____.

2. Authorization to Submit Grant Application to the State of California Department of Parks and Recreation for Proposition 84 Funding; Approval of the Propose Brehm Park Lease Agreement.

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA
VALLEY APPROVING THE APPLICATION FOR STATEWIDE PARK
PROGRAM GRANT FUNDS

Staff Report

Recommendation: 1) Adopt Resolution No. 11-37, authorizing staff to submit a grant application to the State of California Department of Parks and Recreation to seek Proposition 84 funding for the Brehm Park project; 2) Approve the proposed Brehm Park lease agreement Commitment Letter; 3) Authorize the Mayor or Town Manager to execute the draft lease agreement upon award of Proposition 84 State funding for Brehm Park.

Action: Move _____ 2nd _____ Roll Call Vote _____.

PUBLIC COMMENTS

ADJOURNMENT

JANET M. ANDERSON, MMC
Town Clerk

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Jim Schooler, Community Services Director
Date: June 28, 2011
For Council Meeting: June 29, 2011

Subject: Authorization to submit grant application to the State of California Department of Parks and Recreation for Proposition 84 funding; Approval of the proposed Brehm Park lease agreement commitment letter.

Prior Council Review: None

Recommendation:

- 1) That the Council adopts the resolution authorizing staff to submit a grant application to the State of California Department of Parks and Recreation to seek Proposition 84 funding for the Brehm Park project.
- 2) That the Council approves the proposed Brehm Park lease agreement Commitment Letter.
- 3) That the Council Authorizes the Mayor or Town Manager to execute the draft lease agreement upon award of Proposition 84 State funding for Brehm Park;

Order of Procedure:

Request Staff Report
Council Questions of Staff
Request Public Comment
Council Discussion
Motion/Second
Discussion on Motion
Call the Question (Roll Call Vote)

Discussion: The Basin Wide Foundation (BWF) has acquired 12+ acres of property for the development of a community park. The park location was recommended in the Town's Park Master Plan Update, adopted by the Council in 2008. The Foundation has been involved in ongoing project fundraising and has regularly conferred with stakeholder agencies to develop the park concept. BWF has stated their intention to offer the finished park to the Town for operation and maintenance under a long-term lease agreement or outright sale to the Town.

Reviewed By: _____ _____ _____ jas
 Town Manager Town Attorney Mgmt Services Dept Head

<input checked="" type="checkbox"/> Department Report	<input type="checkbox"/> Ordinance Action	<input checked="" type="checkbox"/> Resolution Action	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Consent	<input type="checkbox"/> Minute Action	<input type="checkbox"/> Receive and File	<input type="checkbox"/> Study Session

At the May 3, 2011 Town Council meeting, the Council authorized funding to secure grant writing assistance for preparation of an application for supplemental Brehm Park development funding under the Statewide Park Development and Community Revitalization Program (Prop 84).

The Foundation has held several stakeholder meetings and Town staff has conducted a series of community input workshops to promote awareness and to identify and prioritize the needed recreational elements. The resulting community input is being incorporated into the final park design (shown below) that will be submitted with the grant application. The grant process also requires that an agreement be in place that describes an appropriate long-term relationship between the landowner (BWF) and the grant applicant (Town of Yucca Valley), should grant funds be awarded.



With Council authorization and approval of the proposed Lease Agreement, staff will finalize the preparation and submittal of the grant application on or before the July 1, 2011 deadline. If successful in securing Proposition 84 funding, the Town and BWF will execute the attached lease agreement.

Alternatives: Decline to adopt the resolution authorizing the submittal of the grant application and/or decline to approve the proposed Brehm Park Lease Agreement

Attachments: Authorizing resolution
Proposed Lease Agreement

RESOLUTION NO. 11-37

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA
VALLEY APPROVING THE APPLICATION FOR STATEWIDE PARK
PROGRAM GRANT FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Program, setting up necessary procedures governing the Application; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the applicant to certify by resolution the approval of application(s) before submission of said application(s) to the State; and

WHEREAS, the applicant will enter into a contract with the State of California to complete the grant scope project;

NOW, THEREFORE, BE IT RESOLVED that the Yucca Valley Town Council hereby:

Approves the filing of an application for the Brehm Park Project, and

1. Certifies that said applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project; and
2. Certifies that the applicant has or will have sufficient funds to operate and maintain the project(s), and
3. Certifies that the applicant has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide; and
4. Delegates the authority to the Town Manager to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope; and
5. Agrees to comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and guidelines.

