

**CITY OF IMPERIAL BEACH
PARKS AND RECREATION COMMITTEE**

A G E N D A

JUNE 15, 2015

**City of Imperial Beach Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

REGULAR MEETING – 4:30 p.m.

The Parks and Recreation Committee for the City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at meetings, please contact the City Clerk's office at (619) 628-2347, as far in advance of the meeting as possible.

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

4. PUBLIC COMMENTS - Each person wishing to address the Parks and Recreation Committee regarding items not on the posted agenda may do so at this time. In accordance with State law, the Parks and Recreation Committee may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to City staff or placed on a future agenda.

5. REPORTS

A. MINUTES.

Recommendation: Approve the Regular Meeting Minutes of May 18, 2015.

B.* DISCUSSION AND DIRECTION REGARDING COMMUNITY OUTREACH FOR COMMUNITY SURVEY AND NEEDS ASSESSMENT TO DETERMINE INTEREST LEVELS IN VARIOUS RECREATION PROGRAMS.

C. CONSIDERATION OF AN AMENDMENT OF AN OPERATING AGREEMENT WITH THE BOYS & GIRLS CLUB AND AN AMENDMENT OF A FIELD USE AGREEMENT WITH IMPERIAL BEACH LITTLE LEAGUE AND IMPERIAL BEACH GIRLS SOFTBALL LEAGUE TO MAINTAIN AND OPERATE RECREATIONAL FACILITIES OWNED BY THE CITY OF IMPERIAL BEACH.

Recommendation: That the Parks and Recreation Committee receive this report, hold discussion on the identified items, and provide direction to staff about next steps including the creation of formal recommendations on particular items for consideration by the City Council.

* No staff report.

6. ADJOURNMENT

_____/s/
Jacqueline M. Hald, MMC
City Clerk

For your convenience, a copy of the agenda and meeting packet may be viewed in the office of the City Clerk at City Hall or on our website at www.ImperialBeachCA.gov. Go to the Imperial Beach Parks and Recreation Committee Page located under the Government Section/City Boards and Committees Tab.

Any writings or documents provided to a majority of the Parks and Recreation Committee regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

**CITY OF IMPERIAL BEACH
PARKS AND RECREATION COMMITTEE**

REGULAR MEETING MINUTES

MAY 18, 2015

**City of Imperial Beach Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

1. CALL TO ORDER

Chair O'Neal called the Regular Meeting to order at 4:30 p.m.

2. ROLL CALL

Chair Present: O'Neal
Vice Chair Present: Stucki
Members Present: Blinsman, Klosinski, Stephenson
Alternates Present: Salisbury
Alternate Absent: Aguilar, Goforth
Staff Present: Management Analyst Vea, City Clerk Hald

3. PUBLIC COMMENTS

None.

4. REPORTS

Management Analyst Vea announced he was attending the meeting in place of City Manager Hall due to a scheduling conflict.

A. MINUTES

MOTION BY STUCKI, SECOND BY KLOSINSKI, TO APPROVE THREE (3) SETS OF SPECIAL MEETING MINUTES OF APRIL 27, 2015. MOTION CARRIED UNANIMOUSLY.

B. REPORT FROM THE BOYS & GIRLS CLUB ON THE STATUS OF THE CURRENT IMPERIAL BEACH RECREATIONAL PROGRAMS.

Management Analyst Vea introduced the item.

In response to Member Klosinski's concern about the hours of operation of the Recreation Center, Aaron Ruiz, Unit Director for the Boys and Girls Club of South County (BGC), stated the BGC is operating the Recreation Center during hours set by the City. He anticipated a future recommendation from the BGC to the City to have the Recreation Center in operation only when children are present after school. The facility is currently open at 10:00 a.m. to accommodate the City's desire to have the facility open for adults such as stay at home moms. With regard to Chair O'Neal's question about the opening of the Skate Park, he stated that the BGC currently works with volunteers from the Imperial Beach Girl's Softball and the Little League and on the weekend the three groups switch on a rotating basis.

THE PARKS AND RECREATION COMMITTEE RECEIVED AND FILED THE REPORT.

C. RECOMMENDATION TO CITY COUNCIL TO CONDUCT A COMMUNITY SURVEY AND NEEDS ASSESSMENT TO DETERMINE INTEREST LEVELS IN VARIOUS RECREATION PROGRAMS.

Management Analyst Vea reported on the item and recommended approval of a recommendation to City Council to direct staff to secure the services of California Consulting to conduct a comprehensive needs analysis and survey to determine which recreational programs will be supported by the residents of the City.

Chair O'Neal spoke in support of staff's recommendation.

Andrea Wogsland distributed information to the Board regarding an eco-tourism study that was done for Imperial Beach in 2005 that showed data on recreation. She also submitted letters from the community who were in support of a pool. She questioned the status of partnerships with the Sweetwater High School District and Coronado Recreation Center; how long the needs assessment will take and supported creation of a taskforce to follow the progress and to ensure implementation; and if the Mar Vista High School would be opened up for the public year-round.

Management Analyst Vea stated that staff will look into her questions.

Chair O'Neal spoke about the difficulties of partnering with school districts and he stated that California Consulting will produce answers to her questions.

Sarah Teck spoke about her experience with having access to pools in the local area and the benefits for having a pool. She suggested having a pool on par with that of Coronado which can be used for lifeguard training, scuba dive training, general recreation and swim teams and she spoke in support for a small therapeutic pool. In the meantime, the PRC should seek partnerships with other local pools.

Member Stucki commended that many agencies are not doing joint use agreements anymore because it is not economically feasible.

CONSENSUS OF THE PARKS AND RECREATION COMMITTEE TO FORWARD A RECOMMENDATION TO THE CITY COUNCIL TO DIRECT STAFF TO SECURE THE SERVICES OF A QUALIFIED CONSULTANT TO CONDUCT A COMPREHENSIVE NEEDS ANALYSIS AND SURVEY TO DETERMINE WHICH RECREATIONAL PROGRAMS WILL BE SUPPORTED BY THE RESIDENTS OF THE CITY.

D. RECOMMENDATION TO CITY COUNCIL TO APPROVE A REQUEST FROM THE BOYS & GIRLS CLUB FOR ADDITIONAL RECREATIONAL PROGRAM FUNDING FOR FY15.

Member Blinsman recused himself from discussion of the item due to his employment with the BGC and left Council Chambers at 4:54 p.m.

Management Analyst Vea reported that at the previous Board meeting, staff was directed to prepare a recommendation to the City Council to provide an additional \$50,000 for the Sports Park. Since there is already \$50,000 for water and lights, anything left over from that amount should be used first with the remainder taken from the General Fund. He noted that the BGC plans to talk to Chad Harbin about programming the Girl's softball field to help them become revenue neutral.

Aaron Ruiz, Director for the Boys and Girls Club of South County (BGC), stated the \$50,000 that is part of the current contract is for utilities for the whole park and it is shared with the Imperial Beach Little League and Girl's Softball

Chair O'Neal noted that the BGC is only responsible for the area north of the softball field.

Don Spicer, representing the Imperial Beach Little League, stated that the \$50,000 pays for water, electricity and to help offset repairs over \$1,000 for the entire park.

Aaron Ruiz stated the BGC was under the impression that they would receive \$50,000 to offset staffing expenses but the \$50,000 was put in a maintenance fund. He noted that the BGC still continued with the negotiations because they had funding sources lined up in the amount of

\$45,000 but those sources were later denied. Looking forward, he said the BGC knows there will be a funding shortfall, that the BGC can get to a point of self sufficiency but to say they can do it in a year would not be responsible.

MOTION BY STUCKI, SECOND BY KLOSINSKI, TO FORWARD A RECOMMENDATION TO THE CITY COUNCIL TO APPROVE A ONE-TIME APPROPRIATION OF FUNDING TO ADDRESS A BUDGET SHORTFALL EXPERIENCED BY THE IMPERIAL BEACH BOYS & GIRLS CLUB IN THE PROVISION OF RECREATIONAL SERVICES FOR THE CITY OF IMPERIAL BEACH, AND TO PROVIDE STRATEGIES TO AVOID OR SIGNIFICANTLY REDUCE FUTURE SHORTFALLS. ADDITIONALLY, FIRST USE THE FUNDS LEFTOVER FROM THE \$50,000 ALREADY BUDGETED FOR FOR WATER AND LIGHTS WITH THE REMAINDER TAKEN FROM THE GENERAL FUND. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES: BOARDMEMBERS: STEPHENSON, KLOSINSKI, STUCKI, O'NEAL
NOES: BOARDMEMBERS: NONE
ABSENT: BOARDMEMBERS: NONE
DISQUALIFIED: BOARDMEMBERS: BLINSMAN

5. ADJOURNMENT

Chair O'Neal adjourned the meeting at 5:05 p.m.

Tim O'Neal
Chair

Jacqueline M. Hald, MMC
City Clerk

**ITEM 4.B. - DISCUSSION AND DIRECTION REGARDING COMMUNITY
OUTREACH FOR COMMUNITY SURVEY AND NEEDS ASSESSMENT
TO DETERMINE INTEREST LEVELS IN VARIOUS RECREATION
PROGRAMS**

NO STAFF REPORT



AGENDA ITEM NO. 4.C.

STAFF REPORT
PARKS AND RECREATION COMMITTEE
CITY OF IMPERIAL BEACH

TO: MEMBERS OF THE PARKS AND RECREATION COMMITTEE *AM*

FROM: ANDY HALL, CITY MANAGER

MEETING DATE: JUNE 15, 2015

ORIGINATING DEPT.: CITY ADMINISTRATION *eam*

SUBJECT: CONSIDERATION OF AN AMENDMENT OF AN OPERATING AGREEMENT WITH THE BOYS & GIRLS CLUB AND AN AMENDMENT OF A FIELD USE AGREEMENT WITH IMPERIAL BEACH LITTLE LEAGUE AND IMPERIAL BEACH GIRLS SOFTBALL LEAGUE TO MAINTAIN AND OPERATE RECREATIONAL FACILITIES OWNED BY THE CITY OF IMPERIAL BEACH

EXECUTIVE SUMMARY:

At the July 15, 2015 City Council meeting, Council will consider an amendment to an agreement between the City of Imperial Beach and the Imperial Beach Boys & Girls Club to operate and maintain the Imperial Beach Recreation Center, the Skate Park and associated amenities for an additional two (2) years. Maintenance of the Tot Lot and Parking Lot would once again be the responsibility of the City.

Also up for consideration at the City Council meeting will be an amendment to the agreement between the City of Imperial Beach and the Imperial Beach Little League and Imperial Beach Girls Softball League to use, manage and maintain the ball fields located at the Sports Park facility. This amendment would extend the agreement for two (2) additional years. Collectively, the "Leagues" will provide the maintenance of the fields and schedule the use of the facilities concentrating primarily on the activities of the Little League and Girls Softball youth leagues. The Leagues have requested some minor changes to their contracts which are reflected in the amendment that will be presented to City Council on July 15, 2015 (e.g. allowing the Leagues to change locks on City facilities and providing keys or combinations to the City without preauthorization from the City).

With the adjustments that the Boys & Girls Club is requesting to their contract, the City will incur regular maintenance costs for the Playground / Tot Lot & parking area. Additionally, \$50,000 to offset power and water costs is being requested in the 2015-2017 budget as well as \$10,000 to be used for scholarships for lower income Imperial Beach residents.

RECOMMENDATION:

Staff is recommending that the Parks and Recreation Committee receive this report, hold discussion on the identified items, and provide direction to staff about next steps including the creation of formal recommendations on particular items for consideration by the City Council.

RATIONALE:

A well organized and effective recreation program is consistent with the Imperial Beach Mission Statement by providing a safe environment, family atmosphere and promotes cultural opportunities.

During the summer of 2013, the City Council discussed various options for enhancing the Imperial Beach recreation program and operation of the Imperial Beach Sports Park by finding a professional provider for recreation services. After an RFP process, it was determined by a subcommittee of the City Council that the Boys & Girls Club has unique expertise and extensive experience in administering sports and recreation programs in addition to institutional knowledge obtained from operating sports and recreation programs throughout San Diego County. Further, the Club proposed to provide the residents of the City with more, and better, sports and recreation programs than are offered currently by the City and by City employees. Further discussions resulted in the fields being managed and maintained by the Imperial Beach Little League and Imperial Beach Girls Softball League (collectively the "Leagues").

OPTIONS:

- Review and receive the staff report, hold discussion on the identified items and provide direction to staff about next steps.
- Review and reject the staff report and direct staff to prepare additional information for consideration.

BACKGROUND:

Following an RFP process in early 2014, the City of Imperial Beach entered into agreements that allowed the Boys and Girls Club to maintain and operate the Imperial Beach recreation Center, Skate Park, Tot Lot and associated amenities and the Imperial Beach Little League and Imperial Beach Girls Softball League to use, maintain and operate the playing fields at the Imperial Beach Sports Park as recommended by a subcommittee of the City Council.

The agreements were for one (1) year with the option to renew for two (2) additional two (2) year periods to correlate with the bi-annual budget cycle of the City. The Boys & Girls Club and Leagues have chosen to exercise the renewal options with a few changes to the agreements.

ANALYSIS:

The proposed amendments would extend the agreements to June 30, 2017 to coincide with the Imperial Beach Municipal Budget cycle, unless extended by City Council. These amendments will be presented to City Council at their July 15, 2015 City Council meeting and are described below.

At their June 17, 2015 meeting, the City Council will be considering up to \$50,000 in the municipal budget that will be used to offset the power and water costs for the facility with the remainder of the funds, if any, being used to conduct any necessary improvements to the facility. They are also considering \$10,000 that will be used for scholarships for lower income Imperial Beach residents. This is in addition to the \$50,000 that the Boys & Girls Club will be requesting at the July 15, 2015 City Council meeting to help offset their operations for the previous year.

The Boys & Girls Club has requested that the City take responsibility for the current Playground / Tot Lot and parking areas due to the maintenance required. The Amendment reflects these requested changes. City staff is currently looking into grants to modernize the Playground / Tot Lot and also into xeriscaping or desert-scaping the parking lot grass areas which should minimize maintenance requirements.

The Boys & Girls Club is also asking for more control over the fee schedule and hours of operation, which are both regulated by our municipal code. The Skate Park is currently open earlier than the rest of Sports Park so they would like to establish joint hours for the entire facility. In the meantime, they would like the City or some other organization to be responsible for opening Skate Park. The Amendment reflects these requested changes.

The Leagues have requested some minor changes to their contracts which are reflected in the amendment that will be presented to City Council on July 15, 2015 (e.g. allowing the Leagues to change locks on City facilities and providing keys or combinations to the City without preauthorization from the City).

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

With the adjustments that the Boys & Girls Club is requesting to their contract, the City will incur regular maintenance costs for the Playground / Tot Lot & parking area. Additionally, \$50,000 to offset power and water costs is being requested in the 2015-2017 budget as well as \$10,000 to be used for scholarships for lower income Imperial Beach residents.

Attachments:

1. Boys & Girls Club Operating Agreement for Sports Park
2. Imperial Beach Little League and Imperial Beach Girls Softball League Field Use Agreement for Sports Park

AGREEMENT

OPERATING AGREEMENT BETWEEN THE CITY OF IMPERIAL BEACH, CALIFORNIA, AND THE BOYS & GIRLS CLUB, A CALIFORNIA NON-PROFIT, PUBLIC BENEFIT CORPORATION, FOR OPERATION AND MAINTENANCE OF THE IMPERIAL BEACH SPORTS PARK BY THE CLUB

THIS AGREEMENT ("Agreement") is made and entered into this 16th day of Apr. 1, 2014, by and between the City of Imperial Beach ("CITY"), a municipal corporation, and The Boys & Girls Club ("CLUB"), a California non-profit public benefit corporation. CITY and CLUB are hereinafter sometimes individually referred to as "party" and, collectively, as the "parties."

RECITALS:

WHEREAS, CITY is the owner of certain real property located at 425 Imperial Beach Boulevard, commonly referred to as the "Sports Park," as set forth in Imperial Beach Municipal Code section 12.56.010 ("the Property") as described in Exhibit A, which includes but is not limited to the Recreation Center, Skate Park, Outdoor Basketball Court, Picnic Tables, Playground/Tot Lot, and Parking areas (this Agreement excludes the ball fields on the southern portion of the Property as shown in Exhibit A); and

WHEREAS, CITY acknowledges that CLUB provides recreational, social and educational programs, services and activities to the general public, including the citizens of CITY and that CLUB is a well-respected charity in San Diego County; and

WHEREAS, CLUB has a unique expertise and extensive experience in administering sports and recreation programs in addition to institutional knowledge obtained from running sports and recreation programs throughout San Diego County; and

WHEREAS, CLUB has previously operated the Property and provided recreational programs; and

WHEREAS, this Agreement will provide the residents of CITY with more, and better, sports and recreation programs than are offered currently by CITY and by CITY employees; and

WHEREAS, City Council finds and declares that the services provided by CLUB under this Agreement are sufficiently technical in nature that they require specialized training and expertise, and constitute professional services within the meaning of Imperial Beach Municipal Code section 3.04.160; and

WHEREAS, the City Council finds and declares that the services provided by CLUB under this Agreement could not feasibly be provided by CITY employees, and constitute specialized services; and

WHEREAS, CITY desires that CLUB enter into this Agreement to enhance its recreation programs within Imperial Beach, the terms and conditions of which are expressed herein; and

WHEREAS, in consideration of CITY entering into this Agreement with CLUB, CLUB shall provide defined sports and recreation programming to the public, and shall assume responsibility for the maintenance and operation of the Property, the terms and conditions of which are expressed herein; and

WHEREAS, the Property is primarily intended for the benefit of City of Imperial Beach residents, and the purpose of this Agreement and the Property is to preserve the health and well-being of Imperial Beach residents; and

WHEREAS, this Agreement supersedes all prior written and/or oral agreements, statements or other matters by and between CITY and CLUB related to the Property.

NOW, THEREFORE, in consideration of the terms and conditions set forth, the parties hereby agree as follows:

I. TERM

- A. Commencement:** The term of this Agreement shall be from the commencement date of this Agreement on April 16, 2014 ("Commencement Date") until June 30, 2015 ("Initial Term"), unless otherwise modified by mutual written agreement of the parties. It is understood and agreed that CLUB's ability to use the Property is contingent upon the fulfillment of its obligations and covenants contained in this Agreement.
- B. Renewal Option:** At the end of the Initial Term of this Agreement, the parties have the option to renew this Agreement by mutual agreement for two (2) additional two (2) year periods ("Renewal Term") to correlate with the bi-annual budget cycle of City. Each Renewal Term may be exercised by CLUB providing written notice to CITY at least six (6) months prior to the expiration of the existing term of the Agreement and CITY will then consider CLUB's performance under the provisions of this Agreement in deciding whether or not to approve a renewal term.
- C. Termination:** This Agreement may be terminated without cause by either party with six [6] months advance written notice to the other party.
- D. Holdover:** CLUB shall have no rights of holding over after expiration or termination of the Agreement.
- E. Surrender of Facilities:** Upon termination or expiration of this Agreement, CLUB shall surrender all buildings, replacements, changes, additions and improvements constructed or placed by CLUB thereon, with all equipment or apparatus in or appurtenant thereto, except all movable fixtures [not including equipment or apparatus] installed by CLUB, to

CITY in a serviceable, safe and sanitary condition and good order and repair, except reasonable wear and tear. If any removal of such personal property by CLUB results in damage to the remaining improvements on the Property, CLUB agrees to repair all such damage at their sole cost and expense.

F. Surrender of Records: Upon termination or expiration of this Agreement, CLUB shall deliver to CITY copies of all files, plans, records, registers and other papers and documents which may be required for the proper operation and management of the Property, except those files or documents that may contain confidential information that must be protected by CLUB. CLUB shall surrender the Property free and clear of all liens and encumbrances, except those existing on the Commencement Date of this Agreement or those approved in writing by CITY. It is understood that CITY shall be entitled to a mandatory injunction to enforce this provision.

II. PROPERTY SUBJECT TO THE OPERATING AGREEMENT

A. The Property: For the purposes of operating Sports Park for the benefit of the citizens of Imperial Beach, CITY hereby delivers exclusive possession of the Property as depicted on Exhibit A subject to any covenants, conditions, and restrictions listed in this Agreement (including but not limited to the requirement that CLUB hold certain areas of the Property open to the public for public use in Section III(L); the existing lease mentioned under Section II(G) of this Agreement; and any easements or other encumbrances in the title report attached as Exhibit G) to CLUB and CLUB agrees to operate the Property, which includes but is not limited to the Recreation Center, Skate Park, Outdoor Basketball Court, Picnic Tables, Playground/Tot Lot, and Parking areas.

B. Acceptance of Property: CLUB and CITY will conduct a preliminary walk through to identify the existing condition of the Property and equipment. An inventory of condition will be prepared and attached hereto as Exhibit D. Following the walk through, CLUB accepts the Property in an "AS IS" condition as of the Commencement Date of this Agreement as established by Section I(A), subject to the limitations in this Section and unless otherwise provided for under the terms of the Agreement. By signing this Agreement, CLUB represents and warrants that it has independently inspected the Property and made all tests, investigations and observations necessary to satisfy itself of the condition of the Property. CLUB agrees it is relying solely on such independent inspections, tests, investigations and observations in making this Agreement. CLUB further acknowledges that it does not hold CITY responsible for any defects in the Property and that CITY has made no representations or warranties of any kind, express or implied, with respect to the Property. CLUB's obligations under this Agreement shall not be diminished on account of any defect in the Property, any change of condition, or any damage occurring on the Property except as provided in this Agreement.

