

# *In the Rooms of the Board of Supervisors*

County of Inyo, State of California

I, HEREBY CERTIFY, that at a meeting of the Board of Supervisors of the County of Inyo, State of California, held in their rooms at the County Administrative Center in Independence on the 27<sup>th</sup> day of July 2021 an order was duly made and entered as follows:

*Parks & Recreation  
– Tecopa Hot  
Springs  
Concessionaire  
Agreement*

Moved by Supervisor Kingsley and seconded by Supervisor Tothoroh to ratify and approve the concessionaire's agreement between the County of Inyo and Tecopa Hot Springs Conservancy, LLC of Las Vegas, NV for the operation and maintenance of the Tecopa Hot Springs Campground and Pools in Tecopa, CA for the period of July 1, 2021 through June 30, 2031, with two options to extend through June 30, 2041, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained. Motion carried unanimously.

## *Routing*

CC  
Purchasing  
Personnel  
Auditor  
CAO Parks & Rec  
Other:  
DATE: August 4, 2021

WITNESS my hand and the seal of said Board this 27<sup>th</sup>  
Day of July, 2021



LESLIE CHAPMAN  
Clerk of the Board of Supervisors

*Leslie L. Chapman*

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



# County of Inyo



## County Administrator - Parks & Recreation

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** July 27, 2021

**FROM:** Leslie Chapman

**SUBJECT:** Concession Agreement for Operation and Maintenance at the Tecopa Hot Springs Campground and Pools.

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#### RECOMMENDED ACTION:

**County Administrator - Parks & Recreation** - Request Board ratify and approve the concessionaire's agreement between the County of Inyo and Tecopa Hot Springs Conservancy, LLC of Las Vegas, NV for the operation and maintenance of the Tecopa Hot Springs Campground and Pools in Tecopa, CA for the period of July 1, 2021 through June 30, 2031, with two options to extend through June 30, 2041, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

#### SUMMARY/JUSTIFICATION:

The County leases 40-acres of land from the Federal Bureau of Land Management (BLM) in Tecopa, California, on which there are several County improvements including: 250 dry campsites (105 have electrical hookups); four (4) restroom facilities; two (2) bathhouses with showers; a community center; a 2-acre sewage evaporation treatment pond; and, an R.V. dump station.

Tecopa Hot Springs Conservancy, LLC has been the concessionaire for the Tecopa Hot Springs Campground since 2015 when they were the selected from two proposals that were submitted as responses to a request for proposal. The staff report from the time had a concise description of the process and history of County vs Concessionaire run operations for the hot springs and campground. That description is quoted below in the history section of this staff report for those who may not recall the process and result.

The existing contract expired December 31, 2020 and has been under the holdover provisions since then. Before the lease expired, the Concessionaire approached the County with a desire to renegotiate the contract rather than exercising the first 5-year option to extend the lease, stating the following reasons:

- They can't afford the escalating Operation Fees stated in the contract after losing two busy seasons due to COVID -19, which greatly impacted their revenues;
- They underestimated the condition of electrical lines and water lines and have had to divert money to repairs, depleting funds anticipated for improvements.
- They have recently invested in redoing the bath houses and other repairs and don't want to lose their investment.
- They need cash flow to continue making improvements, so they requested that the County waive the

minimum operating fee for the next two years and agree to a flat \$5,000 for the duration of the agreement with assurance that the improvements listed on Attachment A will be completed.

Based on meetings with the Concessionaire and knowledge of the impacts of COVID and the condition of the hot springs and bath houses, staff determined that the above requests appear reasonable. Additional considerations were given to the cost of issuing a new RFP and the likelihood that there will be other qualified concessionaires responding to the RFP, based on prior experience at this location. During the renegotiation phase, Public Works and Building and Maintenance were consulted and they recommended adding clarifying language on areas of responsibility such as water, sewage, electrical and building permits. With the help of County Counsel, that was done. Additionally, County staff and the Concessionaire agreed to more frequent meetings to discuss projects, issues and resolutions. We also established consistent lines of communications for complaints. With all of the above information and considerations, staff recommends approving this new Concessionaire's Agreement.

#### **BACKGROUND/HISTORY OF BOARD ACTIONS:**

The following excerpt was copied from the staff report dated January 13, 2015 which was when the Tecopa Hot Springs Conservancy, LLC was named successful bidder and a five-year contract with two extension options was approved and executed:

Since 2004, the County has relied upon a concessionaire, California Land Management (CLM) to operate the pools and campground under a concessionaire agreement. The CLM agreement expired on October 1, 2014. Since that time the County has been operating the Campground and Pools with existing and temporary staff. In year's prior the concessionaire agreement, the County operated the campground and pools. The County collected a fee at the campground but the pools were open to the public, free of charge, 24-hours a day. Since October the County has been collecting for camping but the pools have been available free for public use during hours that staff was available on the premises.