Approved and adopted the 29th day of June, 2011.

MAYOR

ATTEST:

TOWN CLERK

LETTER OF COMMITMENT

June 28, 2011

Calif. Dept. of Parks and Recreation
Office of Grants and Local Services (OGALS)
P.O. Box 942896
Sacramento, CA 94296-0001

To Whom It May Concern:

The Town of Yucca Valley, California (TOWN) is pleased to confirm that:

- The TOWN is the lead agency and grant applicant and has negotiated a land tenure/lease agreement with the Basin Wide Foundation (BWF), owner in fee simple of the 12.5 acre property at 6907 Palm Ave. in Yucca Valley, California that is the subject of the accompanying grant application for a new park.
- The Town Council of the TOWN has authorized and hereby commits to sign the land tenure/lease agreement between the TOWN and the BWF for the construction and eventual opening of the proposed Brehm Park at the site location named, and has authorized me, as Mayor, to execute this letter of commitment.

The TOWN commits to sign this agreement upon confirmation that a grant has been awarded to the TOWN, to be funded by the *Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84)*.

We are pleased to partner with the BWF and the State of California to provide these much needed park facilities to our community and look forward to the prospect of working together to bring this project to fruition.

Sincerely,

George Huntington
Mayor, Town of Yucca Valley



The Town of
Yucca Valley

57090 Twentynine Palms Highway • Yucca Valley, California 92284
760/369-7207 • FAX 760/369-0626

LEASE AGREEMENT

This LEASE AGREEMENT ("Agreement") is made and entered into as of this ____ day of ____, 2011 ("Effective Date") by and between the **TOWN OF YUCCA VALLEY**, a public body, corporate and politic ("TOWN"), and **BASINWIDE FOUNDATION**, a 501(c) 3 non-profit corporation ("BWF"), based on the following recital of facts:

RECITAL OF FACTS

- A. BWF is the owner in fee simple of that certain real property located in the TOWN of Yucca Valley, County of San Bernardino, State of California and more particularly described in Exhibit "A" attached hereto (the "Park Property"). TOWN desires to lease the Park Property for the purpose of development and operation of a neighborhood park;
- B. BWF is a local non-profit corporation that has acquired land and raised funds to assist in the construction of a community sports complex. BWF desires to lease the entire Park Property to the TOWN to ensure consistent maintenance and operations of future improvements constructed on the Park Property;
- C. Town will serve as the lead agency in the application for Grants Awarded through Proposition 84 for the construction of new park projects (Proposition 84 Grant Application). Final execution of the Agreement is contingent upon the TOWN receiving a commitment of Proposition 84 funds from the State of California, Department of Parks & Recreation, Office of Grants and Local Services (OGALS);

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be and hereby are incorporated into this Agreement, the Parties agree as follows:

- 1. **PREMISES LEASED:** BWF hereby grants, demises and lets unto TOWN, and TOWN leases from BWF, the property and improvements located at 6907 Palm Avenue, and more particularly described in Exhibit "A" (APN 0595-131-11, 0595-131-17, 0595-131-45, 0595-131-49, 0595-131-01, 0595-131-47);
- 2. **TERM:** The Agreement's initial term ("Initial Term") shall extend for thirty (30) years commencing on the Effective Date. Notwithstanding any other provision of this Agreement, this Agreement may not become effective unless and until the TOWN has received a commitment of Proposition 84 funds from the State of

California. To this end, the TOWN shall not execute the Effective Date first written above until after receiving such Proposition 84 commitment;