C. Representations: CITY has made no representations or warranties, expressed or implied, with respect to the Property and CLUB shall acquire no rights, easements or

licenses in or to the Property by implication or otherwise except as expressly set forth in this Agreement. CLUB understands that this Agreement is solely an operating agreement and the CITY is not granting any real property rights or interests to CLUB by entering into this Agreement. CITY represents that it has full authority and ability to enter into this Agreement.

D. Public Property: CLUB understands that the Property that is the subject of this Agreement is owned by the City of Imperial Beach and is public property.

E. Subsurface Rights: CITY hereby reserves all rights, title and interest in any and all subsurface rights, including but not limited to natural gas, oil, minerals, and/or other hydrocarbon materials or substances and water under, on or within the Property, without the right of surface entry.

F. Easements: CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Property for utilities or access as it deems advisable for the public good.

G. Cricket Wireless Telecommunications Facility: The wireless telecommunications facility located in the area shown on Exhibit E is the subject of a lease agreement between CITY and Cricket Wireless. This facility shall remain under the leasehold of CITY and shall be maintained by Cricket Wireless pursuant to the terms of the lease between CITY and Cricket Wireless. CITY shall retain any and all rights to the monthly payment made by Cricket Wireless to CITY pursuant to said lease agreement.

H. CITY Right to Enter: CITY reserves and shall have the right to enter the Property at any time in response to an emergency and at reasonable hours, upon prior reasonable notice to CLUB for the purpose of viewing and ascertaining the condition, for making necessary repairs, or developing municipal resources and services, to protect its interest in the Property, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that the Property is not in a serviceable, safe, healthy and sanitary condition, CITY shall have the right but not the duty, after ten (10) days' written notice to CLUB, to have any necessary maintenance or repair work done at the expense of CLUB. Further, if at any time CITY determines that Property is not in a serviceable, safe, healthy and sanitary condition, CITY may at its option, upon ten (10) days' notice, require CLUB, at their expense, to file with CITY a faithful performance bond to assure prompt correction of any condition which is not serviceable, safe, healthy or sanitary. If CLUB does not obtain the performance bond within 10 days of receiving the request, the City has the option to obtain the bond and charge the cost of the bond to CLUB. The rights reserved in this section shall not create any obligations or duties on CITY or increase obligations elsewhere in this Agreement imposed on CITY, nor do any rights reserved in this section limit any authority City may have in administering and enforcing state or local laws, regulations, or ordinances.

III. CLUB RESPONSIBILITIES AND OPERATIONAL REQUIREMENTS

- A. Operation Fee:** As an operation fee, CLUB shall: (i) pay CITY \$1.00 per year in advance, (ii) modify and maintain the Property at CLUB's sole cost, and (iii) provide to the general public and citizens of Imperial Beach recreational, social and educational programs at a desirable level.
- B. Use and Programming:** It is expressly agreed that the Property to be operated by CLUB for the purpose of establishing, installing, maintaining and operating the Property to provide, at a minimum, the sports and recreation programming set forth in Exhibit B. Use of the Property for activities other than park and recreation activities are strictly prohibited pursuant to deed restrictions on the Property. Any CLUB programs offered in addition to those listed in Exhibit B are subject to the approval of the City Manager, or the City Manager's designee. No approval required by this Agreement shall be unreasonably withheld.
- C. Hours of Operation:** CLUB, with written consent of CITY which shall not be unreasonably withheld, shall be responsible for establishing hours of operation for all activities other than those areas of the Property required to be open to the public, as set forth in Section III (L).
- D. CLUB Employees:** CLUB shall provide an experienced and well-qualified on-site supervisor to oversee all operations conducted by CLUB at the Property. CLUB shall ensure that its employees are well-trained and shall at all times conform to all applicable rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by CITY. CLUB shall maintain a staff in adequate size and number, to CITY's satisfaction, to effectively operate, maintain and administer all services offered. CLUB shall conduct background checks of its prospective employees, including but not limited to criminal fingerprint clearance through the Department of Justice.
- E. Equipment:** CITY retains the right to require CLUB to discontinue the use of those items that are of a quality or nature unacceptable to CITY.
- F. Fee Schedule:** CLUB shall at all times maintain a complete list or schedule of the prices and charges for all goods or services, or combinations thereof, supplied to the public on or from the Property whether the same are supplied by CLUB or by concessionaires, permittees or licensees. Fees and rates, and any adjustments thereto shall not exceed the cost of providing the services, which includes any regular and acceptable overhead costs. Discounted fees for all memberships, goods and services shall be established for City of Imperial Beach residents (residency to be determined by the CLUB). CLUB shall establish scholarships based on financial need, for members of the public who do not have the ability to pay the established fees. Any fees to be charged are subject to the following exceptions:

1. Skate Park: CLUB shall operate the Skate Park as a public, non-profit facility, in compliance with the terms of a grant agreement between CITY and the Tony Hawk Foundation attached hereto as Exhibit F, which provided funding for construction of the park and in compliance with Imperial Beach Municipal Code Chapter 12.56. CLUB may charge fees for use of the Skate Park which are not inconsistent with these requirements. CITY prefers to allow the Skate Park to be used free of charge, except special events (i.e. competitions, exhibitions, etc.). Any fee charged for the use of the Skate Park by CLUB shall include a discounted Skate Park fee for City of Imperial Beach residents. CLUB shall be responsible to reimburse the CITY for the cost of any grant funds CITY is required to repay to the Tony Hawk Foundation as a result of CLUB's operation of the Skate Park.

- G. Improvements:** This Agreement is executed with the understanding and agreement that CLUB may find it necessary to make certain improvements to the Property in order to provide the required programming to the public. CLUB covenants and agrees that its operations, including any needed improvements to the Property, must be established, improved, and paid for wholly at the expense of CLUB, except as otherwise specified in this Agreement. CLUB shall diligently pursue any necessary improvements, provided however that CLUB shall be granted an extension for the completion of any modifications required under this Agreement if delay is caused by reason of strikes, fire, acts of God or other events beyond the control of CLUB, or unless the parties agree otherwise in writing. All improvements to the Property by CLUB are subject to the prior written approval of the City and are subject to any local, state or federal permits or building requirements. Within sixty (60) days following a request from CITY, CLUB shall furnish CITY with a complete set of "as built" plans for any improvements done by CLUB.
- H. Prevailing Wages:** CLUB shall, when required by law, pay prevailing wages for public works performed on the Property. As a material part of this Agreement, CLUB agrees to assume all risk and liability arising from any decision by CLUB or any contractor or subcontractor of CLUB not to pay prevailing wages for work required by this Agreement as evidenced by the requirements of Section IX(A)(1) of this Agreement.
- I. Contribution by City:** CITY agrees to pay the water and electricity costs for the Property until June 30, 2015. After June 30, 2015, Club and City will determine how much, if any, of the utility costs will be paid by City during the preparation of the Imperial Beach Two Year Municipal Budget. Additionally, City will provide up to \$10,000, per fiscal year, in scholarships for qualified residents who would otherwise not be able to participate. Such residents will be required to submit a request to CITY for consideration. Scholarships will be provided in accordance with policies and procedures of CITY and funds given directly from CITY to CLUB.
- J. Maintenance and Operation:** Except as specifically provided in Section III(I) above, as part of the consideration for permission to operate and use the Property, CLUB agrees to assume full responsibility and cost for all maintenance and operation of the Property

described in Exhibit A, including minor and routine maintenance, and major maintenance and repair, up to \$1,000 of all facilities, fields and buildings on the Property, in consultation with CITY. The Property shall be maintained in a condition satisfactory to CITY throughout the term of this Agreement. CLUB will conduct the repair and maintenance, including interior and exterior of buildings, equipment and apparatus, in conformity with all applicable laws, including the Prevailing Wage Law and the Public Contract Code. CLUB will ensure that the entire Property and all equipment and exterior landscaping are maintained in a safe and aesthetically pleasing manner, as established by (i) health and safety codes, (ii) standards established by exemplary facilities of a similar type, and (iii) CITY. CLUB will make general maintenance repairs within seven working days, and will make emergency (safety-related liabilities) repairs immediately. CLUB will provide custodial services and routine maintenance services for the Property. Should CLUB determine that the Property, in whole or in part, must be closed due to repair, renovation or maintenance, CLUB shall give CITY thirty (30) days advance notice prior to such closure and discuss ways to mitigate any impacts of such closure, unless an emergency condition exists, in which case, the CLUB will make a good faith effort to give CITY notice of the closure within twenty-four (24) hours of learning of the emergency condition.

- K. City Employees:** At the time of this Agreement, CITY has employees currently working at the Sports Park (hereinafter "Current Employees") whose names and contact information shall be provided to CLUB. CLUB shall offer each of the Current Employees the opportunity to interview for employment with CLUB. Further, the Current Employees shall receive priority for employment with CLUB where a Current Employee meets the qualifications and requirements for a position, as designated by CLUB.
- L. Public Access to Programs/Events:** Members of the public shall not be required to join CLUB (Boys and Girls Club or any affiliate or subset of the parent organization) in order to access any program and/or events offered at the Property by or supported by CLUB or its associates, contractors, or others acting on its behalf. Nonetheless, the CLUB may charge daily and other use fees as provided in this Agreement. CLUB shall not charge the public for parking. The Playground and Tot Lot portions of the Property as described on Exhibit C shall be open to the public free of charge at all times that the Property is open to the public, unless specifically reserved for a special event approved by CLUB. At the time of execution of this Agreement, the open hours for the Property are 7:00 a.m. until 10:00 p.m., pursuant to Imperial Beach Municipal Code section 12.56.020(X), which may be amended from time to time. The areas of the Property that are required to remain open to the public at all times that the park is open to the public are depicted in Exhibit C.
- M. Evaluation/Annual Reports:** On or about the first anniversary of the Commencement Date and then annually thereafter, CLUB shall provide annual reports to the CITY denoting Imperial Beach participant numbers, total participant numbers, events coordinated, capital projects completed, budget, next year operating and maintenance

plan and fee schedule, and any other pertinent statistics. CLUB shall provide CITY a written report on the first ninety (90) days of operation within the first six (6) months of this Agreement, which report shall include the same information as required in the annual report. On or about the first anniversary of the Commencement Date and then annually thereafter, CITY shall evaluate CLUB's performance in fulfilling its responsibilities under this Agreement. CITY and CLUB will mutually establish criteria to be used in performing this evaluation of CLUB's services. The evaluation shall include the CLUB's professional evaluation of current programs and the needs of City of Imperial Beach residents so that the CLUB and the CITY can discuss opportunities to further expand or modify services to meet the most current needs of the community.

- N. Use by Others:** The CLUB may allow short term recreational use of the Property to other groups or organizations, subject to regulations and fees as imposed by CLUB and in accordance with Imperial Beach Municipal Code Chapter 12.56.

IV. TAXES AND UTILITIES

- A. Taxes:** CITY shall not be obligated to pay any taxes, assessments or fees assessed or levied ("Impositions") upon the Property CLUB agrees to pay, before delinquency, all Impositions upon the Property.
- B. Payment before Delinquency:** Any and all Impositions and installments of Impositions required to be paid by CLUB under this Agreement shall be paid by CLUB at least ten (10) days before each such Imposition, or installment thereof, become delinquent, and the official and original receipt for the payment for such Imposition or installment thereof shall immediately be given to CITY.
- C. Payment by CITY:** Should CLUB fail to pay within the time specified in this Article any Impositions required by this Article to be paid by CLUB, CITY may, without notice to or demand on CLUB, pay, discharge, or adjust such imposition for the benefit of CLUB. In such event, CLUB shall, on or before the first day of the next calendar month following any such payment by CITY, reimburse CITY for the full amount incurred by CITY in so paying, discharging, or adjusting such imposition together with interest thereon at the highest permissible legal rate per annum, from the date of payment by CITY until the date of repayment by CLUB.
- D. Utilities:** Except as provided in Section III (I) above, CLUB is responsible for the cost of all utilities necessary for operation of the Property, including but not limited to water, sewer, cable, solid waste removal, telephone and electricity.

V. REPORTS / RECORDS

- A. Annual Program Financial Report:** Commencing no later than July 31st of each year after CLUB assumes management and operation of the Property, CLUB shall provide a

written accounting to CITY for the previous calendar year of all (i) fees, appropriate portion of CLUB membership fees and other income (excluding donations and grants) hereinafter called "Property income", and (ii) costs of repair, maintenance, expansion, renovation and operation hereinafter called "Property costs." Any excess of annual Property income over Property costs shall be held by CLUB and accounted for in an account which may be used by CLUB for the following Property-related purposes: operation and program costs, repair, maintenance, expansion, renovation, equipment or the prior year's deficit, if any. Any excess of annual Property costs over annual Property income shall be at cost to CLUB. Each such accounting shall be pursuant to generally accepted accounting principles as applied consistently to all CLUB branches and operating units, and shall be accompanied by CLUB's written certification that the accounting is accurate and complete.

- B. Inspection of Records:** CLUB agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine CLUB's compliance with this Agreement. These records and accounts will be complete and accurate showing all income and receipts from the use of the Property. CLUB's failure to keep and maintain such records and make them available for inspection by CITY shall be deemed a default of this Agreement. CLUB shall maintain all such records and accounts for a minimum period of five (5) years following the expiration or termination of this Agreement.

VI. COMPLIANCE WITH LAW

CLUB shall at all times in the use, maintenance, occupancy and operation of the Property comply with all applicable laws, statutes, ordinances and regulations of CITY, County, State and Federal governments at CLUB's sole cost and expense, whether or not said laws are expressly stated or referred to herein. This shall include, but not be limited to, compliance with the provisions of the Imperial Beach Municipal Code Chapter 12.56 related to the use of public parks and recreation facilities. In addition, CLUB shall comply with any and all notices by CITY under the authority of any such law, statute, ordinance or regulation.

VII. DEFAULTS AND REMEDIES

- A. Default:** The following shall be treated as events of default by CLUB:

1. Failure to perform any covenant or condition required by this Agreement and failure to cure such default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, failure to commence to cure the default(s) within said thirty (30) day period diligently pursue such cure to completion; or
2. Becoming insolvent, or voluntarily filing, or having involuntarily filed against it, any petition under any bankruptcy or insolvency act or law; or
3. Being adjudicated bankrupt; or

4. Making a general assignment for the benefit of creditors.

In any of these events of default, CITY may, at its option, without further notice or demand upon CLUB or upon any person claiming rights through CLUB, immediately terminate this Agreement and all rights of CLUB and of all persons claiming rights through CLUB to the Property or to possession thereof and CITY may enter and take possession of the Property.

B. Remedies: If CITY shall be required to exercise its right to cure default(s) through litigation, CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

1. CITY may correct said default(s) and charge the costs thereof to CLUB, which shall be due and payable within thirty (30) days after presentation by CITY to CLUB.
2. CITY may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of CITY.

C. Abandonment: If CLUB has breached the Agreement and abandoned the Property for more than five (5) consecutive days, CITY may enforce all its rights and remedies hereunder including, but not limited to, the right to reenter and take possession of buildings, improvements, equipment and appurtenances thereto, and to recover any and all damages.

D. Endangerment: In the event CITY determines that CLUB's provision of service, program and/or staff endangers the public health, safety and/or welfare, CITY reserves the right to terminate such use immediately.

E. Waiver: Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager of CITY in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Agreement. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY and CLUB specifically agree that the Property is intended for the benefit of the citizens of Imperial Beach and that failure by CITY to discover a default to take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered.

F. Security Interest and Lien on Improvements And Personal Property: CITY shall have a security interest and first lien paramount to all others on every right and interest of CLUB in and to this Agreement, and on any building or improvement on or thereafter

placed on the Property, and on any furnishings, equipment, fixtures or other personal property of any kind belonging to CLUB, or the equity of CLUB therein, on the Property. The security interest and lien are granted for the purpose of securing considerations, taxes, assessments, charges, liens, penalties, and damages to be paid by CLUB, and for the purpose of securing the performance of all of CLUB's obligations under this Agreement. The security interest and lien shall be in addition to all rights of CITY given under statutes of this state, which are now or shall hereinafter be in effect.

VIII. EMINENT DOMAIN

- A. **Taking:** This Agreement is contingent upon the Property being owned by the City of Imperial Beach. If the Property or portion thereof is taken through condemnation proceedings or under threat of condemnation by another public authority with the power of eminent domain, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- B. **Award:** All monies awarded in any such taking shall belong to CITY. In the event CITY is not the condemning authority, CITY shall have no liability to CLUB for any award not provided by the condemning authority.
- C. **Transfer:** CITY has the right to transfer CITY's interest in the Property in lieu of condemnation to any authority entitled to exercise the power of eminent domain.
- D. **No Inverse Condemnation:** The exercise of any CITY right under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation so long as such rights do not unreasonably or substantially interfere with CLUB's operations.
- E. **Relocation Assistance:** CLUB agrees that nothing contained in this Agreement shall create any duty in CITY for relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16 of the Government Code, as same may be amended or supplemented, upon the expiration or earlier termination of this Agreement.

IX. MECHANICS' LIENS; STOP NOTICES

- A. **Mechanics' Liens; Stop Notices:** CLUB shall pay, or cause to be paid, the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics Lien Law in effect at the place of construction, done by it, or caused to be done by it, on the Property, and for all materials furnished for or in connection with any such work. If any lien or stop notice is filed against the Property, CLUB shall cause the lien or stop notice to be discharged of record within one hundred eighty (180) days after it is filed. If improvements, alterations or repairs are made or are caused to be made to the Property by CLUB, and a lien or notice of lien is filed, CLUB shall within five (5) days of such filing either:

1. Take all actions necessary to record a valid release of lien; or
 2. File with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- B. Indemnification:** CLUB shall indemnify, defend, and hold CITY harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for CLUB or persons claiming under CITY.
- C. Notice of Lien or Stop Notice:** Should any claim of lien or stop notice related to CLUB's work of improvement of the Premises be filed against the Premises or any action be filed against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or stop notice or action shall immediately give the other party written notice thereof.
- D. Notice of Nonresponsibility:** CITY or its representatives shall have the right to post and keep posted on the Premises notices of nonresponsibility or such other notices which CITY may deem to be proper for the protection of CITY's interest in the Premises. CLUB shall, before the commencement of any work which might result in any such lien or stop notice, give to CITY written notice of its intention to do so in sufficient time to enable posting of such notices.

X. INDEMNIFICATION

A. Hold Harmless and Indemnification:

1. CLUB hereby indemnifies, defends, and holds harmless CITY and its Council members, agents, officers, employees and volunteers from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected with an act or omission of CLUB, or an agent, invitee, guest, employee, or anyone in, on or about the Property, with respect to the Property, the operations or services under this Agreement, or with respect to the application of any of CLUB's policies to activities or operations at the Property, including, but not limited to, liability, expense, and claims for: bodily injury, death, personal injury, or property damage caused by negligence, creation or maintenance of a dangerous condition of property, breach of express or implied warranty of product, defectiveness of product, loss of use, or claims pertaining or related to the release or use of hazardous materials, including but not limited to those listed in 49 CFR 172.101; intentional infliction of harm, including any workers' compensation suits, compliance with prevailing wage and public contracting requirements, compliance with tax laws, liability, or expense, arising from or connected with services performed by on behalf of CLUB by any person pursuant to this Agreement;

infringement of a patent or copyright or disclosure of a trade secret; and violation of state and federal antitrust laws; provided, however, that (1) nothing herein shall relieve CITY from liability to the extent that such liability arises from CITY's sole established negligence or willful misconduct and (2) nothing herein shall relieve CITY from liability to the extent that such liability arises solely from CITY operations conducted on the Property. For purposes of this indemnity clause, "Property" shall include all portions of the Property described in Exhibit A and Exhibit E. This indemnity shall not require payment of a claim by CITY or any of its Council members, officers, employees, agents or volunteers as a condition precedent to CITY's recovery hereunder. CLUB's obligation to indemnify hereunder shall not be restricted to insurance proceeds, if any, received by CITY and its Council members, officers, employees, agents and volunteers.

2. CLUB shall at all times save CITY free and harmless and indemnify CITY against all claims for labor and materials in connection with operations, improvements, alterations, or repairs to the Property and the costs of defending against such claims including attorney's fees.

B. Hazardous Materials:

1. **Hazardous Materials Laws-Definition:** As used in this Section X(B), the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., sec.9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., sec.1801 et seq.), and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., sec. 6901 et seq.), relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Property, soil and ground water conditions or other similar substances or conditions.
2. **Hazardous Materials – Definition:** As used in this Section X(B) the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:
 - a. is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
 - b. is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
 - c. gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or
 - d. is any other material or substance giving rise to any liability, responsibility or duty upon the CITY or CLUB with respect to any third person under any Hazardous Materials Law.