On June 10, 2014, the Board of Supervisors reviewed options for the operation of the Tecopa Hot Springs Campground and Pools and directed staff to issue a Request for Proposals (RFP) for a potential concessionaire.

Staff presented several options to the Board regarding potential operation models to be explored including:

- Operate with County staff - either shared with Library and HHS or dedicated Parks staff
- Issue new RFP for Concessionaire Agreement
- Allow for free public use of Bath Houses, and close campground
- Close Bath Houses and campground

In addition to the discussion with your Board, staff also held a community meeting in Tecopa on June 10, 2014 to solicit input regarding operations of the campground and pools. With the input from the Board and the community in mind, staff prepared an RFP. On July 15, 2014 your Board approved the issuance of an RFP for a potential concessionaire. The RFP was sent to campground and hot springs operators throughout California and Nevada as well as to interested parties in the community of Tecopa. Responses to the RFP were due September 19, 2014. The County received two responses as follows:

- Tecopa Hot Springs Conservancy
- Indy Development Group, LLC

As community residents requested at the Tecopa meeting on June 10, 2014 both proposals were made available for community review to community members at the Tecopa Community Center. A form was provided for the rating and ranking of the proposals. In another meeting to update the community on September 23, 2014, both respondents were in attendance and each gave a brief summary of their proposal to the members of the community in attendance at the meeting. All forms and comments that were submitted have been reviewed and weighed by staff.

Staff reviewed both proposals for content and in association with the scoring criteria within the RFP, and with consideration given to the community input. On November 12, 2014 staff updated your Board with the recommendation that negotiations for a concessionaire agreement begin with the Tecopa Hot Springs Conservancy. Staff has exchanged numerous emails and on December 22, 2014 held a meeting with Tecopa Hot Springs Conservancy in an effort to agree upon contract terms. Those efforts have resulted in the mutually agreeable and beneficial contract being recommended for approval.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose not to approve the Agreement, however, this is not recommended as that would require the County to operate and maintain the facility, which has proven difficult and costly in the past. Your Board could also direct staff to do a request for proposal, however, that is not recommended as there were only two responses in the past and staff and the Tecopa community chose Tecopa Hot Springs Conservancy.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

**ATTACHMENTS:**

1. Tecopa Concessionaire Agreement 2021

**APPROVALS:**

Darcy Ellis	Created/Initiated - 7/20/2021
Darcy Ellis	Approved - 7/20/2021
Leslie Chapman	Approved - 7/20/2021
Marshall Rudolph	Approved - 7/20/2021
Amy Shepherd	Final Approval - 7/20/2021

**CONCESSION AGREEMENT BETWEEN COUNTY OF INYO  
AND TECOPA HOT SPRINGS CONSERVANCY, LLC FOR  
THE OPERATION AND MAINTENANCE OF THE  
TECOPA HOT SPRINGS PARK AND CAMPGROUND**

THIS AGREEMENT, made and entered into this 25<sup>th</sup> day of May, 2021 between the COUNTY OF INYO, a political subdivision of the State of California, hereinafter called "County", whose address is 224 N. Edwards Street, Independence, California, 93526, and Tecopa Hot Springs Conservancy hereinafter called "Concessionaire", whose corporate address is 7223 Linden Ave, Las Vegas, NV 89110 and whose mailing address is P.O. Box 103 Tecopa, CA 92389. The County Administrator or his/her designee shall act on behalf of the County for purposes of this agreement.

WITNESSETH:

WHEREAS, County leases from the Bureau of Land Management (BLM) certain property, more commonly referred to as Tecopa Hot Springs Park and Campground, and mineral water bathhouses for the use of and enjoyment of the public; and

WHEREAS, County desires to grant to Concessionaire the right to operate thereon a campground, bathhouses and camp retail store for the benefit and enjoyment of the users of said recreational facility, and County warrants that it has the rights and ability to grant these rights; and

WHEREAS, Concessionaire is desirous of operating such operation within said recreational facility;

NOW, THEREFORE, the parties hereto do hereby agree one with the other as follows:

FOR AND IN CONSIDERATION of the mutual terms, covenants and conditions herein, County grants to Concessionaire the exclusive right during the term of this agreement to enter onto and operate a campground and bathhouses (hereinafter referred to as "campground") at Tecopa Hot Springs Park and Campground upon the terms and conditions more fully hereinafter set forth.

1. AGREEMENT SUBJECT TO MASTER LEASE.

1.1. Concessionaire agrees that notwithstanding any other provision of this Agreement, this Agreement is subject to the terms and conditions of any existing lease, contract, encumbrance, or any such document, right, or interest which may hereafter be exchanged or substituted therefor, affecting the County's rights to the premises. In no event shall Concessionaire seek, have or claim any right of possession or occupation of the premises at variance with the terms thereof or beyond the period of County's right thereto and, notwithstanding any other provision of this Agreement, the term of this Agreement shall automatically terminate without prior notice to concessionaire twenty-four (24) hours prior to the expiration or termination of any such underlying lease or contract. Nothing herein shall obligate County to renew any such underlying lease, contract, encumbrance or easement.