3. RENT. The TOWN shall pay to the BWF annual payments of \$40,000, first payment due on the Effective Date, and annually thereafter on the anniversary of the Effective Date throughout the Term of this Agreement;
4. RENEWAL CLAUSE. BWF gives the Town the option to extend the term of the Agreement on the same provisions and conditions, for two (2) thirty-year periods ("extended terms") following expiration of the initial term, by TOWN giving notice of its intention to exercise the option to BWF prior to the expiration of the preceding term. The lease payment may be adjusted by good faith negotiations of the parties;
5. RETURN OF PREMISES: The TOWN agrees that it will, upon expiration of this Agreement, return the Park Property in as good or better condition as it was at the beginning of the Agreement or shall hereafter be put pursuant to Section 9 below; reasonable wear and tear excepted;
6. SITE CONTROL ROLES AND RESPONSIBILITIES. The TOWN has the authority to construct, operate, and maintain the Park Property, in accordance with the CONTRACT provisions from the State of California and the remaining terms of this agreement.
7. ROLES AND RESPONSIBILITIES. The parties agree as follows regarding their respective roles and responsibilities, subject to all other terms in this agreement, especially but not exclusively Sections 8 (Maintenance and Operation Expenses) and 9 (Park Improvements):
 - a. BWF authorizes the TOWN to proceed with the construction of the Park Property on or after the effective date of the agreement;
 - b. The TOWN may delegate construction to other entities, including BWF, following best management practices;
 - c. The TOWN is permitted by BWF to operate the Park Property, including for example, the scheduling of recreational programs;
 - d. The TOWN may delegate operational roles to other entities, including BWF;
 - e. The TOWN is responsible for maintenance of the Park Property, which maintenance may be delegated to other entities.
8. MAINTENANCE AND OPERATIONAL EXPENSES: The TOWN shall provide all required maintenance of the Park Property in accordance with the standards applied to other TOWN park facilities. This will include provision of all utilities (water, electricity, wastewater) required to service the Park Property and all

improvements located at the site. TOWN shall keep and maintain the Park Property and all improvements on the Park Property in accordance with Applicable Laws and shall make reasonable efforts to keep the Park Property free from garbage and debris. For purpose of this Agreement, the term "Applicable Laws" shall mean all applicable statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions or requirements applicable to the Property of any federal, state, county, municipal, or other governmental or quasi-governmental agency, board, bureau, commission, court, department, panel or other official body (whether legislative, administrative or judicial) or by any competent official of any of the foregoing;

9. **PARK IMPROVEMENTS:** Both the TOWN and BWF shall have the right during the term(s) of this Agreement to install any and all improvements and fixtures that facilitate, maintain and/or enhance the quality of recreational features offered at the Park Property consistent with the permitted uses identified in Section 10. TOWN shall be responsible for final approval of the design and installation of such improvements and fixtures;
 - a. The TOWN specifically has the right to make substantial improvements to the Park Property (as shown in Exhibit "C") consistent with the permitted uses identified in Section 10 and as detailed within the Proposition 84 Grant application (included as Exhibit "D"). Before installing any improvements upon the Park Property, the TOWN must receive all zoning, planning and construction entitlements required under the Town of Yucca Valley Municipal Code and all such improvements must conform to Applicable Laws;
 - b. BWF specifically has the right to make improvements to the Park Property as additional contributions are received from donors, excepting that BWF's improvements to the Park Property shall not unreasonably interfere with, or impede, the Town's construction and operation of improvements and/or the Town's use of the Park Property for those uses listed in the Use of Facilities per Section 10. BWF-constructed improvements are subject to prior review and written approval by the Town. Before installing any improvements upon the Park Property, BWF must receive all zoning, planning and construction entitlements required under the Town of Yucca Valley Municipal Code and all such BWF improvements must conform to Applicable Laws;
 - c. During the term of this Agreement, title to all fixtures and improvements to realty constructed or placed on the Park Property by TOWN, including buildings, structures, and other tenant improvements are and shall be vested in TOWN. Except in the case of the TOWN purchasing fee title to the Park Property pursuant to either Section 15 or 16 hereof, ownership of fixtures and improvements shall automatically become the property of BWF upon the expiration of this Agreement. Ownership of moveables and personal property on the Park Property shall likewise be vested in TOWN

during the Term of this Agreement, unless such moveables and personal property are abandoned by TOWN on the Park Property upon BWF's re-entry thereto.