- 3. CLUB's Representations and Warranties:** CLUB represents and warrants that, during the Term of this Agreement or any extension thereof, CLUB shall comply with the following provisions of this Section unless otherwise specifically approved in writing by CITY, subject to the terms and conditions of CLUB's maintenance obligations provided elsewhere in this Agreement:
- a. CLUB shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Property by CLUB, its agents, employees, assigns, contractors or invitees, except as required by CLUB's permitted use of the Property in the normal course of operations;
 - b. Any handling, transportation, storage, treatment or usage by CLUB of Hazardous Materials that is to occur on the Property following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;
 - c. Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Property following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Property by CLUB at its sole expense, and any such discharge shall be promptly reported in writing to CITY, and to any other appropriate governmental regulatory authorities;
 - d. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by CLUB in the Property;
 - e. No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by CLUB on the Property without CITY's prior written consent;
 - f. CLUB shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Property in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of CITY;
 - g. CLUB shall promptly supply CITY with copies of all notices, reports, correspondence, and submissions made by CLUB to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws; and
 - h. CLUB shall promptly notify CITY of any liens threatened or attached against the Property pursuant to any Hazardous Materials' Law. If such a lien is filed against the Property, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Property pursuant to the lien, CLUB shall either: (a) pay the claim and remove the lien from the Property, or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to CITY in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to CITY in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of this Agreement, CLUB shall surrender the Property to CITY free of any

and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Property.

XI. INSURANCE

- A. Coverage:** Without limiting CLUB's indemnification of CITY, as provided above, CLUB shall take out and maintain at all times during the term of this Agreement, and shall require any contractors performing work on the Property to furnish, the following insurance at its sole expense:
- 1. Liability:** Public liability and property damage insurance in the amount of not less than \$1,000,000 per occurrence in the primary and \$2,000,000 per occurrence in the excess for a stackable amount of \$3,000,000 per occurrence. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CLUB or by authorized representatives of CLUB on or in connection with CLUB's use and operation of the Property.
 - 2. Automobile Liability:** Automobile liability insurance in the amount of not less than \$1,000,000 combined single limit in the primary and \$2,000,000 per occurrence in the excess for a stackable amount of \$3,000,000 per occurrence. At all times during the term of this Agreement, CLUB shall maintain automobile liability insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles in a form and with insurance companies acceptable to CITY.
 - 3. Workers' Compensation:** CLUB shall maintain California Workers' Compensation Insurance with statutory limits. CLUB shall provide the CITY with a certificate of Workers' Compensation Insurance coverage.
 - 4. Employer's Liability Insurance:** CLUB shall provide Employers' Liability insurance in the amount of, at least \$1,000,000 per accident for bodily injury and disease. CLUB shall provide the CITY with a certificate of Employers' Liability Insurance.
 - 5. Sexual Molestation Liability (SML) Insurance:** CLUB shall provide sexual molestation liability (SML) insurance in the amount of \$2,000,000 per occurrence or event with an annual aggregate limit of \$4,000,000.
- B. Conditions:** All insurance policies shall list CITY, its Council members, officers, employees, and agents as additional insureds, protect CITY as its interest may appear against reasonable legal costs in defending claims and shall not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California.
- C.** CLUB shall provide evidence of compliance with the insurance requirements listed above by providing certificates of insurance, in a form satisfactory to the Administrative Services Director of CITY. Copies of the insurance certificate will remain on file with CITY during the entire term of this Agreement. At least thirty (30) days prior to the expiration of each certificate, CLUB shall furnish a certificate showing that a new or extended policy has been obtained which meets the terms of this Agreement. For any

claims related to this Agreement, CLUB's insurance shall be primary insurance as respects CITY, its officers, officials, employees, agents, representatives, and/or volunteers.

- D. Acceptable Insurance Companies:** Insurance carriers shall be qualified to do business in California and maintain an agent for service of process within the State. Such insurance carriers shall have not less than an "A-" policy holder's rating and a financial rating of not less than "Class VII" according to the latest Best Key Rating Guide unless otherwise approved by CITY.
- E. Deductibles and Self-Insured Retentions:** Any deductible or self-insured retention in excess of \$25,000 must be declared to and approved by CITY prior to the execution of this Agreement, but may be adjusted in CITY's discretion over the term of this Agreement for inflation.
- F. Modifications:** CITY, at its discretion, may reasonably require the revision of amounts of coverage at any time during the term by giving CLUB sixty (60) days prior written notice. CITY's requirements shall be designated to assure protection from and against the kind and extent of risk existing on the Property. CLUB also agrees to obtain any additional insurance required by CITY for new improvements in order to meet the requirements of this Agreement.
- G. Accident Reports:** Within seventy-two (72) hours (twenty-four (24) hours for death or serious accidents), CLUB shall report to CITY any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to persons using the Property. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- H. Waste, Damage, or Destruction:** CLUB agrees to give notice to CITY of any fire or other damage that may occur at the Property within three days of such fire or damage. CLUB agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Property clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY.
- I. Failure to Comply:** If CLUB fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. CLUB shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within 30 days of payment stating the amount paid, names of the insurer and rate of interest. Said reimbursement and interest shall be paid by CLUB on the first day of the month following the notice of payment by CITY. Notwithstanding the preceding provision, if CLUB fails or refuses to take out or maintain insurance as required in this Agreement, or fails to provide the proof of insurance, CITY has the right

to declare this Agreement in default without further notice to CLUB and CITY shall be entitled to exercise all legal remedies in the event of such default.

XII. DAMAGE OR DESTRUCTION

- A. CLUB's Duty to Repair Casualty:** Except as provided in this section and subject to the terms and conditions of CLUB's maintenance obligations provided elsewhere in this Agreement, should the Property be damaged by fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature (Casualty), CLUB, at CLUB's sole cost and expense, shall, as expeditiously as reasonably possible, consult with CITY and repair any damages to the Property, and repair, restore and replace any such damaged or destroyed fixtures, improvements or personal property.
- B. Construction Provisions:** In the event of any reconstruction of the Property, fixtures or improvements required of CLUB pursuant to this Section, CLUB shall repair the Property, and repair or rebuild such fixtures and improvements, to substantially the same condition they were in immediately preceding such Casualty.
- C. No Abatement:** In the event of reconstruction, replacement or repair by CLUB pursuant to this Section as approved by CITY, CLUB shall continue its operations on the Property during any such period to the extent reasonably practicable from the standpoint of prudent business management, and in continuing compliance with applicable laws and regulations. CLUB shall not be entitled to any compensation or damages from CITY for loss of use of the whole or any part of the Property, CLUB's personal property or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement.

XIII. GENERAL PROVISIONS

- A. Entire Agreement:** This Agreement supersedes all prior agreements and understandings between the parties relating to the subject matter hereof. Neither of the parties has relied upon any oral or written representation or oral or written information given to it by any representative of the other party. All prior and contemporaneous agreements, representations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the parties hereto. Each party has relied on its own examination of the Property, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself. Each of the parties agrees that no other party, agent, or attorney of any other party has made any promise, representation or warranty, whatsoever, which is not contained in this Agreement. Failure or refusal of any party to read the Agreement or other documents, inspect the Property and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have

been based on these actions. No modification, amendment or alteration of this Agreement will be valid unless it is in writing and signed by all parties.

- B. Covenant Running With the Land:** This Agreement shall be binding upon and shall inure to the benefit of the parties, and their assigns, agents, servants, employees and successors in interest, including, but not limited to, any person or entity claiming title through CLUB to all or any portion of the Property. The benefits and burdens described herein constitute covenants running with the land for the benefit of the Property owned by CITY.
- C. Headings:** The headings of Sections of this Agreement have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions of this Agreement.
- D. Amendments:** The governing bodies of CITY and CLUB may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, and are signed by a duly authorized representative of each organization. Amendments shall not invalidate this Agreement, but may relieve or release either party from certain obligations contained herein.
- E. Additional Instruments to Be Executed:** The parties shall execute and deliver any instruments in writing necessary to carry out any agreement, term, condition, or assurance in this Agreement whenever occasion shall arise and request for such instruments shall be made.
- F. Counterparts:** This Agreement may be executed in counterparts and, when so executed by the parties, shall become binding upon them and each such counterpart will be an original document.
- G. Waiver:** No covenant, term or condition of this Agreement shall be deemed to be waived by any party hereto unless such waiver is in writing and executed by the party making the waiver. No waiver or a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained.
- H. Severability:** If any provision of this Agreement is held invalid, the Agreement shall not be affected thereby and shall nevertheless be in full force and effect to the fullest extent permissible by law.
- I. Successors And Assigns / Binding Effect:** CLUB shall not be entitled to assign or sublet all or any portion of its rights or obligations contained in this Agreement without obtaining the prior written consent of CITY, which consent shall not be unreasonably withheld. Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations

thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this Agreement which are applicable to the rights acquired. Any purported assignment or subletting without CITY's prior written consent shall be void.

- J. Governing Law and Venue:** This Agreement shall be construed in accordance with and governed by the laws of the State of California. This Agreement shall be deemed made and entered into San Diego County, which shall also be deemed to be the sole proper venue for any action or proceeding to this Agreement.
- K. Attorney's Fees:** In the event any action shall be instituted by CITY in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including reasonable attorneys' fees as fixed by the Court therein.
- L. Inconsistencies and Ambiguities:** This Agreement is to be deemed to have been prepared jointly by the parties hereto with advice of counsel and, if any inconsistencies or ambiguities exist herein, they shall not be interpreted or construed against any particular party as the drafter.
- M. Independent Contractor:** This Agreement by and between CITY and CLUB and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between CITY and CLUB. CLUB understands and agrees that all persons furnishing services for and on behalf of CLUB pursuant to this Agreement are, for purposes of liability, employees solely of CLUB and not of CITY.
- N. Nondiscrimination/Equal Opportunity:** CLUB, for itself, its successors and assigns and all persons claiming under or through it, covenants that it shall not discriminate against or segregate against any person or group of persons on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, in the operations, occupancy, use or enjoyment of the Property. CLUB shall adopt guidelines to ensure that neither CLUB nor any person claiming under or through it, will establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, licensees, employees or vendees in the Property or the improvements thereon. CLUB shall not prophesy or promote its creed to persons making use of the Property. CLUB further covenants to comply with all State and Federal nondiscrimination laws now or hereafter in effect. The foregoing covenants shall run with the leasehold. CLUB agrees to abide by CITY's equal opportunity policy as it exists or is amended to the extent that the program is applicable to this Agreement. A copy of the program effective as of the date of this Agreement is on file in the office of the City of Imperial Beach.

- O. Notices:** All notices, demands or other communications concerning this Agreement shall be directed to the following authorized representatives. Any party may change its address by a notice given to the other party.

CITY

City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932
Phone: (619) 423-8303
Attn: City Manager

CLUB

The Boys & Girls Club
847 Encina Avenue
Imperial Beach, CA 91932
Phone: (619) 424-2266
Attn: President

Any such notices shall be deemed given when deposited in the mail as required herein above and shall be deemed received 48 hours after being deposited as required herein. The person and the place to which notices are to be mailed may be changed by either Party by notice to the other.

- P. Authority:** Each party and its respective agents executing this Agreement warrants and represents that it has full power and authority to execute, deliver and perform the obligations under this Agreement, and that each party's performance hereunder has been duly authorized by requisite actions on the part of that party.
- Q. Time of Essence:** Time is of the essence of each and every provision of this Agreement.

IN WITNESS WHEREOF THE PARTIES HERETO have executed this Agreement on date first above written.

CITY OF IMPERIAL BEACH

Signature on File

ANDY HALL, CITY MANAGER

4/17/2014

Date

THE BOYS & GIRLS CLUB

Signature on File

PRESIDENT

4/17/2014

Date

ATTEST:

Signature on File

JACQUELINE M. HALD
CITY CLERK

EXHIBIT A
DESCRIPTION OF THE PROPERTY SUBJECT TO THE OPERATING AGREEMENT

- Note (ball field area to be removed as indicated in attached map)

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, City of Imperial Beach and described as follows:

Parcel 1:

The North 390.00 feet of the West Half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey.

Excepting therefrom the West 960.00 feet thereof.
Also excepting therefrom any and all street openings.

Parcel 2:

The South 515.00 feet of the North 905.00 feet of the East 423.00 feet of the West half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey.

Parcel 3:

That portion of the West half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey More particularly described as follows:

Commencing at the Northwest corner of Lot 24 of Seaside Point Palisades Unit No. 2, according to Map thereof No. 8748, filed December 20, 1977, in the Office of the County Recorder of San Diego County; thence along the Westerly prolongation of the North line of said Lot 24, due West a distance of 16.80 feet to a point on the East line of the West half of the Southeast quarter of said Section 30, said point being 733.00 feet from the Northeast corner of the West half of the Southeast quarter of Section 30; thence along said East line South 00° 08' 32" East a distance of 172.01 feet to a point on the South line of the South 515.00 feet of the North 905.00 feet of said West half as described in Deed recorded March 1, 1972, file/Page No. 72-49370, of Official Records of the County Recorder of San Diego County, said point being the true point of beginning; thence along said South line North 89° 49' 07" West (record North 89° 06' 47" West per record of Survey Map No. 8470), a distance of 289.84 feet; thence South 03° 35' 22" East a distance of 78.92 feet ;thence South 33° 17' 15" East a distance of 57.80 feet; thence South 72° 56' 56" East a distance of 9755 feet; thence North 84° 09' 11" East a distance of 161.09 feet more or less to a point on the East line of said West half; thence along said East line North 00° 06' 32" West a distance of 138.36 feet to the true point of beginning.

APN: 632-400-35-00 and 632-400-33-00
(End of Legal Description)

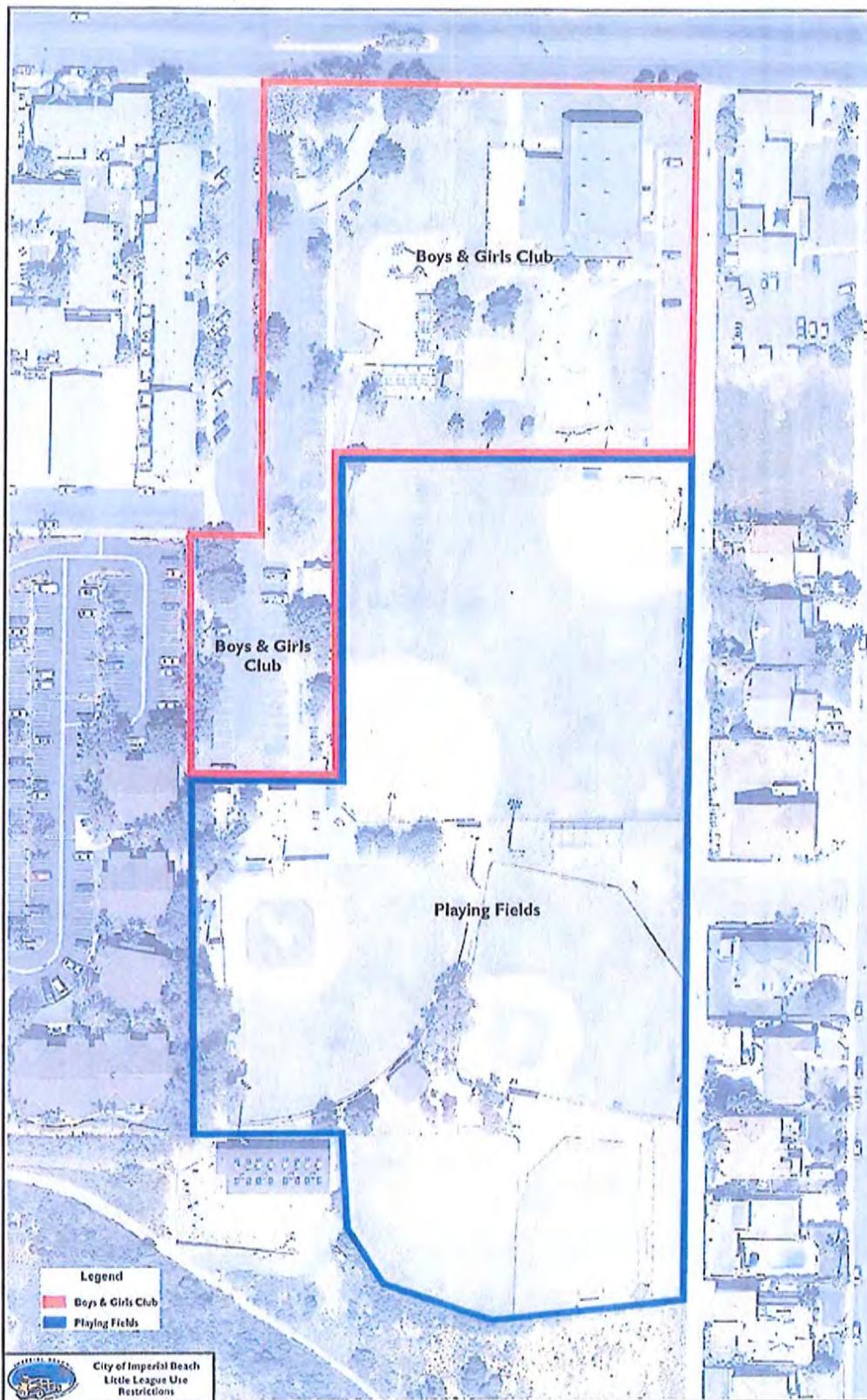


EXHIBIT B
MINIMUM PROGRAMMING TO BE PROVIDED BY CLUB



BOYS & GIRLS CLUBS
 of South County

IMPERIAL BEACH SPORTS PARK
SPRING CLASS SCHEDULE

Annual Membership Fees: \$40 Individual Fee / \$60 Family Fee

DANCE	AGES	INSTRUCTOR	DAY	TIME	MEMBER/RES/NON RES	SESSION
Ballet /Tap-Beginning	3-4	Yesenia	TBD	TBD	\$40/\$45/\$55	10 WEEK
Ballet /Tap-Intermedia	5-7	Yesenia	Thurs	5-5:45pm	\$40/\$45/\$55	10 WEEK
Ballet /Tap-Intermedia	8-10	Yesenia	Wed	5-5:50pm	\$40/\$45/\$55	10 WEEK
Zumba	12+	Abby	Mon & Thurs	7-8pm	\$40/\$45/\$55 (\$7 drop in)	MONTHLY

MARTIAL ARTS	AGES	INSTRUCTOR	DAY	TIME	MEMBER/RES/NON RES	SESSION
Tae Kwon Do I	3-5	Kim	Tues & Thurs	4-4:30pm	TBD	MONTHLY
Tae Kwon Do II	6+	Kim	Tues & Thurs	5-6pm	TBD	MONTHLY

LIFE SKILLS	AGES	INSTRUCTOR	DAY	TIME	MEMBER/RES/NON RES	SESSION
Basic Computer Skills	18 +	STAFF	1/WEEK	TBD	FREE	8 WEEK
Career Readiness	16+	STAFF	1/WEEK	TBD	FREE	8 WEEK

PHYSICAL FITNESS	AGES	INSTRUCTOR	DAY	TIME	MEMBER/RES/NON RES	SESSION
Yoga I	4-7	Minnie	1/WEEK	TBD	TBD	MONTHLY
Yoga II	8-12	Minnie	1/WEEK	TBD	TBD	MONTHLY
Yoga III	12+	Minnie	1/WEEK	TBD	TBD	MONTHLY
Gymnastics	3-5	Daniela	Mon	TBD	\$40/\$45/\$55	10 WEEK
Gymnastics	6-10	Daniela	Thurs	4:15-5pm	\$40/\$45/\$55	10 WEEK
Boot Camp	16+	Marlon	TBD	TBD	\$100/\$105/\$110	MONTHLY

PERFORMING ARTS	AGES	INSTRUCTOR	DAY	TIME	MEMBER/RES/NON RES	SESSION
Guitar	6+	TBD	1/WEEK	TBD	\$35/\$40/\$50	8 WEEK

ENRICHMENT	AGES	INSTRUCTOR	DAY	TIME	MEMBER/RES/NON RES	SESSION
Mommy & Me	2-5	Sandra	Mon	10-11am	\$40/\$45/\$55	10 WEEK

SPORTS	AGES	INSTRUCTOR	DAY	TIME	MEMBER/RES/NON RES	SESSION
Youth Basketball	12-14	TBD	1/WEEK	TBD	\$40/\$45/\$55	SEASONAL
Adult Basketball	18+	TBD	1/WEEK	TBD	\$250/\$300 per team	SEASONAL

Seniors	AGES	INSTRUCTOR	DAY	TIME	MEMBER/RES/NON RES	SESSION
Yoga IV	55+	Minnie	1/WEEK	TBD	TBD	MONTHLY
Zumba II	55+	Abby	Mon & Thurs	7-8pm	\$40/\$45/\$55 (\$7 drop in)	MONTHLY
Basic Computer Skills	55+	STAFF	1/WEEK	TBD	FREE	ON GOING
Social Hour	55+	STAFF	1/WEEK	TBD	FREE	ON GOING

DROP-IN ACTIVITIES	AGES	INSTRUCTOR	DAY	TIME	MEMBER/RES/NON RES	SESSION
Cooking	6-16	STAFF	1/MONTH	TBD	\$2/\$2/\$4	TBD
Dodgeball Night	6-16	STAFF	1/MONTH	TBD	\$2/\$2/\$4	TBD
Dances	11-16	STAFF	1/MONTH	TBD	\$2/\$2/\$4	TBD
Parent Night Out	6-12	STAFF	1/MONTH	6-10PM	\$10/\$15/\$20	TBD