1.2. The County currently leases the Tecopa Hot Springs Park Campground from the United States Department of the Interior, Bureau of Land Management (the Master Lease), the terms of this Agreement are subordinate to that lease as set out in the foregoing paragraph, and the Master Lease between the County and BLM for the Tecopa Hot Springs Park Campground terminates on December 31, 2033.

1.3 Should any successor Master Lease between the County and BLM materially change the County's obligations, the Parties agree to meet and confer regarding possible modifications to this agreement relative to material impacts to the County resulting from the new Master Lease. Nothing herein shall obligate BLM to renew any such master lease, contract or successor document. The County will continue to occupy and operate the on-site Community Center, Library facilities, playground, and sewage treatment lagoon.

2. EQUIPMENT. Concessionaire agrees, in its own name, to provide all equipment, insurance, licenses, permits, supplies of all kinds and nature, and to require County to furnish nothing whatsoever in the course of its operation of such campground.

3. TERM.

3.1. This agreement shall be for a period of approximately ten (10) years from the date of commencement, subject to two (2) options in favor of Concessionaire to renew said agreement for five years each on the same terms and conditions as in the initial term, subject to section 4.2 below.

3.2. Exercise of Options. The two options shall be for separate and successive five (5) year periods. A written notification of the exercise of an option must be received by the County no less than six (6) months prior to the expiration of the initial concession term or successive option period, sent by certified mail to the address hereinafter provided. Failure to exercise any option in the manner provided above by making a written request of County will nullify that and successive options herein granted. Options may be exercised provided:

3.2.1. Neither Concessionaire nor County has terminated this Agreement, or any extension thereof, for any reason.

3.2.2. Concessionaire is not in default under any term or condition of this Agreement, or any extension thereof.

3.3. This agreement shall commence on July 1, 2021, and cease and terminate for all purposes on June 30, 2031, unless an option is exercised as set forth, at which time the new dates for said term shall take effect on the terms and conditions herein provided.

3.4. This agreement may be terminated by either of the parties hereto for cause upon one party giving ninety (90) day notice in writing to the other party of its intention to terminate this agreement. If Concessionaire is in noncompliance with any portion of this agreement, the County may terminate this agreement for non-compliance after thirty (30) day written notice if 30 days after written notice has been given to Concessionaire of the noncompliance said noncompliance has not been cured, or, if the noncompliance cannot reasonably be cured within 30 days, and Concessionaire fails to commence to cure the noncompliance within the 30-day period and does not diligently and in good faith continue to cure the default.

#### 4. OPERATION FEES.

4.1. Operation Fees - Option Periods. The Operation Fee during the term of this ten (10) year lease shall be Five Thousand Dollars (\$5,000) annually, subject to the waiver set forth in paragraph 11.5 below.

Recognizing the distant time horizons associated with the options provided for in this agreement, and that business conditions may change considerably by the time the Concessionaire may decide to exercise these options, the Parties agree that the Operation Fees for the Option Periods in this section shall be renegotiated during the six (6) month period prior to the Concessionaire's deadline for exercising the option(s) described in section 3.2 above. Any negotiated change in the Operation Fees for the Option Period must be approved by the County Board of Supervisors prior to exercising of the option.

4.2 Payment to County. Commencing on July 1, 2021, , Concessionaire shall make payment to County, on or before May 30th each year, for a lump sum payments of the minimum Operation Fee for the previous calendar year. The Fee shall be sent to: County of Inyo, Parks Office, 1360 N. Main St., Room 231, Bishop, CA 93514.

4.4. Late Fee. Concessionaire acknowledges late payment by Concessionaire to the County of the annual fee will cause County to incur costs not contemplated by the Agreement. Such costs include, without limitation, possessory and accounting charges. Therefore, if payments are not received by County when due, Concessionaire shall pay to County an additional sum of 5% of the overdue payment as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that the County will incur by reason of late payment by Concessionaire. Acceptance of any late charge does not constitute a waiver of Concessionaire's default with respect to the overdue amount, or prevent County from exercising any of the other rights and remedies available to County.

## 5. ACCOUNTING/AUDITING.

5.1 Concessionaire agrees to maintain accounting records, according to accounting procedures acceptable to County, for the operation of campground, pools and store. Said records shall include accounting for all income from camping fees, pool use, RV holding tank dumping, and all income from any other source of revenue, including retail, and all expenditures relating to the improvements referred to herein. Accounting for expenditures for improvements shall be kept separate and distinct from accounting for expenditures for operations and maintenance. Said records shall be available to County for inspection at all times. Concessionaire shall make available for auditing purposes its accounting records, relating to this agreement, to County's Auditor/auditing firm who may be auditing for the County, and the Grand Jury.

5.2 Concessionaire shall submit to County, no later than June 30<sup>th</sup> each year, financial statements, including a balance sheet and income statement for the calendar year ended the prior December 31<sup>st</sup>. These financial statements may be subject to audit by a CPA firm, at Concessionaire's expense, upon request by the County.