10. USE OF FACILITIES:

- a. BWF and TOWN both acknowledge that a condition associated with the Proposition 84 Grant funding requires adherence to the Use of Facilities, as included in Exhibit "B". As the GRANTEE, TOWN commits to the Use of Facilities mandates by the State of California;
- b. The Park Property may be used and developed for open space, recreational and educational uses by the general public; provided, however, that all recreational and educational uses of the Property and the facilities therefor shall take into account (i) the desire of TOWN and BWF to provide substantial and regular use of the Park Property by the public, and through recreational and educational uses as permitted under this Agreement, (ii) the recreational and educational uses and facilities provided on other park and open space lands in the TOWN of Yucca Valley. Without meaning to address all possible uses or facilities in advance, permitted uses of the Park Property may include active recreational uses and facilities, such as baseball fields, soccer fields, basketball courts and other athletic facilities. Use of the Park Property for passive recreational uses (such as hiking, biking and picnicking) is specifically permitted.

11. TAXES: BWF shall pay all real and personal property taxes and assessments levied against the Park Property as hereinafter provided. The obligation of BWF hereunder shall include all taxes, assessments, levies and other governmental charges of every description, whether general, special, ordinary, extraordinary or otherwise (individually "imposition" and collectively "impositions") levied on or against the Park Property, personal property located on or in the Park Property or any improvement thereto, the leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the term, whether belonging to or chargeable against either Party hereto.

12. UTILITIES: TOWN shall pay all charges for utilities and services furnished to the Park Property during the Term, including but not limited to gas, electricity, heat, power, sewer, water, telephone, refuse collection, all associated connection charges, and all similar utility bills taxed, levied, or charged upon the Park Property.

13. QUIET ENJOYMENT: BWF covenants that upon payment by TOWN of the Rent herein reserved and upon performance and observance by TOWN of all of the agreements, covenants and conditions herein contained on the part of TOWN to be performed and observed, and subject to any existing oil and gas leases and easements, TOWN shall peaceably hold and quietly enjoy the Park Property

during the entire Term without hindrance, molestation or interruption by BWF or by anyone lawfully or equitably claiming by, through or under BWF.

14. TERMINATION. Should the Park Property be totally or substantially destroyed by an uninsured peril by no fault of TOWN, so that all or a substantial portion of the Park Property are unfit for the conduct of TOWN's parkland and open space uses, TOWN shall have the right, giving thirty (30) days' prior notice to BWF, to terminate this Agreement with respect to the portion of the Park Property so affected (or all of the Park Property if Town concludes that it cannot reasonably continue its business operations at the Park Property), and all Rent and other charges with respect to such portion of the Park Property shall be adjusted to the date of such destruction. This Agreement shall remain in full force and effect with respect to the unaffected portion of the Park Property.
15. RIGHT OF FIRST REFUSAL. During the term of this Agreement, in the event BWF either (i) assigns this Agreement without consent of the TOWN in violation of Section 17.7 hereof, or (ii) dissolves or re-organizes as A corporate entity, then the TOWN shall have a first right of refusal to purchase the Park Property for a fair market value. The fair market value shall be determined in accordance with Section 16(a), below. TOWN shall have sixty (60) days from the time TOWN learns of BWF's assignment or transfer to notify BWF or its successor in writing of TOWN's intent to exercise this right of first refusal and shall have an additional one hundred eighty (180) days from the date of that notice to complete a purchase and escrow agreement and close escrow on the Park Property.
16. OPTION TO PURCHASE. TOWN has a continuing option to purchase the Park Property throughout the Term of this Agreement, including any extension hereof. TOWN shall initiate the option to purchase process by, at any time during the term of this Agreement, delivering written notice of its intent to exercise said option to purchase together with all of the terms of the proposed purchase (excepting purchase price) and including a copy of a purchase and escrow agreement for the Park Property. Upon presentation of a valid notice of intent to exercise the option, the Parties shall establish an escrow period sufficient in time to determine the fair market value of the Park Property, which escrow period shall not in any event close more than one hundred eighty (180) days from the date of Town's notice of intent.