Exhibit C
Property Held Open to the Public
Map/Description of Facilities

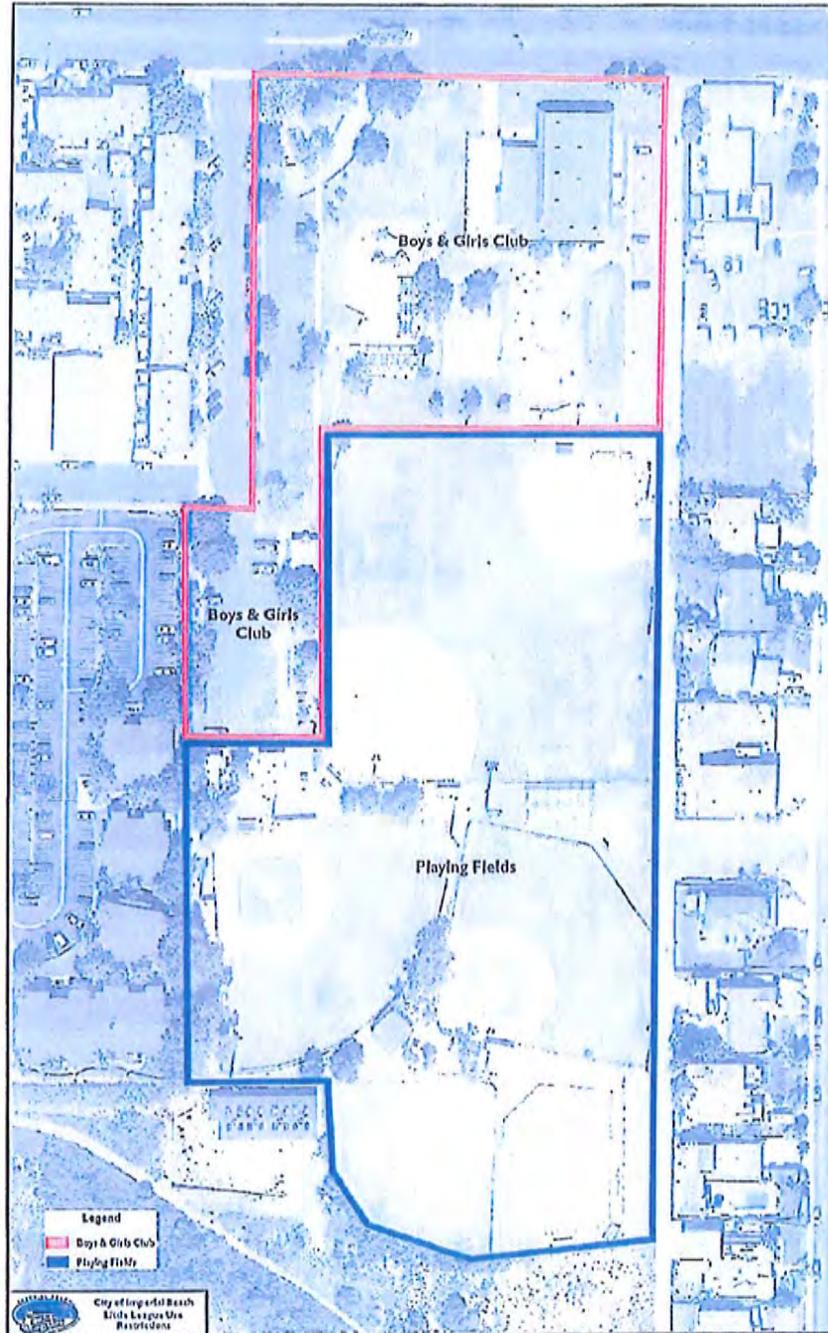


Exhibit D – Walk-Thru Inspection

EXHIBIT D - SPORTS PARK WALK THRU INSPECTION

1. Signage needs to be changed to Boys & Girls Club
2. Gym Fascia needs painted/wood rot needs replaced
3. Remove pine trees on south side of gymnasium. Water is leaching up lower portion of wall
4. South east corner of gym is cracked. PVC piping missing on top Southeast corner of gym, wiring exposed
5. Graffiti removed on South side of gym
6. Southwest entry door is stained with urination
7. Light/fence columns on patio are cracked
8. Caulking around lower joints of patio/building
9. Water heater drain is broken
10. Water heater vent need connection
11. Men's toilet drains slowly. Lines need to be inspected by video camera to determine problem
12. Music Room door/ wall need finished
13. New gym flooring is needed. Multi-purpose flooring such as flooring at BGC gym is suggested
14. Gym divider partition/curtain is needed to maximize recreation classes space
15. Gym storage door needs replaced
16. All gym lights need to be checked
17. Holes in gym storage ceiling
18. Gym water fountain not working properly
19. Spit sink adjustment is needed
20. Breakaway rims need installed on basketball backboards
21. Test mechanical operation of basketball backboards
22. Test mechanical operation of scoreboard
23. Test mechanical operation of heaters
24. Test mechanical operation of speakers
25. Test mechanical operation of fire alarms

Exhibit D – Walk-Thru Inspection

26. Games room counter door hinges need replaced
27. Dry wall under sink in kitchen area needs replaced
28. Games room ceiling tiles need replaced or painted
29. Missing exit light screens
30. Playground mats in Tot Area are missing and worn
31. Gazebo needs repainting
32. Meter box foundation needs replaced
33. Outside activities board needs removed or replaced
34. Is Skate Park unfinished? Identify purpose of grass area in skate park
35. Replace or remove goop on North west fascia
36. East side lighting needs checked
37. North side under eaves stucco is cracked
38. West wall gym entrance door needs replaced
39. NW corner roof - grease or mold
40. NW corner base is discolored
41. Tree trimming

EXHIBIT E
CELLULAR TOWER AGREEMENT WITH CRICKET COMMUNICATIONS

MF 852; CUP 060382; DR 060383
Site known as: Imperial Beach Sports Park
APN: 632-400-35
Cricket Site Identifier: SAN-749 Imperial Beach Park

NON-EXCLUSIVE LICENSE AGREEMENT FOR CELLULAR SITE

This Non-Exclusive License Agreement for Cellular Site (the "Agreement") is entered into as of the date indicated on the execution page, by the City of Imperial Beach, a municipal corporation with an address at 825 Imperial Beach Boulevard, Imperial Beach, California 91932 (the "City" and hereinafter referred to as "Grantor") and Cricket Communications, Inc., a Delaware corporation, with its principal office located at 10307 Pacific Center Court, San Diego, California 92121 (hereinafter referred to as "Grantee"). Pursuant to the terms hereof, Grantor hereby grants to Grantee, its successors and assigns, a License to enter upon certain property, as more particularly described in Exhibit 1 attached hereto and incorporated herein by reference (the "Property"), subject to the terms and conditions set forth in this Agreement:

WITNESSETH:

WHEREAS, the City owns that certain plot, parcel or tract of land, located at 425 Imperial Beach Boulevard, Imperial Beach, California 91932, in the County of San Diego, commonly known as the Imperial Beach Sports Park (referred to hereinafter as the "Property" and more particularly described in Exhibit 1 attached hereto and incorporated herein by reference).

WHEREAS, Grantee desires to use a portion of the Property in connection with its federally licensed communications business.

WHEREAS, Grantor desires to grant to Grantee the right to use said portion of the Property in accordance with the Non-exclusive License described herein.

WHEREAS, the Non-Exclusive License authorizes only the uses specified therein and requires the prior written permission of the City for any other use.

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

1. **GRANT OF LICENSE.** Grantor hereby agrees to permit Grantee to locate its Communication Facility (as defined below in Section 2) on a portion of the Property, as more particularly described and depicted in Exhibit 2, attached hereto and incorporated herein by reference. In connection with the Communication Facility, Grantor grants to Grantee a License to enter upon and/or use portions of the Property consisting of the following: (i) ground area space of approximately 91 square feet with dimensions measuring approximately 13' X 7' feet (the "Equipment Space") upon which Grantee will construct its underground vault station equipment; and (ii) the non-exclusive easement for reasonable access to the Equipment Space and existing telecommunications monopole, seven (7) days a week twenty-four (24) hours a day,

on foot or motor vehicle and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under or along a two (2) foot wide right-of-way extending from the existing monopole and existing SDGE power source, to the demised premises (said demised premises and right-of-way hereinafter collectively referred to as the "Premises") for access being substantially as depicted in Exhibit 2; provided that the access and use shall not interfere with Imperial Beach Sports Park related activities.

2. PERMITTED USE / OBLIGATIONS.

(a) Grantee may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair and replacement of its communication facility and related equipment, cables, accessories and improvements, which may include a suitable support structure for associated antennas, underground equipment shelters or cabinets and any other items necessary to the successful and secure use of the Premises (collectively the "Communication Facility") as approved in the City of Imperial Beach Conditional Use Permit 060382; such use may include the right to test, survey and review title on the Property (collectively, the "Permitted Use"). Grantor and Grantee agree that any portion of the Communication Facility that may be described on Exhibit 2 will not be deemed to limit Grantee's Permitted Use. Final approval of the initial installation of the Communication Facility shall be made based upon final drawings. Grantee has the right to make improvements, alterations or additions to the Premises ("Grantee Changes") appropriate for Grantee's use, subject to prior written approval by the Grantor, which approval shall not be unreasonably withheld, or delayed. Grantee agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility, including all requirements of the Grantor set forth in its Policies and Regulations concerning Cellular Telephone Facilities, a copy of which has been provided to Grantee, as hereafter amended or modified. Grantee has the right to, at its sole cost and expense, to modify, replace, or upgrade the Communication Facility within the Premises at any time during the term of this Agreement provided that said alterations of the Premises or actions taken by Grantee shall not violate Section 7 or Section 12 of this Agreement, shall not increase the burden upon the Premises or the Property, or materially change the shape, number or location of antennae or pole. Grantor reserves the right to increase the License Rent if the Grantor determines that any substitutions, modifications, or additions including, but not limited to, the number of antennae, antennae location, or antennae orientation materially alters the scope of License or project installation as described in Exhibit 2.

(b) As a condition of granting this license the Grantee shall install and maintain three (3) appropriately sized flood lights and one (1) security light to sufficiently illuminate the picnic and basketball court area of the Imperial Beach Sports Park to the Grantor's specifications and satisfaction.

(c) Upon completion of the Communication Facility, Grantee shall arrange for a radio frequency emissions test (the "Test") to be performed by an FCC-certified third party reasonably approved by Grantor, as required by Federal Communications Commission (the "FCC") regulations, which results shall be provided to Grantor in a written report. Grantee shall be responsible for the cost of performing the Test and submitting the third party written report of

monitoring results to Grantor. During the final year of the Initial Term (as defined below), and before the start of the second term, if any, Grantee shall arrange for another Test to be conducted and another written report to be submitted to Grantor, as specified herein.

(d) If the results of either of the Tests described in paragraph (c) above do not demonstrate compliance with FCC emissions standards, Grantor shall give Grantee written notice thereof, and Grantee shall bring the Communication Facility into compliance with FCC standards. The parties acknowledge and agree that the grant of this License is conditioned upon ensuring that Grantee's radio emissions fall within FCC standards. If the facilities of telecommunications licensees other than Grantee are located on the Property, only Grantee's radio frequency emissions shall be considered as the benchmark for compliance with FCC standards. Should Grantee be unable to comply with FCC standards within ninety (90) days after receiving Grantor's written notice of such non-compliance, Grantee shall discontinue use of its equipment that is causing such noncompliance. If Grantee fails to do so within such ninety (90) day period, Grantor shall have the right to terminate this License upon ten (10) day written notice.

(e) During the term of this License, Grantee shall conduct additional emissions tests as may be required by FCC regulations.

(f) Within ninety (90) days after the installation of Grantee's Communication Facilities, Grantee shall provide Grantor with as-built drawings of the Communication Facilities, which show actual location of all equipment and improvements consistent with Exhibit 2. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and antennae.

3. TERM.

(a) This Agreement and the License conveyed herein shall be in effect for five (5) years ("Initial Term"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the fifth annual anniversary of the Commencement Date occurs.

(b) This Agreement and the License will automatically renew for four (4) additional renewals of five (5) years each and, unless earlier terminated, shall remain in effect for up to twenty-five (25) aggregate years (each renewal term shall be referred to as an "Extension Term"). Each Extension Term shall be effective automatically but only if the terms and conditions set forth in Section 4 below are met; provided that Grantee does not notify Grantor in writing of its intention not to renew this Agreement at least ninety (90) days prior to the expiration of the then current Initial Term or Extension Term.

(c) If Grantee continues use of the License after the end of the Initial Term and any applicable Extension Term (the "Holdover Term"), Grantee's use of the Premises shall be subject to the same terms and conditions as this License and Agreement. Grantee shall continue to pay Grantor the same monthly amount set forth in Section 4 hereof on a month-to-month or yearly basis. The Holdover Term and this license to continue use during the Holdover Term may

be revoked by either party upon thirty (30) days written notice to the other party.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("Term").

4. RENT.

(a) Commencing on the later of (i) January 1, 2007, (ii) the date that Grantee commences occupation of the Premises, as evidenced by the storing of any tools or equipment on the Premises or the commencement of construction or any alteration of the Premises, or (iii) the date which is ninety (90) days following the issuance of a non-appealable Conditional Use Permit by the City of Imperial Beach for Grantee's use of the Property (the "Commencement Date"), Grantee will pay annual rental payment of Thirty Thousand and No/100 Dollars (\$30,000.00) ("Rent") to Grantor for the use of the Premises. Payments shall be made annually or in twelve (12) equal monthly installments, on or before the 5th day of each calendar month in advance. The monthly payment shall be an aggregate amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per month to be paid by Grantee in one check addressed and delivered to the City at the address indicated below. Rent will be prorated for any partial month. Grantee also agrees to pay the City a one-time payment in the amount of Seven Thousand Five Hundred Dollars (\$7,500), within sixty (60) days of the date on which the City signs this Agreement.

(b) Upon the commencement of each new calendar year, the Rent shall increase by any percentage increase which occurred in the Consumer Price Index ("CPI") for "All Items - All Urban Consumers" for the San Diego Metropolitan Statistical Area during the preceding year period. However, in no event shall the adjusted rent increase be less than four percent (4%) nor more than eight percent (8%) per year rounded to the nearest dollar (\$1.00). In the event that the above index is no longer published, the parties shall use the successor index, or if no successor index exists, the parties shall mutually agree on an equivalent index.

(c) Grantee shall pay Grantor a late payment charge of five percent (5%) of any payment which is not paid within ten (10) business days after the due date. In addition, any late payment shall bear interest at a rate of one and a half percent (1.5%) per month or the highest rate permitted by law.

5. APPROVALS.

(a) Grantor agrees that Grantee's ability to use the Premises is contingent upon the suitability of the premises for Grantee's Permitted Use and Grantee's ability to obtain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Grantee of its use of the Premises, including without limitation all permits required by the City, applications for zoning variances, zoning ordinances, amendments, special use permits, conditional use permits, and construction permits (collectively referred to as "Governmental Approvals"). Grantor authorizes Grantee to prepare, execute and file all required applications to obtain Governmental Approvals for Grantee's Permitted Use under this Agreement and agrees to reasonably cooperate with Grantee in preparing such applications.

(b) Grantee has the right to obtain a title report or commitment for a title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Grantee's choice at Grantee's sole cost and expense.

(c) Grantee may also obtain, at Grantee's sole cost and expense, soil boring, percolation, engineering procedures, environmental investigation or other tests or reports (collectively the "Tests") on, over, and under the Property, necessary to determine if the Grantee's use of the Premises will be compatible with Grantee's engineering specifications, system, design, operations or Governmental Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 14 of this Agreement after the applicable cure period;

(b) by Grantee upon written notice to Grantor, if Grantee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by Grantee; or if Grantee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(c) by Grantee on sixty (60) days written notice for any reason, so long as Grantee pays Grantor and City a termination fee equal to six (6) months Rent, at the then current Rent rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Grantee under any one or more of Sections 6(a), 6(b), 17, 18 or 19(c) of this Agreement;

(d) by Grantor upon eighteen (18) months' prior written notice by Grantor after the first five (5) year term, if Grantor needs the Premises to provide for the health, safety, and welfare of its citizens; provided, however, in the event any such notice of such termination is given, Grantor and Grantee shall use their best efforts to find a suitable alternative site on or near the Property to which Grantee's Facilities may be temporarily or permanently relocated. If a relocation site is agreed to, this License shall be amended accordingly.

(e) upon termination of this Agreement for any of the causes listed in this section or at the end of the Term of this Agreement, all interests herein conveyed shall be terminated automatically (no conveyance from Grantor to Grantee will be required) and all equipment shall be removed pursuant to Section 12 hereof.

7. **INTERFERENCE.**

(a) Except for any uses required under applicable law, Grantor will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use interferes with Grantee's Communication Facility. Grantor will notify

Grantee of any such proposed lease, license or other right, and Grantor may grant any third party the right to install and operate communications equipment on the Property so long as it has determined that such use will not create interference with Grantee's Communication Facility.

(b) Neither Grantee nor Grantor will use, nor will Grantee or Grantor permit its respective employees, licensees, invitees or agents to use, any portion of the Premises or the Property in any way which unreasonably interferes with each other's operations or the rights of either Grantor or Grantee under this Agreement. Grantor and Grantee will cause interference caused by either of them, respectively, to cease within seventy-two (72) hours after receipt of written notice of interference from the other party. In the event any such interference does not cease within the aforementioned cure period, then the party causing or permitting such interference shall cause the equipment causing such interference to be modified such as to eliminate the interference or to be removed, if modification is not successful in terminating the interference. The parties acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this Paragraph and therefore, either party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

8. INDEMNIFICATION.

Subject to Section 19(b) below, Grantee agrees to indemnify, defend and hold City and its respective governing board or council, officers, attorneys, agents and employees, collectively and individually, harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from the installation, use, maintenance, repair or removal of the Communication Facility or Grantee's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of the City, or their respective employees, agents or independent contractors.

9. WARRANTIES.

(a) Grantee and Grantor each acknowledge and represent to the other that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) The City, as applicable, represents and warrants that: (i) the Property is owned by the City in fee simple; (ii) the Property is not encumbered by any other liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Grantee's Permitted Use and enjoyment of the premises under the License and this Agreement; (iii) as long as Grantee is not in default then Grantor grants to Grantee sole, actual, quiet and peaceful use, enjoyment and possession of the Premises subject to the terms herein; (iv) City's execution and performance of this Agreement will be binding on the respective party after the other party's binding and valid execution thereof.

10. ENVIRONMENTAL.

(a) Grantee agrees it will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or at any time hereafter be in effect, that are now or were related to Grantee's activity conducted in, or on the Property.

(b) Grantee agrees to hold harmless and indemnify Grantor from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards of policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property or activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

(c) The indemnifications of this Section 10 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 10 will survive the expiration or termination of this Agreement.

11. ACCESS.

At all times throughout the Term of this Agreement, and at no additional charge to Grantee, Grantee and its employees, agents, and subcontractors, will have twenty-four (24) hour, seven (7) days a week pedestrian and vehicular access to and over a portion of the Property, from an open and improved public road, to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises, provided that such access does not interfere with Imperial Beach Sports Park activities as determined by Grantor.

12. REMOVAL/RESTORATION.

All portions of the Communication Facility brought onto the Property by Grantee will be and remain Grantee's personal property and, at Grantee's option, may be removed by Grantee at any time during the Term. However, the Grantor, in its sole discretion, may elect for the antenna pole, the facility used to store communications equipment, and related conduit to become the permanent property of the Grantor upon expiration or termination of this Agreement by notice to Grantee, in writing, no later than sixty (60) days following expiration or termination of this Agreement. Within one hundred twenty (120) days of the expiration or termination of this Agreement, Grantee will remove all improvements, including the antenna pole, facility used to store communications equipment, and related conduit, unless Grantor has elected to take permanent possession of said items, and return the Premises to their original condition on the

date of execution of this Agreement, normal wear and tear and loss due to casualty and other causes beyond Grantee's control excepted, unless such requirement is waived in writing by Grantor.

13. MAINTENANCE/UTILITIES.

(a) Grantee will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Grantor will maintain and repair the Premises and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Grantee will promptly repair any damage to the Property caused by Grantee or its agents.

(b) Grantee will apply and maintain an anti-graffiti coating of the Grantor's specification on their antenna pole up to a height of ten feet above ground. Grantee will remove any graffiti from their property within 48 hours following receipt of notice to Grantee. If graffiti is not removed by Grantee within 48 hours following receipt of notice to Grantee, Grantor will remove graffiti and bill Grantee cost of removal, the minimum charge being fifty (\$50) dollars per occurrence. Grantee shall provide Grantor with the name and telephone number of Grantee's representative for purposes of the notice in this Section 13(b). Within ten (10) days of a change in representative, Grantee shall notify Grantor of the new representative's name and telephone number.