## 6. PURPOSES; DAYS AND HOURS: OPERATION.

6.1. The premises shall be used by Concessionaire only for the purpose of operating a campground, store, and public bathhouses.

6.2 Concessionaire shall operate and maintain the campground in accordance with the provision of Exhibit A and B hereto; the "'Request for Proposal' for Concessionaire for operation of the Tecopa Hot Springs Campground, Tecopa, California, dated August, 2014, Concessionaire's proposal in response to that Request for Proposal; and Concessionaire's response to



County's "Notice Requesting Additional Information, etc."

6.3. Concessionaire shall, without cost to the County, continuously operate the campground for the purposes specified in the Agreement. If the buildings or equipment used for the campground are damaged or destroyed and this Agreement remains in full force and effect, Concessionaire shall continue to operate the campground to the extent reasonably practical from the standpoint of good business judgment during any period of reconstruction. Concessionaire shall employ its best efforts to operate the business conducted on the premises in a manner that will produce the maximum volume of gross sales.

6.4. Concessionaire may utilize the County-operated Community Center for community events open to the public with written permission of the Director of Parks.

6.5. Concessionaire agrees to operate said concession in accordance with all applicable Inyo County ordinances and the laws of the State of California, and the rules and regulations adopted thereunder, governing such establishments. Concessionaire shall inform the public utilizing the RV sewage dump facilities that they are prohibited from utilizing treatment chemicals in their waste disposal and shall ensure that the RV sewage dump facilities are not utilized beyond the designed capacity. Additionally, Concessionaire will maintain the bathhouses and restrooms located within the campground in a clean, sanitary condition and ensure that the facilities are well stocked at all times. Concessionaire shall operate the campground in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstructions of any kind, and in compliance with any and all present and future laws, rules or regulations of any governmental authority now, or at any time during the term of this Agreement, relating to public health, safety or welfare. Concessionaire further agrees that it is the sole operator of such campground and that the County has no interest in the operation of the business to be conducted thereon and that County is in no way responsible for any indebtedness which may arise from its operation of said concession. No offensive or dangerous activity shall be carried on or permitted on the concession premises. No goods, merchandise or materials that are explosive or hazardous shall be sold, kept or stored on the premises.

6.6. The campground may be operated 24 hours a day.

7. MAINTENANCE. Concessionaire agrees to maintain the campground, buildings, including the rest room and shower building at the campground as described in Attachment C, and related equipment and shall, at its own expense, provide routine maintenance to the electrical and water systems (including wells and the water supply to the Community Center), plumbing, gas service, roofs, and sewer piping exiting buildings to the point of entry to the treatment pond. Concessionaire shall comply with all laws, rules and regulations applicable thereto, adopted by federal, state or other governmental bodies, or departments or officers thereof, including, without limitation, the obligation at

Concessionaire's cost to alter, maintain or restore its facilities in compliance and conformity with all laws relating to the condition, use or occupancy of its facilities during the term of this agreement. This agreement is expressly subject to present and future regulations and policies of the County. Concessionaire shall remedy without delay any non-compliance and any defective or dangerous conditions.

8. SIGNS. All promotional materials and signs to be placed at, distributed from, or in connection with the concession, must be submitted to County for prior approval and shall comply with the provisions of Title 18 of the Inyo County Code.

9. UTILITIES/TAXES.

9.1. Utilities. Concessionaire agrees to pay the full cost of all electricity and gas used in conjunction with the operation of the campground and concession facilities. Concessionaire is further responsible for the installation of further needed utilities and the provision of services used in connection with the concession, to include electricity, gas, telephone, garbage, sewer and water. Concessionaire will immediately contact all utility providers and transfer utility billings to Concessionaire's name and billing address, and shall not be responsible for prior amounts owed. Upon receipt of the concession and camping statement from the utility, Concessionaire hereby agrees to pay said statement in a timely manner.

9.2. Taxes. Concessionaire acknowledges and understands that this agreement may create a possessory interest subject to property taxation and Concessionaire may be subject to the payment of property taxes levied on such interest. Concessionaire further acknowledges that Concessionaire is responsible for any and all taxes on improvements of fixtures on said premises. Concessionaire shall pay before delinquency all taxes, assessments, license fees and other charges that are levied upon the personal property and improvements owned by Concessionaire, if any, and used or located on the subject premises; and shall pay any other tax arising out of Concessionaire's operations upon the premises, including, but not limited to, any possessory interest tax.

9.2.1 Concessionaire acknowledges and understands that Point of sale is Inyo County for all products, materials, equipment and vehicles delivered to Concessionaire for use in association with the Concession whether for improvements, sales or other uses.

10. CONDITIONS OF PREMISES. Concessionaire has inspected the campground and all buildings on the premises, and accepts these facilities in their present condition. County is not obligated to make any alterations, additions, improvements, or repairs to the concession facilities. Concessionaire agrees to return the campground and facilities to the County in the same or better condition as the campground and facilities were in when this agreement was signed.