- a. The purchase price shall be the fair market value of the Park Property (the "Purchase Price"), which shall be determined based on the value established by an appraisal. Each Party may select an appraiser and the two appraisers shall by mutual agreement select a third-party review appraiser. The appraiser selections shall be made within fifteen (15) days of the TOWN's written notice of intent to purchase the Park Property. The two appraisers selected by the Parties shall have thirty (30) days to prepare their written appraisals. The appraisals shall be delivered to each appraiser, the review appraiser, and the Parties. If the two appraisals are within fifteen percent (15%) of the value of each other, then

the Purchase Price shall be the average value between the two appraisals. In such case, each Party shall bear the cost of their appraisal. If the difference is greater, then the review appraisal shall have fifteen (15) days to establish the review appraisal value. The Purchase Price shall then be the average value between the two appraised values which are closest to each other. In such case, the Party whose appraisal is not utilized shall bear the cost of all the appraisals.

b. Said appraisal shall be based upon the land value of the Park Property, excluding the value of any improvements that were constructed by, or paid-for by, the Town (whether from Town funds or other grant funds awarded to Town).

17. MISCELLANEOUS.

17.1 Attorneys' Fees. In the event of any dispute between the Parties hereto involving the terms, conditions and agreements contained in this Agreement or arising out of the subject matter of any purchase of the Park Property pursuant to the terms of this Agreement, the prevailing Party shall be entitled to recover, and the other Party agrees to pay, all reasonable fees, expenses and costs, including, but not limited, to reasonable attorneys' fees.

17.2 Mutual Indemnity.

a. TOWN shall indemnify, protect, defend and hold harmless BWF, including its respective directors, officers, employees, representatives, members, and agents from and against any and all challenges arising from or related to this Agreement, or any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising out of, in connection with, or as a result of the performance of this Agreement, excluding any such losses arising from the sole negligence or sole willful misconduct of BWF or the conduct of third parties not under contract to or associated with, and outside the control of, TOWN. This indemnity obligation shall survive the expiration of this Agreement. TOWN and BWF shall have sole discretion in selecting its defense counsel. BWF shall give Town notice of any suit or proceeding possibly entitling BWF to indemnification pursuant to this paragraph and Town shall defend BWF in such suit or proceeding with counsel reasonably acceptable to BWF.

b. BWF shall indemnify, protect, defend and hold harmless Town, including its elected officials, officers, employees, representatives, members, and agents from and against any and all challenges arising from or related to this Agreement, or any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising out of, in connection with or as a result of the performance of this Agreement, excluding any such losses arising from the sole negligence or sole willful

misconduct of Town or the conduct of third parties not under contract to or associated with, and outside the control of, BWF. This indemnity obligation shall survive the expiration of this Agreement. TOWN shall give BWF notice of any suit or proceeding possibly entitling TOWN to indemnification pursuant to this paragraph and BWF shall defend TOWN in such suit or proceeding with counsel reasonably acceptable to TOWN.

17.3 Nonliability of Town Officials and Employees; Conflicts of Interest; Commissions.

a. Personal Liability. No member, official, or employee of TOWN shall be personally liable to BWF in the event of any default or breach by TOWN or for any amount which may become due to BWF or on any obligations under the terms of this Agreement; provided.

b. Financial Interest. No member, official, employee or agent of TOWN shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

c. Commissions. Neither Party has retained any broker or finder or has paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. Neither Party shall be liable for any real estate commissions, brokerage fees or finders' fees which may arise from this Agreement, and each Party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party. Each Party agrees to indemnify and hold the other harmless from and against all liabilities, costs, damages and expenses, including, without limitation, reasonable attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay broker's commissions and/or finder's fees.