(c) Grantee will be solely responsible for and promptly pay all utilities charges for electricity, telephone service or any other utility used or consumed by Grantee on the Premises. Grantor and Grantee will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Grantee or Grantor. In the event Grantee cannot secure its own metered electrical supply, Grantee will have the right, at its own cost and expense, to submeter from the Grantor, in which case Grantee's share of the electricity shall be "Rent" for purposes of Section 14 hereof. Grantee will pay on a monthly basis the current local utility company rate for submetered electric, after the meter is read by the Grantor and billed to Grantee. Grantor will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Grantor, of such services to be furnished or supplied by Grantor.

14. DEFAULT AND RIGHT TO CURE.

The following will be deemed a default by Grantee and a breach of this Agreement: (i) non-payment of Rent if such rent remains unpaid for more than thirty (30) days after receipt of written notice from Grantor of such failure to pay; or (ii) Grantee's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Grantor specifying the failure, provided that with respect to a non-monetary failure to perform, no default will be deemed to have occurred if, within such thirty (30) day period, Grantee commences a cure satisfactory to Grantor and makes progress to complete said cure in a manner reasonably satisfactory to Grantor, but no later than ninety (90) days from the date of the notice without prior written consent from Grantor. Delay in curing a default will be excused if due to causes beyond the reasonable control of Grantee. If Grantee remains in default beyond any

applicable cure period, Grantor will have the right to exercise any and all rights and remedies available to it under law and equity, including the right to cure Grantee's default and to charge Grantee the costs of said cure payable under the same terms and conditions as set forth in Section 4(c).

15. **ASSIGNMENT.**

Grantee may assign this Agreement at any time without Grantor's consent (i) to any of Grantee's partners or parent firms; (ii) to Grantee's successors-in-interest and their affiliates and subsidiaries; (iii) in connection with the sale, exchange, or other transfer of Grantee's FCC authorization for the geographic market area in which the premises are located or substantially all of Grantee's assets in the geographic market area where the premises are located; or (iv) in connection with any financing, loan, security interest, pledge, or mortgage of Grantee's property. Any other assignment or any subletting shall require Grantor's prior written approval, which approval shall not be unreasonably withheld, delayed, or conditioned.

16. **NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

City: City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, California 91932
Attention: City Manager's Office

Grantee at: Cricket Communications, Inc.
10307 Pacific Center Court
San Diego, CA 92121
Attention: Legal Department

with a copy to: Cricket Communications, Inc.
4031 Sorrento Road
San Diego, CA 92121
Attention: Property Manager

Any party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other parties as provided herein.

17. **SEVERABILITY.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) days prior written notice to the other party hereto.

18. **CONDEMNATION.** In the event Grantor receives notification of any

condemnation proceedings affecting the Property, Grantor will provide notice of the proceeding to Grantee within ten (10) days. If a condemning authority takes all of the Property, or a portion sufficient, in Grantee's sole determination, to render the Premises unsuitable for Grantee, this Agreement will terminate as of the date the title vests in the condemning authority. As owner of a license on the Property, it shall be Grantee's responsibility to negotiate its separate award, if any, with the condemning authority.

19. CASUALTY.

(a) During the Initial Term, Grantee shall maintain Commercial General Liability insurance covering bodily injury (including death), personal injury and property damage in an amount of not less than five million dollars (\$5,000,000) per occurrence which may be satisfied by a primary policy with a limit of no less than \$2,000,000 and an umbrella policy of excess liability in an amount of no less than \$5,000,000 with an insurance provider authorized to do business in California and rated at least "AV" in *A.M. Best & Company's Insurance Guide* and include the City as an additional insured on the policy or policies. Grantee shall provide the City, with a Certificate of Insurance evidencing the required insurance within thirty (30) days after the Commencement Date of this Agreement. Prior to the commencement of any Extension Term, the City and Grantor shall confer to agree on the insurance to be maintained during that term, which insurance coverage shall, at a minimum, be equal to the financial equivalent of \$5,000,000 in 2006 dollars, reasonably increased each year to account for inflation. Evidence of renewal of the policy (reflecting any required increases) shall be provided by Grantee to the City within twenty (20) business days after each renewal of said insurance policy. Grantor agrees that Grantee may self-insure against any loss or damage which could be covered by a comprehensive general public liability insurance policy; provided that, if Grantee elects to self-insure, it shall notify the City at least 60 days in advance of the effective date of that election and shall provide evidence of a satisfactory self-insurance program to the City. Any election to self-insure shall not become effective until the City has given Grantee written approval therefore, and Grantee shall maintain insurance coverage through an insurance company until said approvals are granted. All policies of insurance covering property damage obtained by any of the parties hereto concerning the Property shall waive the insurer's right of subrogation against the other parties.

(b) The parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation.

(c) City will provide notice to Grantee of any casualty affecting the Property within forty-eight (48) hours after the casualty occurs. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Grantee's sole determination, then Grantee may terminate this Agreement by providing written notice to the City, which termination will be effective as of the date of such damage or destruction. Notwithstanding the foregoing, if Grantee does not terminate this Agreement, all

Rent shall abate during the period of repair following such fire or other casualty until such time as Grantee may resume use of the Premises for Grantee's Permitted Use.

- (d) Grantee shall maintain Worker's Compensation coverage at statutory limits.

20. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the City and the Grantee. No provision may be waived except in writing signed by all parties to this Agreement.

(b) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(c) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements.

(d) **Governing Law.** This Agreement will be governed by the laws of the State of California. Any action at law or in equity brought by either of the parties for the purposes of enforcing a right provided by this Agreement will be tried in a court of competent jurisdiction in the county of San Diego, State of California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

(e) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof. (ii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iii) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement.

(f) **Estoppel.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(g) **Corporate Authority.** The persons 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.

(h) **No Electronic Signatures/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Grantor and Grantee.

IN WITNESS WHEREOF, the undersigned have caused this NON-EXCLUSIVE LICENSE AGREEMENT FOR CELLULAR SITE to be executed and effective as of the date the last party executed this Agreement below.

"GRANTOR"

CITY OF IMPERIAL BEACH

Signature on File

By: _____

Name: Gary R. Brown

Its: City Manager

Dated: 12/21/06

"GRANTEE"

Cricket Communications, Inc.,
a Delaware corporation

Signature on File

By: _____

Name: Anthony G. Benyola

Its: Regional Network Director, Western Region

Dated: 1/8/07

EXHIBIT 1

ASSESSOR PARCEL NUMBER: 632-400- 35

COMMON ADDRESS:
425 Imperial Beach Boulevard
Imperial Beach, California 91932
County of San Diego

LEGAL DESCRIPTION OF THE PROPERTY:

The land referred to herein is situated in the State of California, County of San Diego, described as follows:

Parcel 1:

The North 390.00 feet of the West half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey. Excepting therefrom the West 960.00 feet thereof. Also excepting therefrom any and all street openings.

Parcel 2:

The South 515.00 feet of the North 905.00 feet of the East 423.00 feet of the West half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey.

EXHIBIT F TONY HAWK FOUNDATION GRANT AGREEMENT

TONY HAWK
FOUNDATION

19 December 2008

City of Imperial Beach
825 Imperial Beach Blvd
Imperial Beach, CA 91932
Attn: Tom Ritter

Dear Tom,

I'm pleased to inform you that the Tony Hawk Foundation has raised \$10,000 to assist in the construction of your public, non-profit skatepark in Imperial Beach. Please review and sign the grant agreement outlined below.

It is our hope that a check from the Tony Hawk Foundation might also help raise your project's public profile and accelerate local fundraising efforts. We'll leave such publicity strategies to your discretion. We only ask that you don't imply that Tony will be appearing at your park, and that no one exploits his name for personal gain.

Please return this agreement to: 1611-A S. Melrose DR #360, Vista, CA 92081.

The grant is made subject to the following conditions:

1. You agree to assume any and all liability for:
 - a. The construction and operation of the skateboard park, and
 - b. The implementation of any information or advice given to you by the Foundation.
2. The Foundation has the right to terminate the grant, to modify or withhold any payment otherwise due under the grant, or to require repayment of any expended or unexpended grant funds if the skatepark is not operational within two (2) years of the date of this agreement, or if in the Foundation's sole judgment:
 - a. Grant funds or income arising from the grant have been used for purposes other than those described above; or
 - b. Your organization has failed to comply with any of the terms of the grant.
3. You agree to provide a written progress report (not to exceed two pages) on or before six months from the date of this agreement, and every six months thereafter until the skatepark opens, detailing the manner in which the Grant money has been spent and the progress you've made in accomplishing the purpose of the Grant. Upon opening the skatepark, you agree to submit a final report, including a photograph (or photographs) showing the entire skatepark.
4. You qualify as a public charity as described in Section 501(c)(3) and under IRC sec. 170(b)(1)(a), or you are a state or local agency, including public school systems or public projects. You agree to inform the Foundation immediately of any alterations in your organization's structure or activities which may adversely affect its status under this Code provision.
5. You agree NOT to expend Tony Hawk Foundation grant funds:
 - a. To carry on propaganda or otherwise to attempt to influence legislation within the meaning of the Internal Revenue Code 4945(d)(1), or

1611-A S. MELROSE DRIVE #360 • VISTA, CA • 92081 • P: 760.477.2479 • F: 760.477.2474

- b. To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive within the meaning of Internal Revenue Code Section 4945(d)(2). (The term "legislation" in this case does not include actions by executive, judicial or administrative bodies, such as school boards, housing authorities, zoning boards, and similar federal, state or local special-purpose bodies.)
6. Neither Tony Hawk's name or likeness may be used for any purpose, including, without limitation, in connection with the skatepark and/or any other activities of the City of Imperial Beach, or otherwise. Notwithstanding the foregoing, you are welcome to make any appropriate public announcements about this grant, particularly if they are designed to boost local fundraising efforts.
7. You give the Foundation permission to publicly release information concerning this grant, including your statements and correspondence with the Foundation.
8. You shall defend, indemnify and hold harmless the Foundation, Tony Hawk, Inc., Tony Hawk, and each of their affiliates, officers, directors, partners, shareholders, employees, contractors, successors, licensees and assigns, of and from all liability, loss, damage, claim or expense (including attorneys' fees and court costs) with respect to any and all claims arising in connection with this grant and/or the skatepark, including, without limitation, any and all third party claims for injuries and or other damages, if any, resulting at, or otherwise related to, the skatepark.

Please signify your agreement to the above terms of the grant by signing below. The agreement must be signed by the officer or officers who are, under your bylaws and the law governing you, authorized to execute contracts on your organization's behalf. Please return both pages of the executed original of the letter to us, and keep a copy for your records. The original, signed agreement must be returned no later than Thursday, March 19, 2009 (90 days from the date of this agreement).

After we've received the signed original of this letter, we'll send you the check. Please use this address: 1611-A S. Melrose DR #360, Vista, CA 92081.

Sincerely,



Miki Vuckovich
Executive Director
Tony Hawk Foundation

Agreed to and accepted on behalf of City of Imperial Beach this 28 day of JANUARY, 2008/9.

By: Signature on File (signature)

Name: TOM RITTER (please print)

Title: ASSISTANT CITY MANAGER

The check to be made payable to: City of Imperial Beach

Address and name of the person to whom the check should be mailed: TOM RITTER
CITY OF IMPERIAL BEACH
825 IMPERIAL BEACH BLVD.
IMPERIAL BEACH, CA 91932

EXHIBIT G TITLE REPORT

stewart title

Frank Green
Commercial Title Mgr/ATO

Stewart Title of California, Inc.
San Diego, CA 92108
Phone (619) 398-8035
Fax
fgreen@stewart.com

PRELIMINARY REPORT

Order No. : 01180-12316
Title Unit No. : 7034
Your File No. :
Buyer/Borrower Name :
Seller Name : City Of Imperial Beach

Property Address: 441 Imperial Beach Boulevard, Imperial Beach, CA

In response to the above referenced application for a Policy of Title Insurance, Stewart Title of California, Inc. hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referenced to as an Exception on Schedule B or not excluded from coverage pursuant to the printed Schedules, Conditions, and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on covered Risks of said policy or policies are set forth in Exhibit A attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limits of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters, which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report, (and any supplements or amendments thereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance a binder or commitment should be requested.

Dated as of November 20, 2012 at 7:30 a.m.

Frank Green, Title Officer

When replying, please contact: Frank Green, Title Officer

PRELIMINARY REPORT

The form of Policy of Title Insurance contemplated by this report is:

- CLTA Standard Coverage Policy
- CLTA/ALTA Homeowners Policy
- 2006 ALTA Owner's Policy
- 2006 ALTA Loan Policy
- ALTA Short Form Residential Loan Policy
- Preliminary Search

SCHEDULE A

The estate or interest in the land hereinafter described or referred to covered by this report is:

Fee

Title to said estate or interest at the date hereof is vested in:

City of Imperial Beach, a Municipal corporation

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, City of Imperial Beach and described as follows:

Parcel 1:

The North 390.00 feet of the West Half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey.

Excepting therefrom the West 960.00 feet thereof.

Also excepting therefrom any and all street openings.

Parcel 2:

The South 515.00 feet of the North 905.00 feet of the East 423.00 feet of the West half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey.

Parcel 3:

That portion of the West half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey More particularly described as follows:

Commencing at the Northwest corner of Lot 24 of Seaside Point Palisades Unit No. 2, according to Map thereof No. 8748, filed December 20, 1977, in the Office of the County Recorder of San Diego County; thence along the Westerly prolongation of the North line of said Lot 24, due West a distance of 16.80 feet to a point on the East line of the West half of the Southeast quarter of said Section 30, said point being 733.00 feet from the Northeast corner of the West half of the Southeast quarter of Section 30; thence along said East line South 00° 08' 32" East a distance of 172.01 feet to a point on the South line of the South 515.00 feet of the North 905.00 feet of said West half as described in Deed recorded March 1, 1972, file/Page No. 72-49370, of Official Records of the County Recorder of San Diego County, said point being the true point of beginning; thence along said South line North 89° 49' 07" West (record North 89° 06' 47" West per record of Survey Map No. 8470), a distance of 289.84 feet; thence South 03° 35' 22" East a distance of 78.92 feet; thence South 33° 17' 15" East a distance of 57.80 feet; thence South 72° 56' 56" East a distance of 9755 feet; thence North 84° 09' 11" East a distance of 161.09 feet more or less to a point on the East line of said West half; thence along said East line North 00° 06' 32" West a distance of 138.36 feet to the true point of beginning.

APN: 632-400-35-00 and 632-400-33-00
(End of Legal Description)

SCHEDULE B

At the date hereof, exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy or policies would be as follows:

Taxes:

- A. General and special city and/or county taxes, bonds or assessments which may become due on said land, if an when title to said land is not longer vested in a government or quasi-governmental agency. Tax parcel(s) for said land are currently shown as 632-400-35-00.

Said matter affects: Parcels 1 and 2

- B. General and special city and/or county taxes, bonds or assessments which may become due on said land, if an when title to said land is not longer vested in a government or quasi-governmental agency. Tax parcel(s) for said land are currently shown as 632-400-33-00.

Said matter affects: Parcel 3

- C. Assessments, if any, for Community Facilities Districts or a Mello-Roos District affecting said land which may exist by virtue of assessment maps or notices filed by said districts. Said assessments are collected with the County Taxes.

- D. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the revenue and taxation code of the State of California.

Exceptions:

1. Rights of the public in and to any portion of the property herein described lying within roads, streets or highways.
2. An easement for laying, relaying, repairing, maintaining and/or renewing an anode bed together with necessary electric cables and appurtenances thereto and rights incidental thereto in favor of California Water & Telephone Company, A California Corporation as set forth in a document recorded February 28, 1955 in Book 5549, Page 77, of Official Records, affects a portion of the herein described land.
3. An easement for public street and rights incidental thereto in favor of City Imperial Beach, a municipal corporation as set forth in a document recorded November 29, 1957, in Book 6851, Page 352, of Official Records, affects a portion of the herein described land.

Said matter affects: Parcel 1

4. The provision that the portion of the herein described property located in the North 390 feet of the Northwest Quarter of the Southeast Quarter of said Section 30, respecting the West 960 feet thereof, be used for park and recreational purposes, as provided in Grant Deed dated May 27, 1960, recorded May 31, 1960 as Instrument No. 111864, of Official Records.

The reversionary interest, if any, of South Bay Lions Club in and to the portion of the reversionary property described above, if said land is used for purposes other than park and recreational, as provided in the above referenced deed.

Said matter affects: Parcel 1

5. The matters contained in an instrument entitled "Development Agreement" dated June 6, 1967, by and between Helix Imperial Harbour Redevelopment Corporation, A California Corporation and

City of Imperial Beach, California, a municipal corporation, upon the terms therein provided recorded June 7, 1967 as Instrument No. 67-80981, of Official Records.

Reference is made to said document for full particulars.

6. The effect, if any, of record of survey map no. 8470 which sets forth, or purports to set forth certain dimensions and bearings of the herein described property.
7. An easement for public utilities, appurtenances, ingress, egress and rights incidental thereto in favor of the San Diego Gas and Electric Company as set forth in a document recorded December 28, 1984 as Instrument No. 84-484000, of Official Records, affects a portion of the herein described land.

Said matter affects: Parcel 2

8. A Resolution of the City Council of the City of Imperial Beach, California Establishing an underground utility district, in the City of Imperial Beach to be known and denominated as the Imperial Beach Boulevard underground utility district, recorded April 5, 1994 as Instrument No. 1994-0225350, of Official Records.
9. The Provision that said land be used for public recreational purposes as provided in Grant Deed recorded December 21, 1994 as Instrument No. 1994-0724849, of Official Records, the Reversionary interest, if any, of the United States of America, acting by and through the Department of the Interior, U.S. Fish and Wildlife Service in and to said land if said land is used for any purposes other than recreational.

Said matter affects: Parcel 3

10. The effect, if any, of record of survey map no. 14756 which sets forth, or purports to set forth certain dimensions and bearings of the herein described property.
11. Please be advised that our search did not disclose any open deeds of trust of record. If you should have knowledge of any outstanding obligation, please contact your title officer immediately for further review.
12. Rights of tenants in possession of said land by reason of unrecorded leases. Kindly forward said lease, or a current certified tenant rent roll.
13. Matters which may be disclosed by an inspection or by a survey of said land satisfactory to this Company or by inquiry of the parties in possession thereof.
14. Rights of parties in possession.

(End of Exceptions)

NOTES AND REQUIREMENTS

- A. There are no conveyances affecting said land, recorded with the County Recorder within 24 months of the date of this report.
- B. The Company is not aware of any matters which would cause it to decline to attach CLTA Endorsement 100 and 116, indicating that there is located on vacant land to an extended coverage policy.
- C. This Company will require the following documents, in order to insure a conveyance or encumbrance by the corporation or unincorporated association named below:

Entity: City of Imperial Beach, a municipal corporation

- a. A copy of the corporation By-Laws or Articles.
- b. An original or certified copy of the Resolution authorizing the subject transaction.
- c. If the Articles or By-Laws require approval by a "parent" organization, we will also require a copy of those By-Laws or Articles.
- d. If an unincorporated association, a statement pursuant to applicable law (such as California Corporation Code Section 20002).

The right is reserved to add requirements or additional items after completion of such review.

CALIFORNIA "GOOD FUNDS" LAW

California Insurance Code Section 12413.1 regulates the disbursement of escrow and sub-escrow funds by title companies. The law requires that funds be deposited in the title company escrow account and available for withdrawal prior to disbursement. Funds received by Stewart Title of California, Inc. via wire transfer may be disbursed upon receipt. Funds received via cashier's checks or teller checks drawn on a California Bank may be disbursed on the next business day after the day of deposit. If funds are received by any other means, recording and/or disbursement may be delayed, and you should contact your title or escrow officer. All escrow and sub-escrow funds received will be deposited with other escrow funds in one or more non-interest bearing escrow accounts in a financial institution selected by Stewart Title of California, Inc.. Stewart Title of California, Inc. may receive certain direct or indirect benefits from the financial institution by reason of the deposit of such funds or the maintenance of such accounts with the financial institution, and Stewart Title of California, Inc. shall have no obligation to account to the depositing party in any manner for the value of, or to pay to such party, any benefit received by Stewart Title of California, Inc.. Such benefits shall be deemed additional compensation to Stewart Title of California, Inc. for its services in connection with the escrow or sub-escrow.

If any check submitted is dishonored upon presentation for payment, you are authorized to notify all principals and/or their respective agents of such nonpayment.

WIRE INSTRUCTIONS

We hereby request that our funds are wire transferred directly to our account. If you have any questions, regarding this matter, please call the number as referenced above.

We do not accept ACH Transfers, these funds will be returned and may cause a delay in closing.

Bank Name: **Unlon Bank**

Bank Address: **1980 Saturn Street, Monterey Park, CA**

ABA#: **12200496**

Account Name: **Stewart Title of California, Inc.**

Account Number: **0010426383**

REFERENCE OUR FILE NUMBER: **01180-12316**

REFERENCE OUR BUYER/BORROWER NAME:

REFERENCE OUR SELLER NAME: **City Of Imperial Beach**

EXHIBIT "A"
LEGAL DESCRIPTION

Order No.: 01180-12316
Escrow No.: 01180-12316

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

Parcel 1:

The North 390.00 feet of the West Half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey.