## 11. ALTERATIONS AND IMPROVEMENTS.

11.1. Notwithstanding anything to the contrary in this Agreement, County has the right to cause alterations and improvements to be made at the campground. The work required to complete any such alterations or improvements shall not unreasonably interfere with the operation of the campground. The parties to this Agreement agree that the work to complete any project listed on Attachment A or B to this Agreement will not unreasonably interfere with the operation of the campground.

11.2. Concessionaire may, upon written approval from the Parks Director, with all requests for improvements from the Concessionaire to be made in writing, make improvements to the campground. Such improvements will then become the property of the County, unless otherwise agreed to in writing by the County.

11.3. Concessionaire shall not make any improvements or alterations to the premises without County's consent. Any alterations made shall remain on and be surrendered with the premises on expiration or termination of this agreement, except that County can elect, within 30 days before or five days after expiration of this Agreement, to require Concessionaire to remove any unapproved alterations that Concessionaire has made to the premises. Concessionaire shall apply for all required state and local permits prior to commencing any repairs, reconstruction, replacement, or installation of which is governed by title 24 and title 25 of the codified laws of California

11.4. If Concessionaire makes any alterations to the premises as provided in this Section 11, the alterations shall not be commenced until 10 days after County has received notice from Concessionaire stating the date the installation of the alterations is to commence so that County can post and record an appropriate notice of non-responsibility.

11.5. In exchange for the waiver of fees in year one and two of this Agreement, Concessionaire will prioritize those improvements outlined in Exhibit A and complete those improvements within the first two years of this agreement. Said waiver of fees shall be credited toward the amounts owed upon satisfactory completion of the improvements, as determined in the sole discretion of the County. Thereafter, Concessionaire shall consult with the County annually to prioritize and implement selected and agreed to improvements identified in Exhibit B.

## 12. CONCESSIONAIRE'S PERSONNEL.

12.1. Concessionaire's employees engaged in operating the premises shall be fully trained and qualified to perform the duties assigned to them. They may wear uniforms or other identification approved, in writing, by County. Concessionaire's personnel may drive private vehicles only as required

for loading and unloading items used to operate the concession.

12.2. Concessionaire shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, customers and patrons, and, upon objection by the County concerning the conduct, demeanor or appearance of any such person, Concessionaire shall immediately take all necessary steps to remedy the situation.

12.3. Concessionaire shall develop and maintain an *Employee Injury and Illness Prevention Program* that meets or exceeds all requirements as set forth by the California Health and Safety Code, CAC Title 8, as may be amended.

12.4. Concessionaire shall ensure that all employees meet the provisions of Section 5164 of the Public Resources Code for all employees who supervise minors. Copies are available in the County Administrator's Office.

12.5. Concessionaire shall ensure that all employees meet the provisions of Section 5163 of the Public Resources Code relating to TB tests for all employees who handle food. Copies are available in the County Administrator's Office.

13. QUALITY OF SERVICE: RATES AND CHARGES. The prices to be charged by Concessionaire shall be approved, in writing, by County prior to Concessionaire's charging such amounts. Concessionaire shall maintain a high standard of service. Concessionaire shall notify County, in writing, at least 30 days before changing any fee or price charged to the public ("charge"). If County finds that any charge is not comparable with like charges at other similar operations, County shall notify Concessionaire and request justification of such charge. If County shall reasonably determine, prior to such change, that the charge is not comparable, Concessionaire shall not implement same.

14. CAMPGROUND INSPECTION AND MAINTENANCE. County reserves the right of entry upon the campground premises at all reasonable times and the right to inspect the premises and the operation thereon, and if Concessionaire has been advised and requested, and refuses or neglects to do so, to do any and all work of any nature necessary for the immediate preservation, maintenance and operation of the campground and bathhouses and to charge Concessionaire of the cost thereof. Concessionaire shall be given reasonable notice when any such work may become necessary and will adjust operations in such a manner that the County may proceed expeditiously. County shall coordinate with Concessionaire in order to minimize the interruption to Concessionaire's activities.

## 15. INDEMNIFICATION.

15.1. To the fullest extent permitted by law, Concessionaire shall hold harmless, defend at its own expense, and indemnify County, its officers, employees, agents, and volunteers from and against any and all liability, claims, damages, losses, judgments, expenses, and other costs, including litigation costs and reasonable attorney's fees, arising from all acts or omissions of Concessionaire or its officers, agents, or employees in rendering services under this Agreement; excluding, however, liability, claims, losses, damages, or expenses arising from County's sole negligence or willful acts. . Concessionaire's obligation to defend, indemnify, and hold the County, its officers, employees, agents, and volunteers harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Concessionaire's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the Concessionaire, its agents, employees, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable. Concessionaire's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Concessionaire to procure and maintain insurance.