17.4 Notices. All notices required to be delivered under this Agreement to the other party must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy, electronic or fax transmission, provided a hard copy of such transmission shall be thereafter placed in the mail within twenty-four (24) hours, ordinary postage prepaid, addressed to the other party; in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To TOWN: Town of Yucca Valley
57090 29 Palms Hwy
Yucca Valley, California 92284
Attention: Town Manager

Copy to: Law Firm of Aleshire and Wynder, LLP
18881 Von Karman Avenue, Suite 400
Irvine, CA 92612
Attention: Lona N. Laymon

To BWF: Basin Wide Foundation
56711 29 Palms Hwy
Yucca Valley, California 92284
Attention: Executive Director

To OGALS: Calif. Dept. of Parks and Recreation
Office of Grants and Local Services (OGALS)
P.O. Box 942896
Sacramento, CA 94296-0001

17.5 Non-Discrimination. Both Parties hereto covenant by and for themselves or their heirs, successors, administrators and assigns, and all persons claiming under or through them, and this Agreement is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, gender preference, national origin, sexual orientation or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Park Property herein leased nor shall the Parties, or any person claiming under or through them, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Park Property herein leased

17.6 Force Majeure. Each Party shall give the other Party prompt written notice of any Uncontrollable Circumstances materially impacting or delaying the Party's ability to fully perform the terms of this Agreement. "Uncontrollable Circumstance" means any act, event or condition that has delayed or prevented, or which the Parties hereto agree may be reasonably expected to delay or prevent, a party from performing or complying with one of their obligations under this Agreement, including, without limitation, such acts, events or conditions as:

a. A change in law, including (i) the adoption, promulgation, amendment, modification, rescission, revision or revocation of any Applicable Law or change in judicial or administrative interpretation thereof occurring after the date hereof, and/or (b) any order or judgment of any federal, State or local court, administrative agency or governmental body issued after the date hereof, so long as such order or judgment is not the result of a Party's negligent or willful misconduct or criminal violation; or

b. Governmental action, inaction, restriction, initiative, referendum, moratoria, or processing with governmental agencies; or

c. Earthquake, explosions, epidemic, quarantine, landslide, lightning, fire, flood and weather, including, without limitation, consecutive or numerous non-consecutive days of rain, snow or other inclement weather or other Acts of God; or

d. Sabotage, acts of public enemy, war, riot, insurrection or civil disturbance, expropriation, confiscation; or

e. Failure of any permitted subcontractor or supplier of goods, materials, services or other items required for performance of this Agreement (other than an affiliate of the responsible Party) to furnish such goods, services, materials or other items on the dates agreed to, which materially and adversely affects the Party's ability to perform its obligations and such Party is not able to reasonably obtain substitute goods, services, materials or items on the agreed upon dates; or

f. The condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Park Property or any material portion or part thereof by the action of any federal, State, county, city or local governmental agency or authority;

g. In no event shall any act, event or condition that has occurred as a result of poor management practices or negligence of a Party, or an employee or agent thereof, be an Uncontrollable Circumstance.

17.7 Assignment.

a. TOWN shall have no right to assign or transfer this Agreement or any right or privilege TOWN might have in this Agreement, by operation of law or otherwise;

i. without the prior written consent of BWF, which consent shall not be unreasonably withheld, and;

ii. without the prior written consent of OGALS.

Notwithstanding the foregoing, upon written consent from BWF, Town shall have the right to assign the Maintenance and Operational responsibilities contained within this Agreement,

b. BWF shall have no right to assign or transfer this Agreement or any right or privilege BWF might have in this Agreement, by operation of law or otherwise, without the prior written consent of TOWN, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, upon written consent from TOWN, BWF shall have the right to assign this Agreement,

c. An assignment or transfer subject to this Section shall not include any (i) the granting of easements or dedications to any appropriate governmental municipal or utility or permits to facilitate the development of the Park Property, or (ii) a sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