Excepting therefrom the West 960.00 feet thereof.

Also excepting therefrom any and all street openings.

Parcel 2:

The South 515.00 feet of the North 905.00 feet of the East 423.00 feet of the West half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey.

Parcel 3:

That portion of the West half of the Southeast Quarter of Section 30, Township 18 South, Range 2 West, San Bernardino Base and Meridian, in the City of Imperial Beach, County of San Diego, State of California, according to United States Government Survey More particularly described as follows:

Commencing at the Northwest corner of Lot 24 of Seaside Point Palisades Unit No. 2, according to Map thereof No. 8748, filed December 20, 1977, in the Office of the County Recorder of San Diego County; thence along the Westerly prolongation of the North line of said Lot 24, due West a distance of 16.80 feet to a point on the East line of the West half of the Southeast quarter of said Section 30, said point being 733.00 feet from the Northeast corner of the West half of the Southeast quarter of Section 30; thence along said East line South 00° 08' 32" East a distance of 172.01 feet to a point on the South line of the South 515.00 feet of the North 905.00 feet of said West half as described in Deed recorded March 1, 1972, file/Page No. 72-49370, of Official Records of the County Recorder of San Diego County, said point being the true point of beginning; thence along said South line North 89° 49' 07" West (record North 89° 06' 47" West per record of Survey Map No. 8470), a distance of 289.84 feet; thence South 03° 35' 22" East a distance of 78.92 feet; thence South 33° 17' 15" East a distance of 57.80 feet; thence South 72° 56' 56" East a distance of 9755 feet; thence North 84° 09' 11" East a distance of 161.09 feet more or less to a point on the East line of said West half; thence along said East line North 00° 06' 32" West a distance of 138.36 feet to the true point of beginning.

APN: 632-400-35-00 and 632-400-33-00

(End of Legal Description)

AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT

Date: December 11, 2012

Escrow No.: 01180-12316

Property: 441 Imperial Beach Boulevard, Imperial Beach, CA

From:

This is to give you notice that ("Stewart Title") has a business relationship with Stewart Solutions, LLC, DBA – Stewart Specialty Insurance Services, LLC ("Stewart Insurance"). Stewart Information Services Corporation owns 100% of Stewart Insurance and Stewart Title of California. Because of this relationship, this referral may provide Stewart Title a financial or other benefit.

Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for purchase, sale, or refinance of the subject Property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

Stewart Insurance Settlement Service	Charge or range of charges
Hazard Insurance	\$400.00 to \$6,500.00
Home Warranty	\$255.00 to \$ 780.00
Natural Hazard Disclosure Report	\$ 42.50 to \$ 149.50

CLTA Preliminary Report Form

Exhibit A (Revised 06-03-11)

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY – 1990
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
(a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
(c) resulting in no loss or damage to the insured claimant;
(d) attaching or created subsequent to Date of Policy; or
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE
EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not Insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;
 - b. zoning;
 - c. land use;
 - d. improvements on the Land;
 - e. land division;
 - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.a., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

* For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 18:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19:	1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21:	1% of Policy Amount or \$2,500.00 (whichever is less)	\$5,000.00

2006 ALTA LOAN POLICY (06-17-06) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

**2006 ALTA OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

WARNING: THIS DOCUMENT MUST BE COMPLETED IN ITS ENTIRETY (1 THROUGH 9, BELOW MUST BE FILLED IN) FOR IT TO BE ACCEPTED BY . IF THIS IS NOT COMPLETED WILL REQUIRE A COMPLETE COPY OF THE TRUST, WITH A SIGNED AND ACKNOWLEDGED AFFIDAVIT.

TRUSTEE CERTIFICATE
(California Probate Code Section 18100.5)

SCETRUST

STG Privacy Notice 1 (Rev 01/26/09) Stewart Title Companies

WHAT DO THE STEWART TITLE COMPANIES DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of the Stewart Title Guaranty Company and its affiliates (the Stewart Title Companies), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as the Stewart Title Companies, need to share customers' personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

Reasons we can share your personal information	Do we share?	Can you limit this sharing?
For our everyday business purposes—to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.	Yes	No
For our marketing purposes—to offer our products and services to you.	Yes	No
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes— information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies. <i>Our affiliates may include companies with a Stewart name; financial companies, such as Stewart Title Company</i>	Yes	No
For our affiliates' everyday business purposes— information about your creditworthiness.	No	We don't share
For our affiliates to market to you	Yes	No
For non-affiliates to market to you. Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.	No	We don't share

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

Sharing practices

How often do the Stewart Title Companies notify me about their practices?	We must notify you about our sharing practices when you request a transaction.
How do the Stewart Title Companies protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal and state law. These measures include computer, file, and building safeguards.
How do the Stewart Title Companies collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> • request insurance-related services • provide such information to us We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.
What sharing can I limit?	Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.

Contact Us

If you have any questions about this privacy notice, please contact us at: Stewart Title Guaranty Company, 1980 Post Oak Blvd., Privacy Officer, Houston, Texas 77056

Order No. 01180-12316

AVAILABLE DISCOUNTS DISCLOSURE STATEMENT

This is to give you notice that Stewart Title of California, Inc. ("Stewart Title") is pleased to inform you that upon proper qualification, there are premium discounts available upon the purchase of title insurance covering improved property with a one to four family residential dwelling.

Such discounts apply to and include:

Property located within an area proclaimed a state or federal disaster area;

Property purchased from a foreclosing beneficiary or successful bidder at a foreclosure sale;

Property being refinanced.

Please talk with your escrow or title officer to determine your qualification for any of these discounts.

Order Number: 01180-12316
Available Discounts Disclosure Statement SCE

**SPORTS PARK FIELD USE AGREEMENT
BETWEEN THE CITY OF IMPERIAL BEACH,
IMPERIAL BEACH LITTLE LEAGUE, AND IMPERIAL BEACH GIRLS SOFTBALL LEAGUE**

This Agreement is made and entered into by and between the City of Imperial Beach, a municipal corporation (hereinafter referred to as "City"), Imperial Beach Little League, a 501(c)(3) nonprofit corporation ("IBLL") and Imperial Beach Girls Softball League, a 501(c)(3) nonprofit corporation ("IBGS") (IBLL and IBGS hereinafter referred to collectively as "Leagues").

1. Purpose

The purpose of this Agreement is to provide for certain terms and conditions for the use by Leagues of the City's Sports Park fields and facilities. This Agreement is solely a use agreement and CITY is not transferring any ownership interests in the Sports Park or the associated facilities.

2. Facility Description

City's Sports Park facility is located at 425 Imperial Beach Boulevard, Imperial Beach, California (hereinafter referred to as the "Park").

Leagues shall have preferred use of designated athletic recreational fields, facilities, concession stand, batting cages, storage containers, and grounds at the Park as shown in Exhibit "A" (hereinafter referred to as "Facilities") for Leagues activities and other sporting activities as scheduled by Leagues.

3. Other Activities

Leagues agree to acquire all necessary permits, including Special Event Permits and Noise Amplification Permits, pursuant to provisions of the Imperial Beach Municipal Code and subject to approval by the City, for Leagues' activities or activities of other authorized users which require said permits (e.g., Opening and Closing Day ceremonies, league tournaments, etc.) other than those authorized by this Agreement.

4. Maintenance, Care and Condition of Facilities

A. Routine and Minor Maintenance/Repairs: Leagues agree that during and throughout the term of this Agreement they will maintain and operate the Facilities in a clean, safe, and sanitary condition, free of trash, to the satisfaction of the City. Leagues will inspect the Facilities after each use to ensure they are maintained in a clean, safe, and

sanitary condition, free of trash. Leagues will perform minor maintenance or repair for certain recreational grounds or facilities once approved by City in advance. Leagues shall provide notice to City regarding any proposed minor maintenance or repair and such minor maintenance or repair shall be subject to prior approval by City and will become the property of City unless otherwise agreed to in writing.

B. Specified Maintenance Activities: Leagues shall be solely responsible for, and will perform, the following maintenance duties at the Park, at all times (both during league play and when league play is not being conducted or otherwise in session), throughout the entire term of this Agreement:

- (a) Landscaping and turf maintenance of the batting cages and designated fields and surrounding areas, as indicated in Exhibit "A", including mowing, edging and dragging infields, and chalking the base lines before each game.
- (b) Repairing damage caused by the use of the batting cages and designated fields, including minor sprinkler repairs, fencing, and other facility damage.
- (c) Litter and trash clean up at all areas within the facilities as designated on Exhibit "A", including the batting cages, designated fields, concession stand and field restroom, including emptying full trash cans during and immediately after their activities, performing trash pick-up after each athletic activity, and providing liners for all trash cans on the designated fields.
- (d) Maintaining the field restroom, including supplying all supplies for the restroom.
- (e) Securing the batting cages after each use.
- (f) Maintenance and cleaning of all concession buildings and surrounding areas within the area indicated in Exhibit "A".

C. City's Ability to Inspect and Require Minor Maintenance/Repairs: Leagues agree that within thirty (30) days' notice from the City, Leagues will make any and all of the repairs or maintenance upon the Facilities that have been determined by the City to be necessary in order to maintain a safe environment and/or maintain the Facilities in a satisfactory condition. Should Leagues fail to complete the necessary repairs or maintenance within thirty (30) days' notice from the City, the City shall have the right, but not the duty, to complete such repairs or maintenance and to charge Leagues the City's costs of doing so. The City shall also have the right, but not the duty, to make emergency repairs to the Facilities at the cost of Leagues when

the City determines such repairs arise from use and are immediately necessary for the safety of persons using the Facilities. In instances when the City makes emergency repairs to the Facilities, it will notify Leagues in accordance with Section 5 of this Agreement.

D. City's Contribution Towards Maintenance: City shall provide payment for electricity and water until June 30, 2015. Additionally, City will create a Recreation financial assistance fund equal to \$50,000 per fiscal year for the FY14 and FY15 budget years. The proceeds of the fund will be used to cover the cost of water and electricity for the entire Sports Park facility, including the Recreation Center and surrounding City owned property. The monetary difference between the electricity and water costs for the entire Sports Park facility and \$50,000, if any, may be used to maintain and enhance the area included in Exhibit "A". City and Leagues may negotiate additional financial contributions from City after June 30, 2015, in a manner that coincides with the preparation of the two year municipal budget adopted in June of every odd year. If a financial contribution is not provided by City after June 30, 2015, Leagues shall be responsible for electricity and water costs associated with the contemplated use of the Facilities.

E. Major Repairs/Maintenance: With the exception of Leagues' maintenance and repair obligations set forth in this Section and as otherwise provided in the Agreement, City shall be responsible for all major repairs and major capital improvements at the Park, including those which may be necessary in its parking lots. In addition, City shall be responsible for field lighting maintenance and structural concession stand area maintenance. City shall not be responsible for any minor repairs arising from use of the Designated Fields or any repairs determined by City to be necessitated by a lack of maintenance by Leagues.

No later than December 15 of each year, Leagues will submit a project list to the City to be considered for inclusion in City's next succeeding fiscal year Capital Improvement Program (CIP). This list shall include any desired major maintenance or repair items for recreational fields, grounds or structures (i.e., playing fields, dugouts, fencing, etc.) or any other public facility improvements for the following contract year. City is not obligated to approval any request and each request shall be measured against other items listed in the CIP.

F. Condition of Facilities: Leagues acknowledge that they have made a thorough inspection of condition of the Facilities prior to entering into this Agreement and accept the condition of these Facilities at that time. Leagues further agree to restore the Facilities to their current condition (or maintain better condition if Leagues have improved them during the course of this Agreement) upon expiration of this Agreement. Attached to this Agreement as Exhibit "B" are points of concern and Leagues are not responsible for those repairs.

5. Inspection, Entry and Control

City shall maintain control over, have access to, and have the right, but not the obligation, at any time to inspect and assess the conditions of all Facilities. The City reserves the unfettered right of ingress and egress to the Facilities by authorized City representatives for the purpose of repairs, preservation and maintenance of the Facilities. If such repairs, preservation or maintenance would interrupt Leagues' use, except in emergency situations requiring immediate work, Leagues will be given reasonable notice when such work may become necessary and shall adjust operations in such a manner that City may proceed expeditiously.

Leagues are allowed to use the storage containers shown in Exhibit "A" for the storage of maintenance equipment. Leagues must provide the City any and all keys or combinations Leagues use to secure these containers.

Leagues shall not change, modify or re-key any locks at the Facilities or gates without prior approval from the City. At all times the City shall have key access to all Facilities covered in this Agreement on City property. The unauthorized placement of any lock placed on City facility or gate is strictly prohibited. Any such lock shall be subject to immediate removal by the City at the sole cost of Leagues.

6. Term

This Agreement shall commence on April 16, 2014 and continue through June 30, 2015. City shall have the option to extend this Agreement for two (2) additional two year (2) increments after the end of the current term. Should City desire to exercise an option to extend, it shall give Leagues thirty (30) days notice prior to the end of the then current term.

Notwithstanding the above, this Agreement may be terminated by either party without cause upon delivery and receipt of written notice one hundred twenty (120) calendar days prior to the proposed termination. City may terminate this Agreement for cause, without notice, should Leagues be in default of any covenant or condition hereof.

Upon termination or expiration of this Agreement, Leagues shall surrender all buildings, replacements, changes, additions or improvements constructed or placed by Leagues thereon to CITY in a serviceable, safe and sanitary condition and in good repair except reasonable wear and tear. All personal property of Leagues remaining upon the Park premises thirty (30) days after the expiration or termination of this Agreement shall become, at its election, the property of City. Leagues shall be responsible for any costs of removal of property.

7. Consideration for Use of Concession Operation

In consideration of City granting Leagues the right to store and sell food, snacks, drinks and other related items from the concession stand area, Leagues agrees to use all net proceeds from the concession stand sales exclusively for the benefit of and for the purpose of supporting Leagues' related activities in accordance with this Agreement, or for improvements to the Facilities. Leagues will also comply with all Health and Safety codes for the equipment and personnel in the operation of the concession stand.

8. Use

All scheduling of the Facilities shall be completed by an authorized representative of Leagues. Leagues games and practice schedules, including batting cages, will take priority for Facilities usage.

Outside leagues and/or private groups shall be required to complete a "Rental Use Permit" (included as Exhibit "C") and satisfy all of the requirements as stated in this Agreement. As indicated in the permit, City shall have the right to use the Facilities for any special event with no fee assessed. All fields shown in Exhibit "A" when not in use by Leagues or an authorized renter shall remain open for use to the citizens of Imperial Beach, except when the fields are closed for repair or maintenance.

City and Leagues shall meet on a monthly basis to discuss pertinent items or issues concerning the Facilities. The communication is intended to ensure that all parties are maintaining their part in this Agreement.

City and Leagues will endeavor to develop and adopt user policies and procedures for annual and seasonal recreational scheduling of designated fields including a 2-3 week time period in December for extended field maintenance and recovery. Any proceeds obtained from the use of the Facilities through user fees, grants, donations or other sources of revenue will be used to enhance and augment the Facilities.

Leagues shall not, nor shall Leagues permit employees, agents or representatives of the Leagues or individuals participating in Leagues' programs to violate provisions of the Imperial Beach Municipal Code when using the Facilities or Park, or allow the Facilities or Park to be used for civil insurrection, events contrary to acceptable community standards, or to contribute to general immorality.

9. Hazardous Materials

(i) Hazardous Materials Laws-Definition: As used in this Section 10, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., sec.9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., sec.1801 et seq.), and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., sec. 6901 et seq.), relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Property, soil and ground water conditions or other similar substances or conditions.

(ii) Hazardous Materials – Definition: As used in this Section 10 the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

- a. is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- b. is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- c. gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or
- d. is any other material or substance giving rise to any liability, responsibility or duty upon the City or Leagues with respect to any third person under any Hazardous Materials Law.

(iii) Leagues' Representations and Warranties: Leagues represent and warrant that, during the Term of this Agreement or any extension thereof, Leagues shall comply with the following provisions of this Section unless otherwise specifically approved in writing by City, subject to the terms and conditions of Leagues' maintenance obligations provided elsewhere in this Agreement:

- a. Leagues shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Facilities by Leagues, its agents, employees, assigns, contractors or invitees, except as required by Leagues' permitted use of the Facilities in the normal course of operations;
- b. Any handling, transportation, storage, treatment or usage by Leagues of Hazardous Materials that is to occur on the Facilities following the

commencement date of this Agreement shall be in compliance with all applicable Hazardous Materials Laws;

- c. Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Facilities following the commencement date of this Agreement shall be promptly and thoroughly cleaned and removed from the Facilities by Leagues at their sole expense, and any such discharge shall be promptly reported in writing to City, and to any other appropriate governmental regulatory authorities;
- d. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Leagues in the Facilities
- e. No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Leagues on the Facilities without City's prior written consent;
- f. Leagues shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Facilities in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of City;
- g. Leagues shall promptly supply City with copies of all notices, reports, correspondence, and submissions made by Leagues to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws; and
- h. Leagues shall promptly notify City of any liens threatened or attached against the Facilities pursuant to any Hazardous Materials' Law. If such a lien is filed against the Facilities, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Facilities pursuant to the lien, Leagues shall either: (a) pay the claim and remove the lien from the Facilities, or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to City in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to City in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of this Agreement, Leagues shall surrender the Facilities to City free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Facilities.

10. Dispute Resolution

City desires to reach consensus with and between the Leagues regarding use of the Facilities. All disputes between Leagues and/or City related to this Agreement will be decided by the City Manager or his/her designee. The decision of the City Manager or his/her designee will be final.

11. Compliance with Laws

Leagues expressly agree at all times during the term of this Agreement to comply, and cause compliance, with the Imperial Beach Municipal Code, and any and all present and future laws, general rules, or regulations of any governmental authority now, or at any time during the term of this Agreement, in force relating to sanitation or public health, safety, or welfare; and Leagues shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto, adopted by federal, state, or other governmental bodies or departments or officers thereof. This shall include, but not be limited to, compliance with the provisions of the Imperial Beach Municipal Code Chapter 12.56 related to the use of public parks and recreation facilities.

12. Operating Rules and Procedures

Leagues shall provide a copy of the rules, regulations, operating policies and procedures for its sports league activities to City upon request.

13. Audit of Records

At any time during normal business hours and as often as may be deemed necessary Leagues shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and will permit City to audit, examine and/or reproduce such records. Leagues will retain such financial and program service records for at least four (4) years after termination of this Agreement.

14. Security and Reporting

All violations of law, abuse or damage to the Park or Facilities, or injuries to the public or Leagues' agents or employees, shall be reported immediately to City.

15. Leagues' Employees and Equipment

Leagues have secured or will secure at Leagues' own expense all persons, employees, and equipment required to perform the services required under this

Agreement and all such services will be performed by Leagues, or under Leagues' supervision, by persons authorized by law to perform such services at Leagues' sole expense. Leagues covenant and agree to comply with all local, state and federal laws in the employment of persons and equipment, and to require any of its sub-contractors to likewise comply.

16. Responsibility for Equipment

City shall not be responsible nor held liable for any damage to person or property consequent upon the use, misuse, or failure of any equipment used by Leagues or any of Leagues' employees or sub-contractors. The acceptance or use of any such equipment by Leagues, Leagues' employees, or sub-contractors shall be construed to mean that Leagues accept full responsibility for and agree to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

17. Independent Contractor

Leagues are, for all purposes arising out of this Agreement, independent contractors. Leagues have and shall retain the right to exercise full control and supervision of all persons assisting Leagues in the performance of said services hereunder, City only being concerned with the finished results of the work being performed. Neither Leagues nor Leagues' employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, Leagues being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

18. Hold Harmless

Leagues shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officers, agents, employees and volunteers, from and against any and all claims for loss, damage or expense, by reasons of any act or omission of any employee, servant agent or sub-contractor of Leagues, including those, if any, originally employed by City and utilized by Leagues, and Leagues agree to defend, at Leagues' own expense, any suit or suits that may be brought against City by reason of any such act or omission.

Leagues shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officers, agents, employees and volunteers, from and against, and shall assume full responsibility for payment of all Federal and State income taxes with respect to

Leagues and Leagues' employees engaged in performance of this Agreement. City and its agents and employees shall not be, nor be held, liable for any liabilities, penalties, or forfeitures, or for any damage to the goods, properties or personal injury to or death of them, whether caused by, or resulting from, any negligent act or omission of Leagues.

Leagues shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officers, agents, employees and volunteers, from and against any and all of the foregoing obligations and liabilities, and any and all costs and expenses incurred by City on which any claim arising therefrom is based. It is intended by both parties that Leagues shall indemnify, defend and hold City harmless from all claims arising by reason of the work done, or by reason of any act or omission of Leagues, their agents, employees and sub-contractors in the performance of this Agreement or any activities undertaken by Leagues on City's property, or resulting from any acts or omission by City resulting from any breach of Leagues under this Agreement, excepting those which arise out of the sole active negligence of City.

19. Insurance

Leagues agrees to maintain such insurance as will fully protect both Leagues and City from any and all claims under any workers' compensation act or employer's liability laws, and from any or all other claims of whatsoever kind or nature for the damage to property or from personal injury, including death, made by anyone whomsoever, which may arise from operations carried on under this Agreement, whether by Leagues, any sub-contractor or by anyone directly or indirectly engaged or employed by either of them.