15.2. County shall have no responsibility to safeguard the equipment and property of Concessionaire, in Concessionaire's possession, or that of any of its invitees. County shall have no responsibility to safeguard or protect the Concessionaire or its employees, agents, officers, directors, or any of its invitees from bodily injury (including death) or personal injury.

15.3. In the event a claim is made against County, or County is named a co-defendant in any action, Concessionaire shall immediately notify County of such fact, and at County's option shall either retain legal counsel to represent County in such action at Concessionaire's sole expense, or reimburse County for County's litigation costs, expenses and attorney's fees in undertaking to represent itself.

15.4. In the event a claim is made against both County and Concessionaire for the joint and several liability of County and Concessionaire, the determination as to the apportionment of liability between County and Concessionaire shall be made by the judge in a court of competent jurisdiction. Concessionaire must give prompt notice to County in the event of any fire or accident involving personal injury or property damage at the concession facilities. Neither County nor Concessionaire shall request that the apportionment of liability be determined by a jury. Notwithstanding the apportionment of liability between County and Concessionaire, Concessionaire shall nevertheless be responsible to indemnify, defend, protect and hold harmless County as fully set forth above, unless the court determines that the injury or damage resulted from

the sole negligence or intentional and willful misconduct of County, its officers, directors, agents or employees.

15.5. Concessionaire hereby waives all claims and recourse against County, including the right or contribution for loss or damage or expenses by reason of death or injury to persons or damage to property, and releases County from any liability relating to, or in any way connected to, Concessionaire's activities or Concessionaire's use of the campground, or facilities, unless injury or damage is caused by the sole negligence or the intentional and willful misconduct of County, its officers, directors, agents or employees.

16. **INSURANCE.** Concessionaire shall procure and maintain for the duration of the contract, insurance as set forth in Attachment D.

17. **ASSIGNMENT AND SUBLETTING.** Concessionaire shall neither assign, nor otherwise convey any interest in this agreement, without the prior written consent of County, and any attempt to assign any such interest without such prior written consent shall be void. If consent to any such assignment or Sub-Agreement is given by County, Concessionaire shall be and hereby agrees to be and remain fully bound and responsible hereunder for such duties and obligations as may be assigned to another. Any sub-agreement entered into by Concessionaire shall expressly provide for recognition and acceptance of all the terms of this agreement as binding upon sub-agreement.

18. **WAIVER OF CONTRACT TERMS.** No delay or omission in the exercise of any right or remedy of County on any default by Concessionaire shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by County of any delinquent concession fee shall not constitute a waiver of timely payment for the particular concession fee payment involved. County's consent to or approval of any act by Concessionaire requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent act by Concessionaire.

19. **DEFAULT.**

19.1. The occurrence of any of the following shall constitute a default by Concessionaire:

19.1.1. Failure to pay the Annual Operation fee when due. Any amount subject to a bonafide dispute shall be paid under protest.

19.1.2. Concessionaire's failure to occupy and operate the premises for 10 consecutive days shall be deemed an abandonment and vacation of the campground and concession premises (). Non occupation or operation of the premises is permissible with advance written approval of the Parks Director during seasonal/scheduled closures, or in the event of natural disasters or other threats to the safety of the personnel and employees of Concessionaire.

Requests for abandonment and/or vacation shall be made in writing with 30 days advance notice.

19.1.3. Failure to perform any other provision of this Agreement, if the failure to perform is not cured within 30 days after notice has been given to Concessionaire, or, if the default cannot reasonably be cured within 30 days, Concessionaire fails to commence to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

19.1.4. Concessionaire becomes insolvent or files for bankruptcy, either voluntarily or involuntarily.

19.2. Notices given under this paragraph shall specify the alleged default and the applicable provisions of the Agreement, and shall demand that Concessionaire perform the provisions of this Agreement or pay the concession fee that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this agreement unless County so elects in the notice.

19.3. County shall have the following remedies if Concessionaire commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

19.3.1. County may continue this agreement in full force and effect, and the agreement will continue in effect as long as County does not terminate Concessionaire's right to possess and operate the facilities. County shall have the right to collect the concession fee when due. After Concessionaire's default, and for as long as County does not terminate Concessionaire's right to possession of the concession premises, and if Concessionaire obtains County's written consent, Concessionaire shall have the right to assign or sublet its interest in this Agreement, but Concessionaire shall not be released from liability.

19.3.2. County may terminate Concessionaire's right to possess and operate the campground and concession premises (baths and camp store) at any time following a default. No acts by County, other than giving notice to Concessionaire, shall terminate this Agreement. Acts of maintenance, efforts to locate a new concessionaire, or the appointment of a receiver on County's initiative to protect County's interest under this agreement shall not constitute a termination of Concessionaire's rights under the Agreement. On termination, County has the right to recover from Concessionaire court costs necessary to compensate County for all damage proximately caused by Concessionaire's default. Concessionaire shall be liable immediately to County for the reasonable and necessary costs County incurs in entering into another concessionaire agreement for the concessions including, without limitation, restoring the facilities as detailed in this Agreement and subject to Paragraph 22 and /or 24.1, and like costs.