- 17.8 Time is of the Essence. Time is of the essence with respect to each of the terms, covenants and conditions of this Agreement.
- 17.9 Binding on Successors and Assigns. Subject to the limitations set forth in Section 17.7 above, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto.
- 17.10 Modification, Waivers and Entire Agreement. Any amendments or modifications to this Agreement must be in writing and executed by both Parties to this Agreement. No delay or omission by either Party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other Party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions thereof. This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered hereby, and all negotiations and agreements, statements or promises between the Parties hereto or their agents with respect to this transaction have been deemed merged in this Agreement, which alone expresses the Parties' rights and obligations. No prior agreements or understandings not contained herein shall be binding on or valid against either of the parties hereto.

- 17.11 Interpretation; Governing Law; Forum. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Title and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. In the event of any litigation between the parties hereto, the Superior Courts of the State of California in and for the County of San Bernardino shall have exclusive jurisdiction.
- 17.12 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 17.13 Authority to Execute. The person(s) executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.
- 17.14 Execution in Counterpart. This Agreement may be executed in several counterparts and if so executed each counterpart when read together shall constitute a single agreement that is binding on and enforceable against the parties hereto.
- 17.15 Exhibits. Exhibit "A", "B", "C", & "D" attached hereto are hereby incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Option Agreement as of the day and year first above written.

TOWN:

TOWN OF YUCCA VALLEY,
a public body corporate and politic

By: _____

(Print Name and Title)

BWF:

BASINWIDE FOUNDATION
a 501(c) 3 non-profit corporation

By: _____

(Print Name and Title)

APPROVED AS TO FORM:

By: _____
Lona N. Laymon, Town Counsel

Exhibits

- "A" Legal Description of Park Property
- "B" Use of Facilities
- "C" Park Improvements Site Plan
- "D" Proposition 84 Grant Application

EXHIBIT "A"

[LEGAL DESCRIPTION OF PARK PROPERTY]

DRAFT

EXHIBIT "B"

I. Use of Facilities

1. The GRANTEE agrees to operate and maintain any property acquired or developed with the GRANT MONIES for the duration of the CONTRACT PERFORMANCE PERIOD.
2. The GRANTEE agrees that during the CONTRACT PERFORMANCE PERIOD, any income earned by the GRANTEE from a STATE approved non-recreational use of the project shall be used for recreational purposes at the project, or, if approved by the STATE, for recreational purposes within the GRANTEE's jurisdiction.
3. All facilities shall have operating hours consistent with the times proposed in the APPLICATION and be open to members of the public in accordance with the project selection criteria in the APPLICATION, unless otherwise granted permission by the State and except as noted under the special provisions of this AGREEMENT or under provisions of the enabling legislation and/or grant program.
4. The GRANTEE agrees that for the duration of the CONTRACT PERFORMANCE PERIOD, any property acquired or developed with GRANT MONIES under this AGREEMENT shall be used only for the purposes of the grant and consistent with the GRANT SCOPE referenced in the APPLICATION unless prior written approval is given by the State.
5. The GRANTEE agrees to use any property acquired or developed with GRANT MONIES under this AGREEMENT only for the purposes of the grant and no other use, sale, or other disposition shall be permitted except as authorized by a specific act of the legislature in which event the property shall be replaced by the grantee with property of equivalent value and usefulness as determined by STATE.
6. The property acquired or developed may be transferred to another eligible entity only if the successor entity assumes the obligations imposed under this AGREEMENT and with written approval of the STATE.
7. Any real Property (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the State of California, acting through the DPR, or its successor, provided that such approval shall not be unreasonably withheld as long as the purposes for which the Grant was awarded are maintained. Any such permission that is granted does not make DPR a guarantor or a surety for any debt or mitigation, nor does it waive DPR's rights to enforce performance under the Grant Contract.
8. All real property, or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse STATE an amount at least equal to the amount of GRANT MONIES received from STATE or the pro rated full market value of the real property, including improvements, at the time of sale, whichever is higher.
9. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

EXHIBIT "D"

PROPOSITION 84 GRANT APPLICATION

DRAFT