Leagues shall, throughout the period of this Agreement, provide public liability and property damage insurance covering all operations of the Leagues, its agents and employees, including but not limited to, bodily injury, personal injury and property damage with minimum liability limits of \$1,000,000 per occurrence.

Leagues agree to provide City at or before the effective date of this Agreement with Certificates of Insurance of the policy or policies specified above and to keep insurance in effect during the entire term of this Agreement. Said policy or policies shall provide for thirty (30) days written notice to City of cancellation or material change thereto. Additionally, except for policies of workers' compensation and employer liability, City shall be named as an additional insured in said policy.

In no event will any document other than a Certificate of Insurance be acceptable as evidence of insurance. Failure to provide such document shall be grounds for immediate termination or suspension of this Agreement and use of the Facilities.

It is agreed that any insurance maintained by the City of Imperial Beach shall apply in excess of and not contribute with insurance provided by Leagues as required under this Agreement. Each insurance policy required of Leagues under this Agreement shall acknowledge this by an appropriate clause of similar statement.

20. Waiver of Subrogation

City agrees to continue fire and liability insurance coverage on Sports Park Recreation Center, concession stand and all City contents within; Leagues shall provide any insurance necessary for equipment owned by Leagues and placed in the Facilities.

21. Notices

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to:

IBLL:	Imperial Beach Little League P.O. Box 1041 Imperial Beach, CA 91933
IBSL:	Imperial Beach Girls Softball League Attn: Jim Laccone 225 Broadway, Ste. 2000 San Diego, CA 92101
City:	City Manager City of Imperial Beach 825 Imperial Beach Boulevard Imperial Beach CA 91932

The address to which notices shall or may be mailed as aforesaid by either party, shall or may be changed by written notice given by such party to the other as herein provided.

22. Nondiscrimination and Nonsegregation

League and Leagues' employees, agents and sub-contractors, shall not segregate or discriminate because of race, religion, color, creed, ancestry, sex, age, national origin, marital status, or physical handicap against any person or group of persons by refusing to furnish such person any accommodation, facility, service, or privilege offered to or enjoyed by the general public.

Leagues, their employees and agents are also prohibited from establishing or permitting the establishment of any practice or policy involving segregation or discrimination with respect to the use of the Park.

23. City Manager

The City Manager or his/her designee shall be the contract officer and shall receive communications from the Leagues and render decisions, unless otherwise stated by this Agreement, on behalf of the City of Imperial Beach.

24. Approvals

Approvals required by City shall not be unreasonably withheld.

25. Modification

Notwithstanding any of the provisions of this Agreement, City and Leagues may hereafter, by mutual consent, agree in writing to any lawful modification, addition or deletion of the terms and conditions of this Agreement.

26. Assignments

No transfer or assignment by the Leagues that affects this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first consented to in writing by City.

27. California Law; Venue

This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in San Diego County, California. Leagues hereby waive any and all rights they might have pursuant to Section 394 of the California Code of Civil Procedure.

28. Severability

If any part of this Agreement is/should be held unenforceable or void, in whole or in part, then such unenforceable or void provision or part shall be deemed separable from the remaining provisions and shall in no way affect the validity of the remainder of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed:

City of Imperial Beach:

Signature on
File

City Manager

5/27/14

Date

Imperial Beach Little League (IBLL)

Signature on File

League President

4/15/14

Date

Imperial Beach Girls Softball League (IBGS)

Signature on File

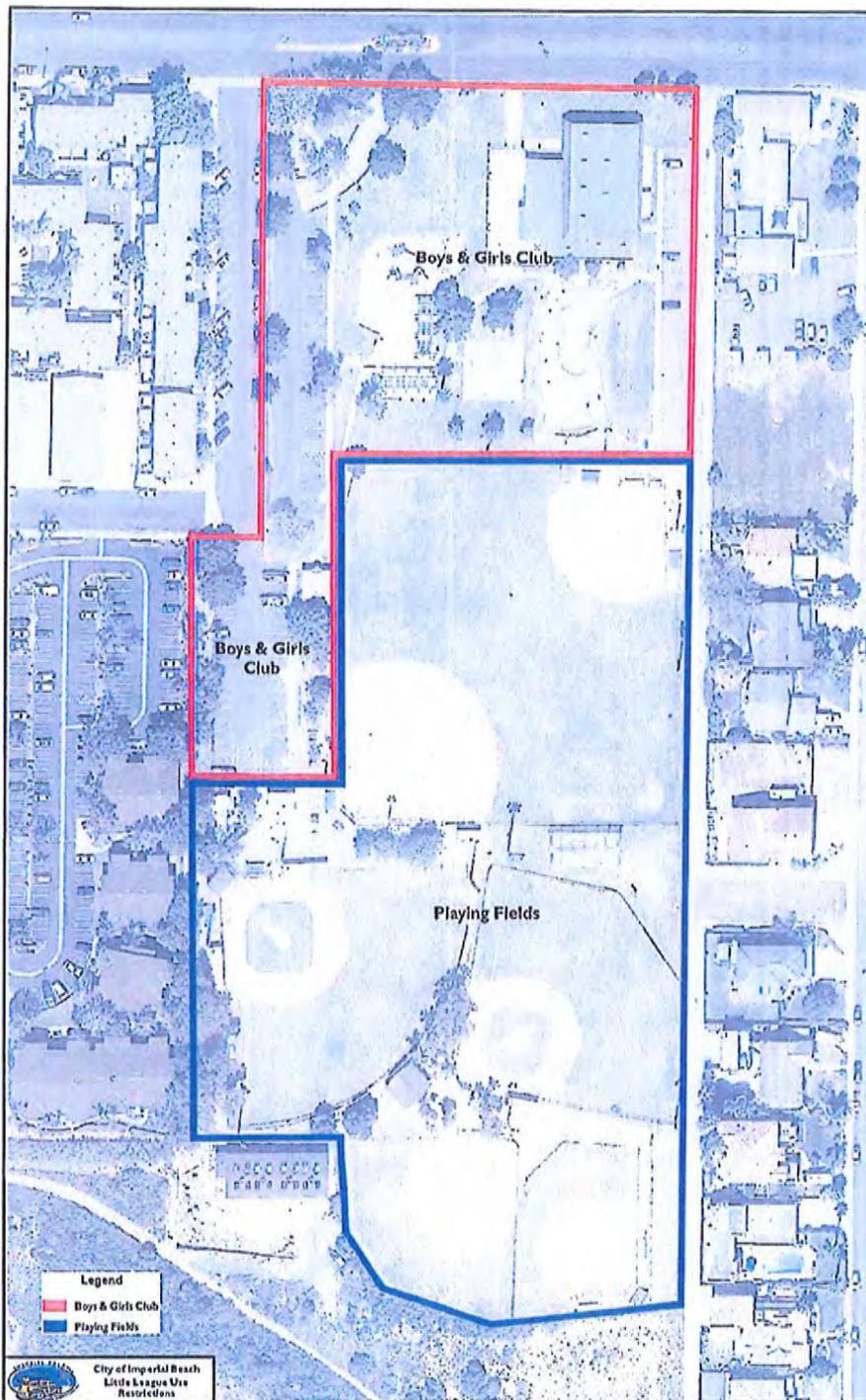
League President

5/2/14

Date

Exhibit "A"

Map/Description of Facilities



Points of Concern

Imperial Beach Little League

1. Fencing east side of the fields separating the alley from the fields is bowed with bent sharp edges exposed. I have seen kids and adults climb under this fence. Matter of time before someone is cut bad from these exposed sharp edges.
2. Field D right field fencing is bent exposing sharp edges.
3. Field C dugout fencing is bent and wood is split and rotting. Trim wood is rotten and termites are present.
4. Wood fencing around area where security trailer was parked is falling down west side of snack bar.
5. On the west side of Field C there are exposed tree roots.
6. 2 small convex boxes are rusted and inside is completely covered in mold.
7. Outfield fence on Field E extending to Field F is falling down, replaced at the same height as new fencing installed by the Estuary.
8. Field E/F fencing separating left Field E from Field F is falling. Posts are rusted at ground level.
9. Watering system needs 3 new sprinkler heads added for proper watering. Major Field C Field 2 – 180/1 – 360 degree sprinkler heads needed for Fields D and E.
10. Trees at west side of parking lot are in need of trimming. Large dead branches and over weighted limbs are a danger of breaking off causing property damage or injury to people in the parking lot area. Trees on west side of Major Field D are also in need of trimming dead branches and overgrown limbs.
11. Right field fence (Field D) is bent caused by a falling tree branch.
12. Outside center field, Field C, near scoreboard: 2 pine trees in need of property trimming, branches are overloaded and beginning to sag. Planter box is rotten and has rusty nails.
13. Wood trim around snack bar is rotten.
14. Infields are in need of approximately 40 yards of Padre Gold.

Submitted by Imperial Beach Little League on May 12, 2014. See attached photos (Attachment B-1).

Points of Concern

Girls Softball

1. Field A & B-we have 12 lights out of the 28 that shine the fields (per diagram: Attachment B-2)
2. Field B-electrical box has a short. Also, box is in path of water flow when it rains and keeps the box wet and box does not have a cover.
3. Field A-Water turn off has a leak at the shut off valve. Board on the back stop needs to be replaced. Fencing is bowed out (First & Third Base lines) and fencing needs to be tied down in various areas
4. Snack Bar-Eaves have termite damage, no main water shut off for snack bar.
5. Both Fields need Dirt
6. Batting Cages-water always pools up at front of batting cage door
7. Trash Can Fence is off hinges
8. Stands need repair-foot area
9. Sprinklers stay on too long-outfield grass always mushy in the mornings
10. Some sprinkler heads don't work
11. Need to change meters from being billed to City of Imperial Beach to Imperial Beach Girls Softball so we can get a better rate as we are non-profit.
12. Need steel grate to cover drain where Motor Home once was, car wheels have fallen into it in the past
13. Request to have doors/curtain for Women's Bathroom Toilet Stalls
14. Bathrooms have no way to dry hands or dispense soap
15. Sprinkler heads by Batting cages (near home plates) do not turn on (grass dying)
16. No Turn on valve for grass around trees (3rd base line)
17. Snack Bar Security Doors are rusted and need replacement/refinishing
18. Need yellow safety pads on top of short fences to protect players from getting hurt
19. Vent on restroom backside (none present)
20. No numbers on Light Poles
21. Leaks between Men's/Women's restrooms
22. Awnings for dugouts
23. Trees need to be trimmed
24. Fencing around area where Jessop's motor home was
25. Curtains for bathrooms by outfield of Field A

See Attached Diagram (Attachment B-2)