19.3.3. County, at any time after Concessionaire commits a default, may cure the default at Concessionaire's expense. If County, at any time, by reason of Concessionaire's default, pays any sum or does any act that requires the payment of any sum, the sum paid by County shall be due immediately from Concessionaire to County at the time the sum is paid, and if paid at a later date, shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by County until County is reimbursed by Concessionaire. The sum, together with interest on it, shall be an additional concession fee.

20. LIENS Concessionaire shall not suffer or permit any mechanic's, materialmen's or other liens to be filed against the premises and/or the buildings and improvements located thereon, or against the County or any lender holding funds for any work on the premises done by Concessionaire. If any such liens or similar proceedings are filed or commenced, Concessionaire shall, within 30 days after notice of the filing thereof, cause the same to be discharged or recorded by payment, deposit, order of court or bonding; provided, however, that Concessionaire shall have the right to contest, with due diligence, the validity or amount of any such lien, if Concessionaire shall give to County security therefore, reasonably acceptable to County, in an amount equal to one and one-half times the original and any increased amount of any such claim.

Nothing in this Agreement shall be deemed in any way to constitute the consent of County, express or implied, to the performance of any labor or the furnishing of any material for any improvement, alteration, repair or replacement of the buildings and improvements on the Premises by any contractor, subcontractor, laborer or materialman, nor as giving Concessionaire any right, power or authority to contract for, on County's behalf, the rendering of any services or the furnishing of any materials.

21. DAMAGE/DESTRUCTION. If, during the term of this agreement, the campground or other facilities are totally or partially destroyed from any cause other than Concessionaire's partial or sole negligence, County, at its option, may terminate this agreement or restore the premises and other improvements thereon to substantially the same condition as they were in immediately before destruction. If County elects to restore, such destruction shall not terminate this agreement. In the event the premises are totally or partially destroyed due to Concessionaire's negligence, Concessionaire shall, at County's option, promptly restore the Premises.

22. MODIFICATION OF AGREEMENT. Notwithstanding any of the provisions of this Agreement, the parties may, by mutual written consent, modify or amend this Agreement.



## 23. NON-DISCRIMINATION.

23.1. Concessionaire shall not discriminate on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, against any person by refusing to furnish such person any service or privilege offered to the general public. Nor shall Concessionaire publicize such services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.

23.2. During the performance of this Agreement, Concessionaire, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Concessionaire and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Concessionaire shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

## 24. SURRENDER OF PREMISES.

24.1. On expiration or termination of this Agreement, Concessionaire shall surrender to County the campground and all of Concessionaire's improvements and alterations in good condition. Concessionaire shall have a period of ten (10) days to remove all things which are the property of the Concessionaire. Concessionaire shall perform all restoration made necessary by the removal of Concessionaire's personal property within a reasonable time. If Concessionaire fails to surrender the premises to County on expiration or termination of the Term as required by this section, Concessionaire shall indemnify, defend, protect and hold County harmless from all damages resulting from Concessionaire's failure to surrender the premises.

24.2. County may elect to retain, or dispose of in any manner, Concessionaire's personal property that Concessionaire does not remove from the Premises on expiration or termination of this Agreement after giving at least a 10-day notice to Concessionaire. Title to Concessionaire's personal property that County elects to retain or dispose of on expiration of the 10-day period, shall vest in County. Concessionaire waives all claims against County for any damage to Concessionaire resulting from County's retention or disposition of Concessionaire's personal property. Concessionaire shall be liable to County for

County's costs for storing, removing, and disposing of Concessionaire's personal property.

24.3. If Concessionaire, with County's consent, continues to operate the campground after expiration of this Agreement, or after the date in any notice given by County to Concessionaire terminating this Agreement, such use by Concessionaire shall be on a month-to-month basis, terminable on a 30-day notice given at any time by either party. All provisions of this agreement except those pertaining to the term, shall continue to apply.

25. STATUS OF CONCESSIONAIRE. All acts of Concessionaire, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Concessionaire, by virtue of this agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in this agreement, Concessionaire has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the County is to be considered an employee of Contractor. It is understood by both Concessionaire and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

25.1. Concessionaire shall determine the method, details, and means of performing the work and services to be provided by Concessionaire under this Agreement.

25.2. Concessionaire shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

25.3. Concessionaire, its agents, officers, and employees are, and at all times during the term of this agreement shall, represent and conduct themselves as independent contractors, and not as employees of County.

25.4. Concessionaire will obtain any and all necessary licenses and permits for such concession in the name of Concessionaire and not name County in any manner on such licenses or permits.

26. NOTICES. Except as otherwise provided herein, any notices required or permitted to be given under this Agreement shall be personally delivered or sent by certified mail and addressed to the respective parties at their addresses indicated on the first page hereof. Such addresses may be changed from time to time by notice, in writing, to either party.

27. ADVICE OF COUNSEL. Each party hereto has been provided full

opportunity for review of this agreement by legal counsel. Therefore, no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this agreement.

28. RULES AND REGULATIONS. Concessionaire agrees to comply with the ordinances, rules and regulations, and any other regulations of County. Such rules and regulations shall include County Ordinances 1024, 1038 and any amendments thereto or revisions or replacements thereof.

29. ENTIRE AGREEMENT. This instrument contains the entire Agreement of the parties relating to the rights granted and obligations assumed and supersede all prior written and oral discussions or representations.

//I/III

**CONCESSION AGREEMENT BETWEEN COUNTY OF INYO  
AND TECOPA HOT SPRINGS CONSERVANCY, LLC FOR  
THE OPERATION AND MAINTENANCE OF THE  
TECOPA HOT SPRINGS CAMPGROUND**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS  
16 DAY OF September, 2021.

**COUNTY OF INYO**

  
\_\_\_\_\_  
Signature

Dated: 10/13/2021

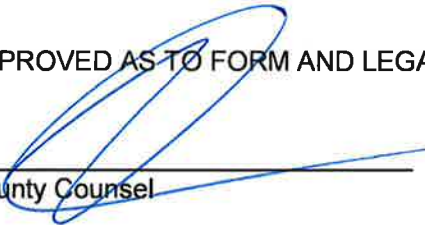
**CONTRACTC**

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

Paul T. Barnes

\_\_\_\_\_  
Type or Print Name

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
County Counsel

APPROVED AS TO ACCOUNTING FORM:

  
\_\_\_\_\_  
County Auditor

APPROVED AS TO INSURANCE REQUIREMENTS:

  
\_\_\_\_\_  
County Risk Manager

## **Exhibit A**

### **Priority Improvements**

- Repair or replace campground restrooms and plumbing
- Picnic tables at every camp site with allowance for the required number of accessible tables
- Install electrical upgrades to section near bathhouses and store to reduce load on current system, including replacing existing electrical boxes.
- Upgrade electrical to 50 amp circuits in the “D” Section as existing service to the property will allow. New service to the property will be provided by the County in conjunction with Southern California Edison.
- Install metal fire rings with cooking grates in Section D permanent sites,
- Install picnic tables in Section D permanent sites
- Pave pathways on bathhouse grounds to create accessible pathways from the parking area to both bathing areas

**Exhibit B**  
**Long Term Improvements**

- Campsite electrical upgrades including 30 amp and 50 amp facilities
- Remodel campground bathrooms to include shower facilities
- Install fire rings with cooking grates at all campground sections prioritized by most frequently used by guests.
- Install picnic tables at all campground sections prioritized by most frequently used by guests.

## **Exhibit C**

### **Daily Maintenance Schedule**

#### **Daily Maintenance:**

- Clean and sanitize both bath houses including tubs, restrooms and showers.
- Clean and sanitize campground restrooms.
- Stock all paper dispensers.
- Check and clear any plugged drains, toilets and laves.
- Check interior and exterior lighting for operation.
- Check for and remove trip and other hazards in public access areas.
- Disconnect or turn off power to all unoccupied camp sites.
- Check hot tubs for correct chlorination and water flow.
- Check operation of domestic water system.

#### **Monthly Maintenance:**

- Add root inhibitor to main line sewers.
- Check all electrical outlet and connections at campsites.
- Clean, maintain and evaluate all campsite.
- Pressure wash or hose down exterior of buildings
- Clean windows inside and out
- Check electrical pedestals at campsites for damage.
- Water Jet all lateral sewer lines in bath houses.
- Check all structures inside and out for damage, i.e. Leaking roofs, broken windows, missing or damage siding.
- Check all main electrical panels for sign of bad connections or excessive heat at circuit breakers.

## **Exhibit D Insurance Requirements**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

**Commercial General Liability (CGL):** ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. The CGL policy shall contain, or be endorsed to contain, additional insured status as specified as follows.

Additional Insured Status. Inyo County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

**Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8), and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage. May be waived with signed letter on Contractor's letterhead certifying that no vehicle or mobile equipment will be used in the execution of the agreement.

**Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. May be waived with signed letter on Contractor's letterhead certifying that Contractor has no employees.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, Inyo County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Inyo County.



## **OTHER INSURANCE PROVISIONS**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

### **Primary Coverage**

For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects Inyo County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Inyo County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

### **Notice of Cancellation**

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to Inyo County.

### **Waiver of Subrogation**

Contractor hereby grants to Inyo County a waiver of any right to subrogation which any insurer of said Contractor may acquire against Inyo County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Inyo County has received a waiver of subrogation endorsement from the insurer.

### **Self-Insured Retentions**

Self-insured retentions must be declared to and approved by Inyo County. Inyo County may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Inyo County.

### **Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to Inyo County.

### **Verification of Coverage**

Contractor shall furnish Inyo County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Inyo County before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. Inyo County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Special Risks or Circumstances**

Inyo County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.