Exhibit B -- Attachment B1



Exhibit B – Attachment B1



Exhibit B – Attachment B1

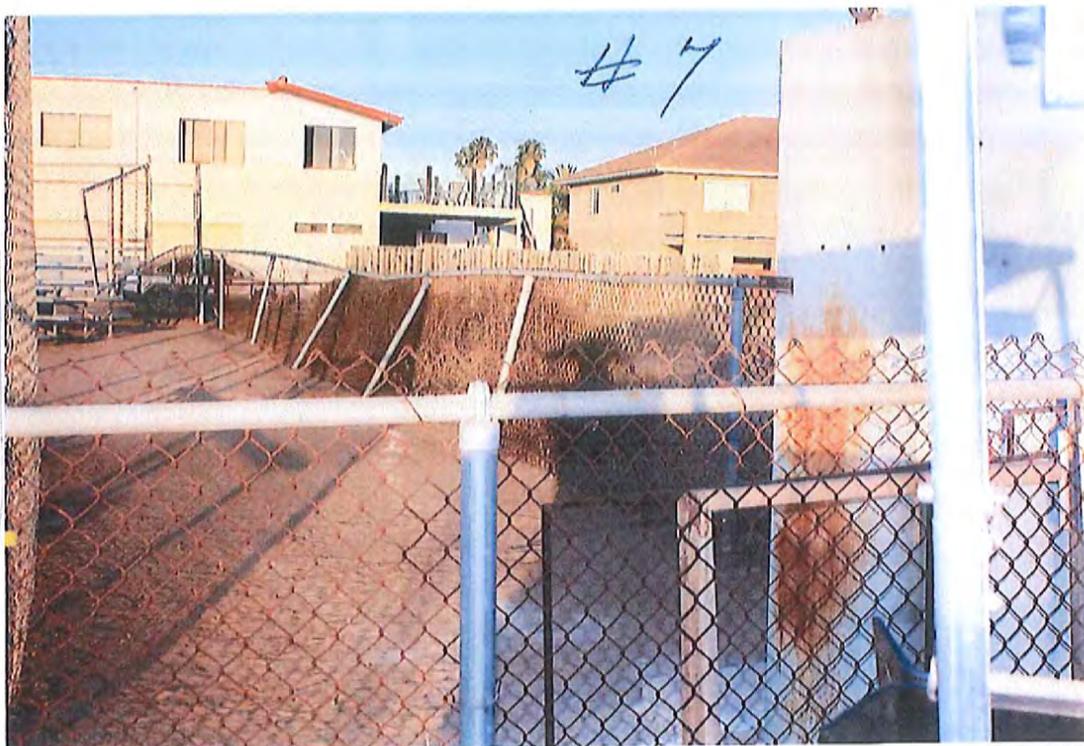


Exhibit B – Attachment B1

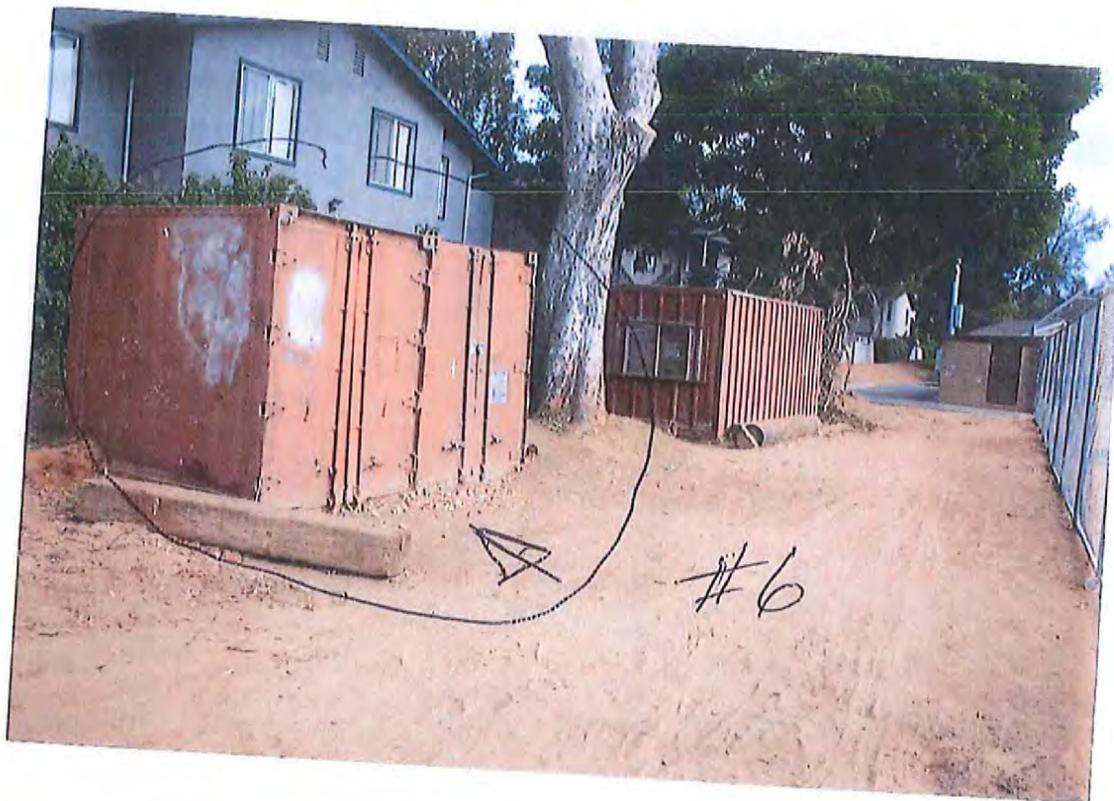




Exhibit B – Attachment B1



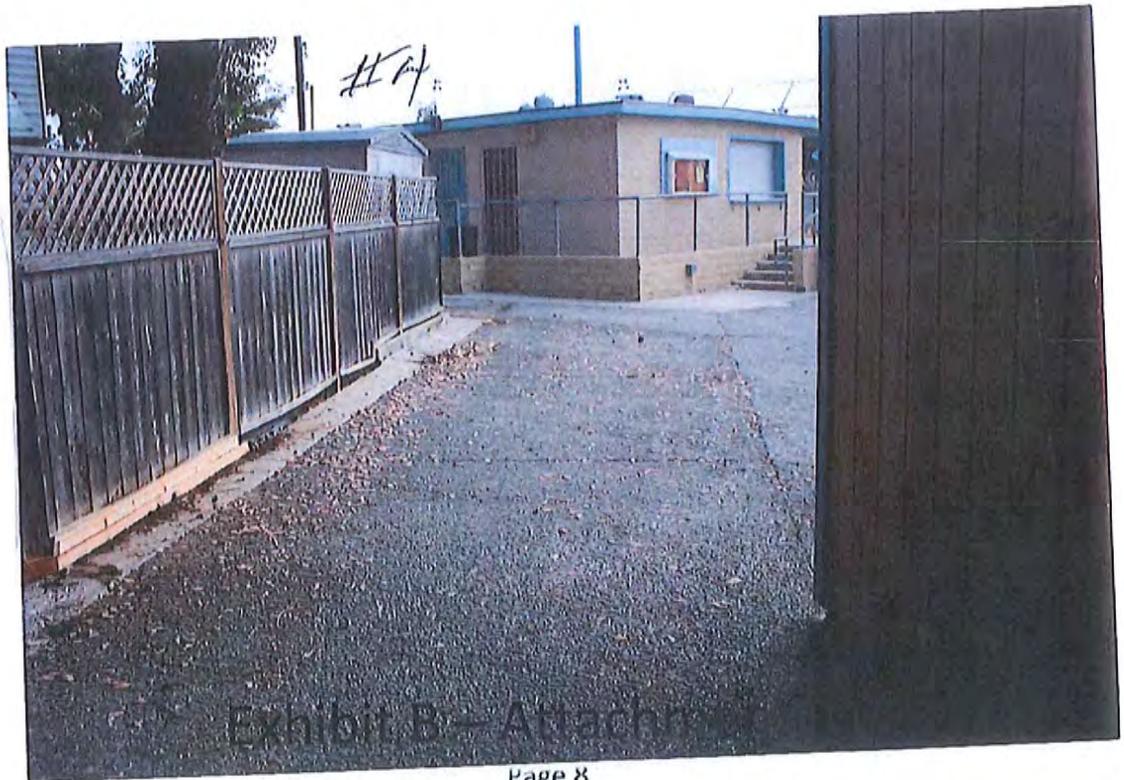


Exhibit B - Attachment

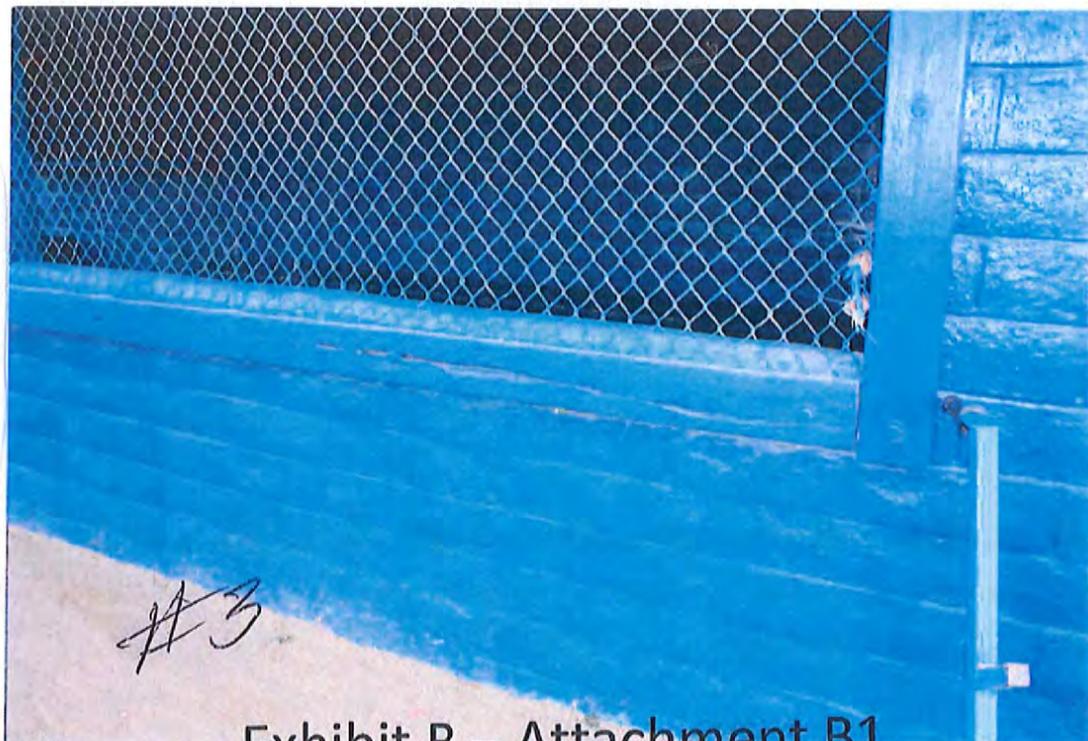


Exhibit B – Attachment B1



Exhibit B – Attachment B1

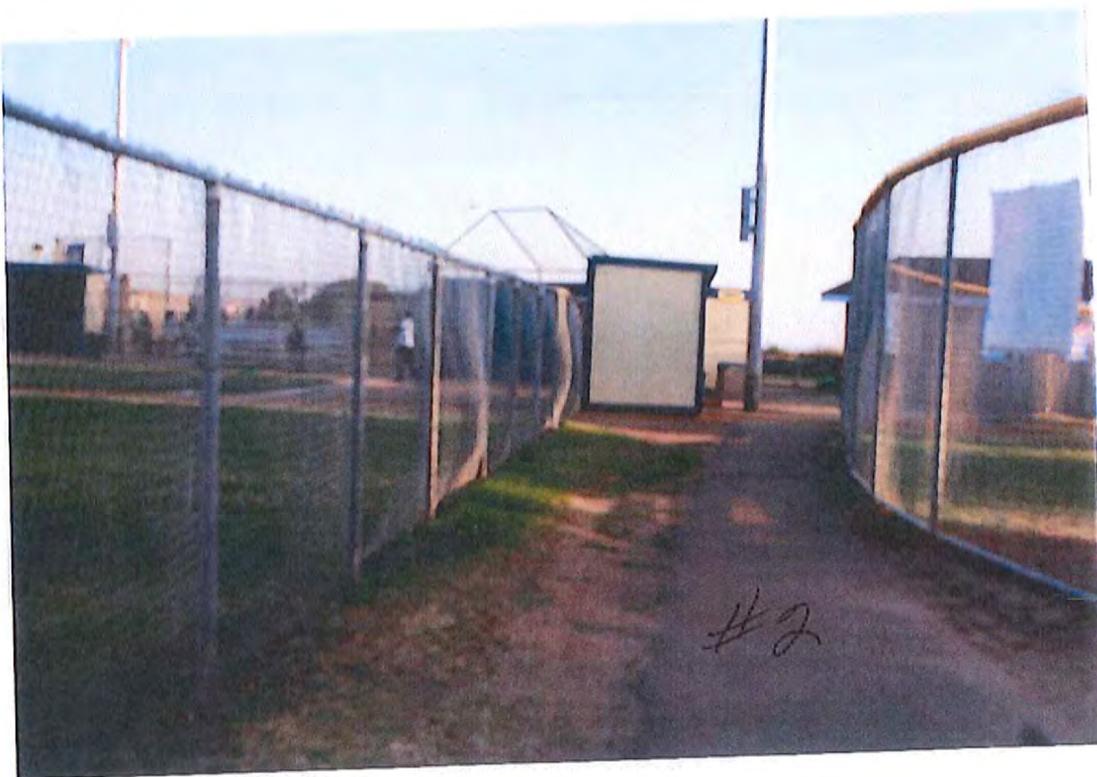


Exhibit B – Attachment B1

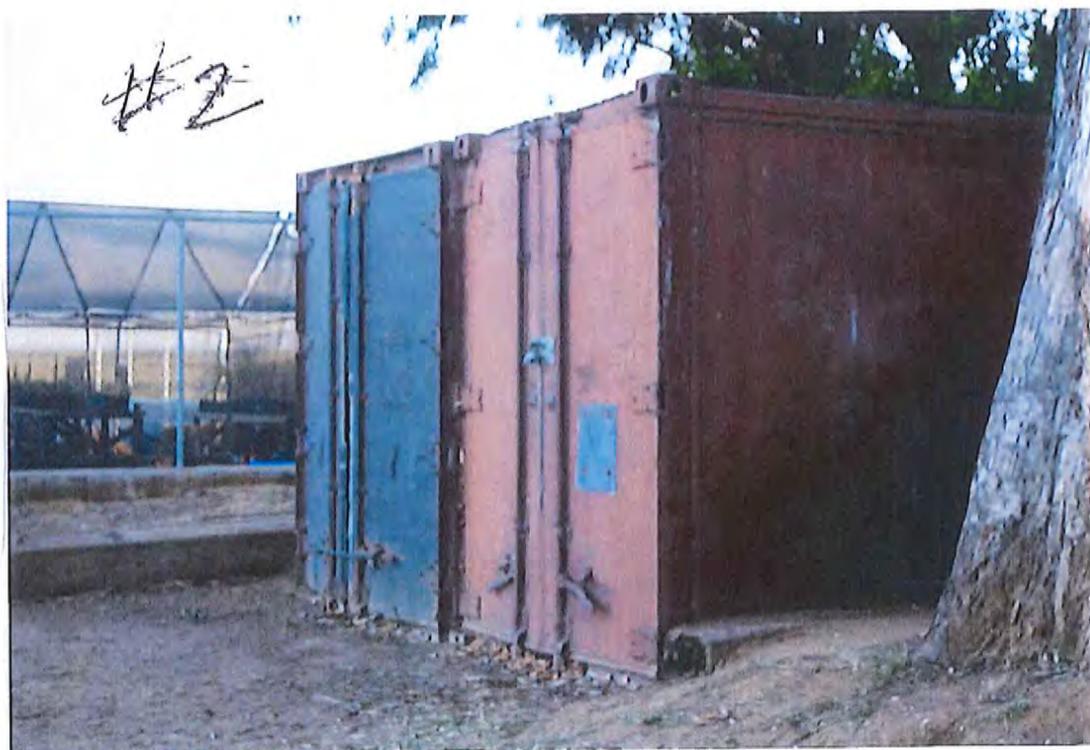


Exhibit B – Attachment B1

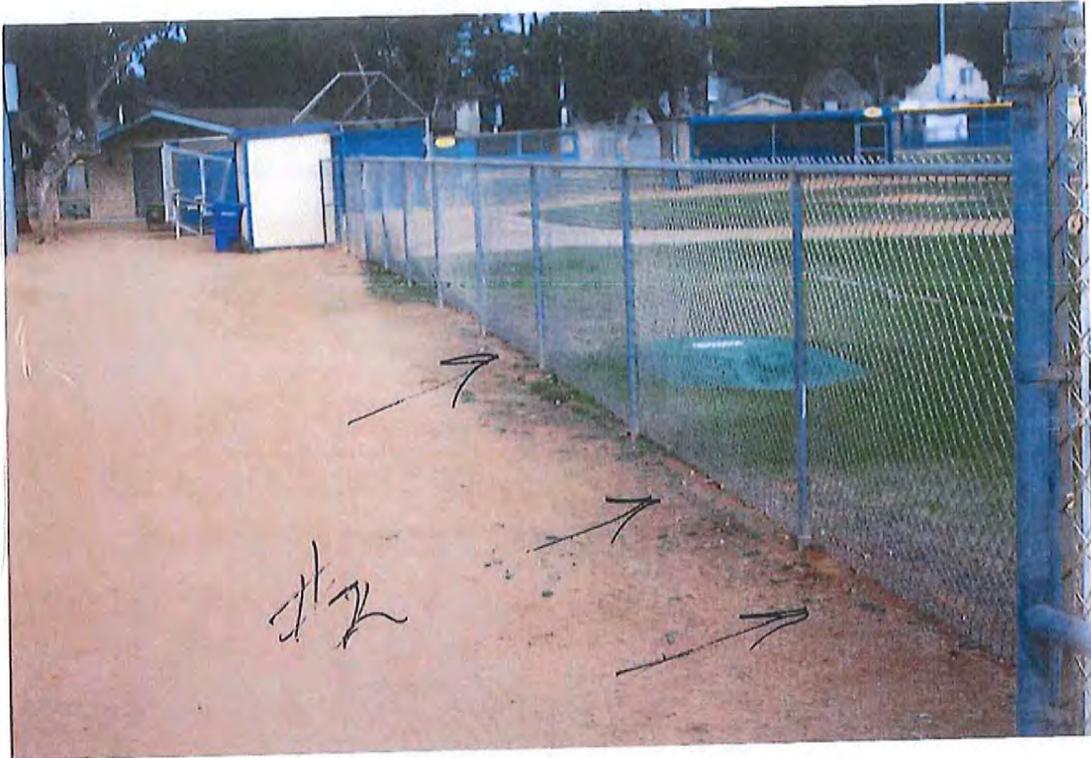


Exhibit B – Attachment B1



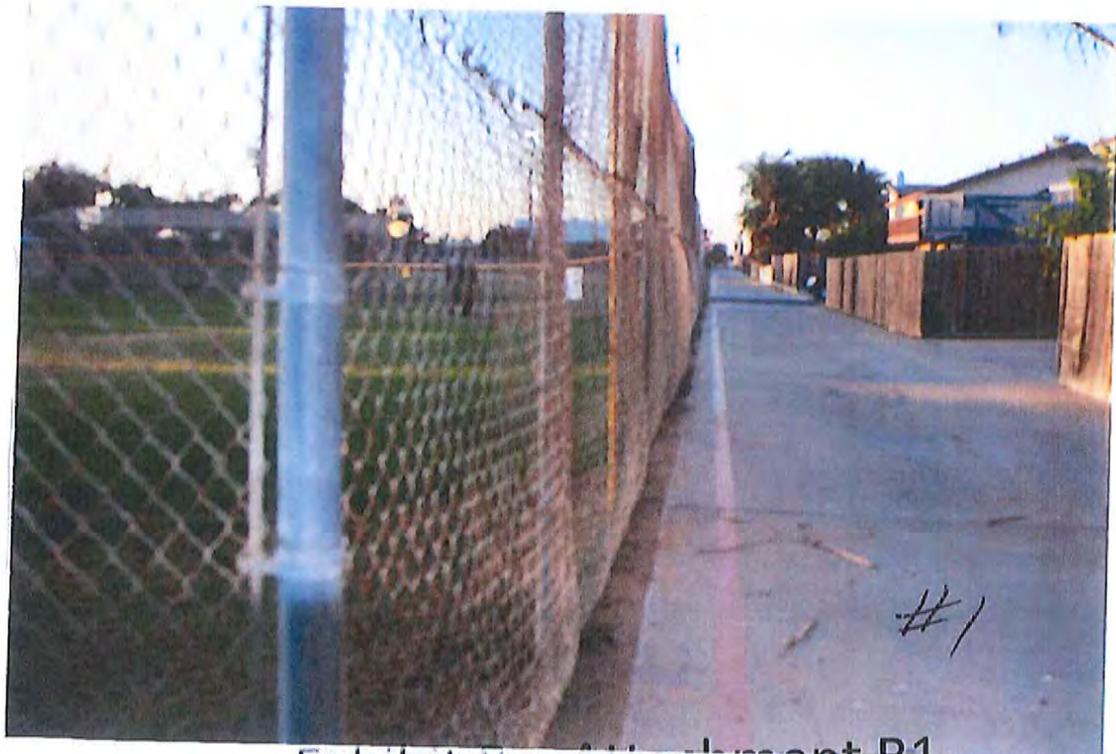


Exhibit B – Attachment B1

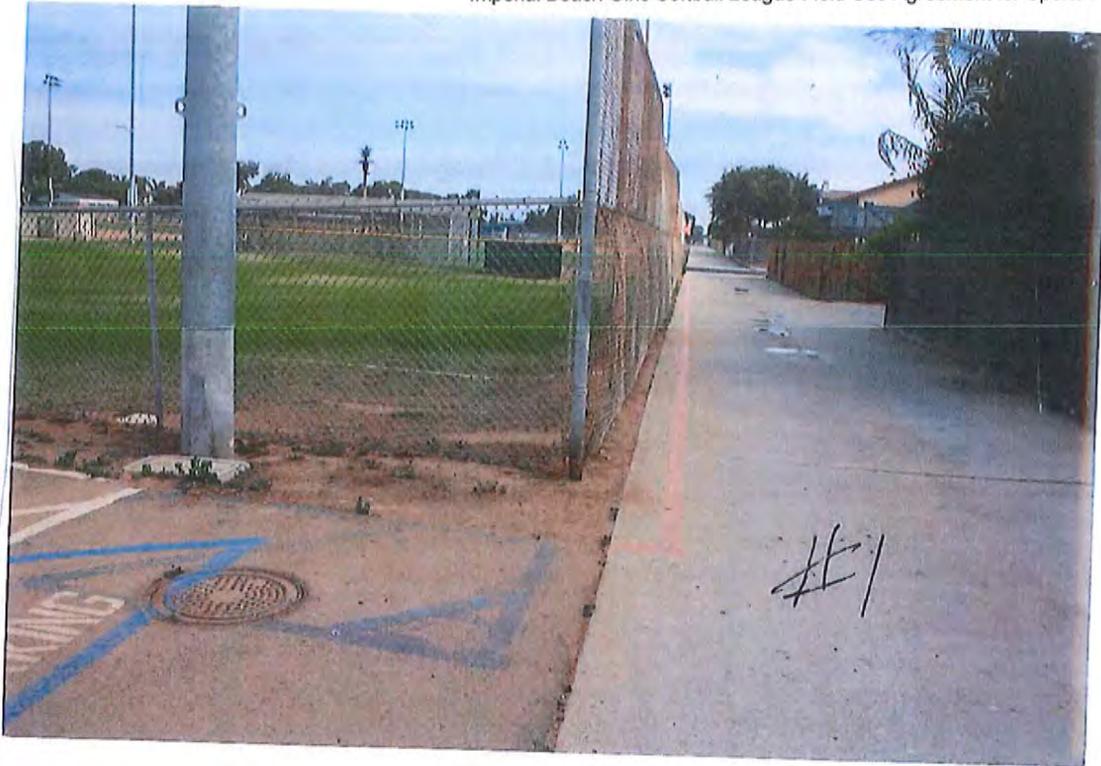


Exhibit B – Attachment B1

FIELD A & B W/ LIGHTS OUT

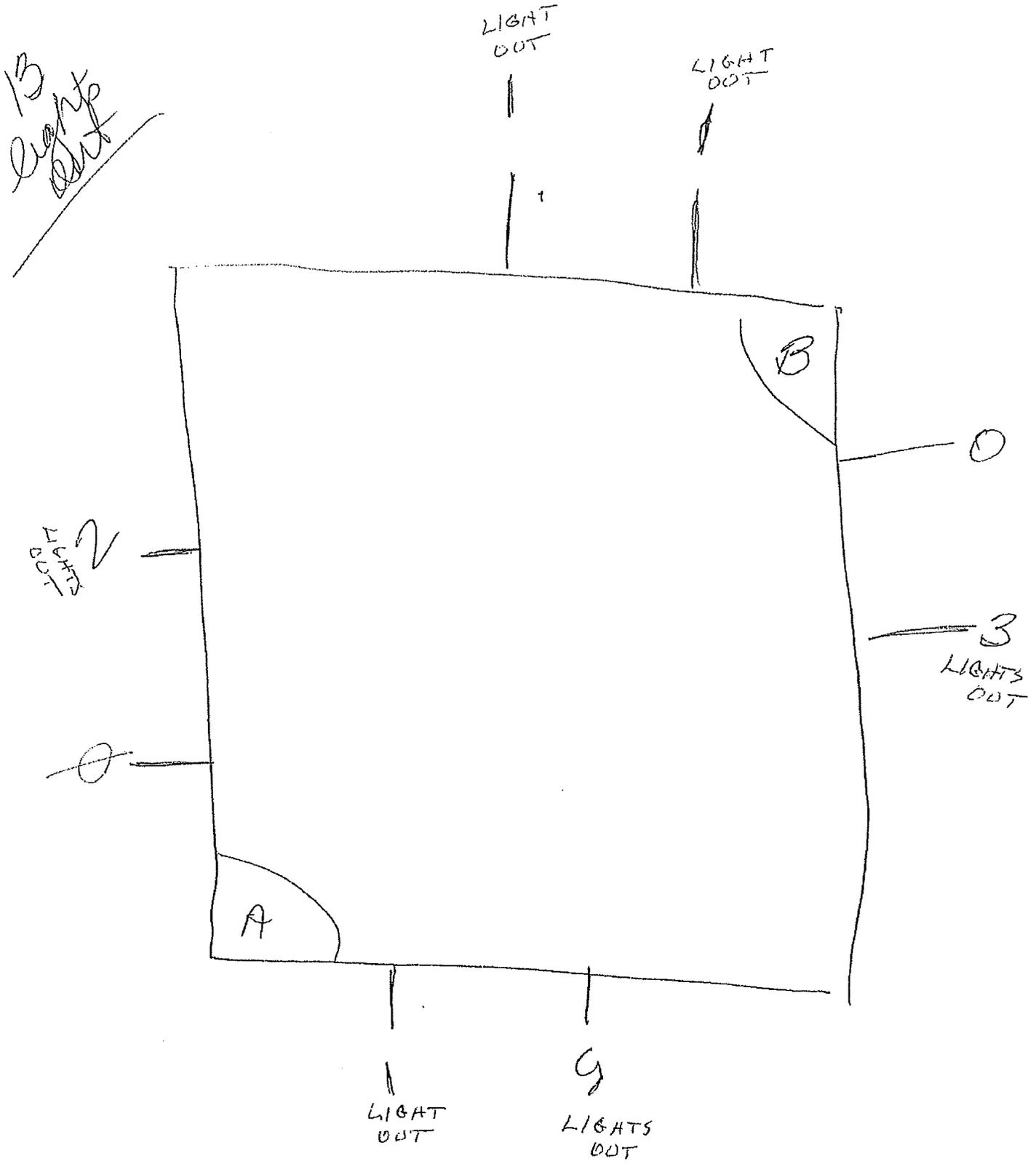


Exhibit "C"

Rental Use Agreement

ATTACHMENT 2

SPORTS PARK FIELD USE AGREEMENT BETWEEN THE CITY OF IMPERIAL BEACH AND IMPERIAL BEACH LITTLE LEAGUE

This Agreement is made and entered into by and between the City of Imperial Beach, a municipal corporation (hereinafter referred to as "City") and Imperial Beach Little League - a 501(c)(3) nonprofit corporation (hereinafter referred to as "IBLL").

1. Purpose

The purpose of this Agreement is to provide for certain terms and conditions for the use by IBLL of the City's Sports Park fields and facilities.

2. Facility Description

City's Sports Park facility is located at 425 Imperial Beach Boulevard, Imperial Beach, California (hereinafter referred to as the "Park").

IBLL shall have certain limited rights to use designated athletic recreational fields, facilities and grounds at the Park (with the exception of the Gym Complex and Sports Park Picnic Area) for sports league activities. Fields "A", "B", "C", "D", "E", and "F" are generally available for seasonal use by organized leagues as approved and scheduled by the City in advance. In addition, the City will make the southern portion of the concession stand area (as shown on Exhibit "A") available for IBLL use during approved league play.

3. Other Activities

IBLL agrees to acquire necessary Special Event Permits and Noise Amplification Permits, pursuant to provisions of the Imperial Beach Municipal Code and subject to approval by the City, for activities of IBLL which require said permits (e.g., Opening and Closing Day ceremonies, league tournaments, etc.) other than those authorized by this Agreement.

4. Condition of Park

IBLL agrees during the term of this Agreement to maintain and operate those designated ball fields and concession stand areas of the Park in a clean, safe, and sanitary condition, free of trash. IBLL will inspect their designated ball fields and concession stand area after each use to ensure they are maintained in a clean, safe, and sanitary condition, free of trash.

IBLL will solely be responsible for dragging the infield and chalking the base lines before each game. City agrees to provide daily litter control and trash disposal services for Park facility. However, IBLL will be responsible for emptying full trash cans during their activities and trash pick-up after each athletic activity.

An inspection and report on the condition of the Park, fields, facilities, and concession stand, based on a joint inspection between the City and IBLL, will be completed not later than December 15 of each year. In addition, IBLL shall report any immediate maintenance issues to the City as they are identified.

5. Inspection, Entry and Control

The City, shall maintain control over, have access to, and have the right at any time to inspect and assess the conditions of all facilities within the Sports Park. The City reserves the

unfettered right of ingress and egress to its Park by authorized City representatives for the purpose of repairs, preservation and maintenance of its Park and its facilities. If such repairs, preservation or maintenance would interrupt IBLL's use of Park, except in emergency situations requiring immediate work, IBLL will be given reasonable notice when such work may become necessary and shall adjust operations in such a manner that City may proceed expeditiously.

IBLL shall not change, modify or re-key any locks at the Park, structures, facilities or gates without prior approval from the City. At all times the City shall have key access to the entire Park including structures, facilities, buildings, storage rooms or gates on City property.

6. Term

This Agreement shall commence on January 1, 2007 and continue through December 31, 2009 for a total contract period of three (3) years. The City shall have the option to extend this Agreement for an additional two (2) one (1) year increments after the end of the current term. Should City desire to exercise an option to extend, it shall give IBLL thirty (30) days notice prior to the end of the then current term.

Notwithstanding the above, this Agreement may be terminated by either party without cause upon delivery and receipt of written notice one hundred twenty (120) calendar days prior to the proposed termination. City may terminate this Agreement for cause, without notice, should IBLL be in default of any covenant or condition hereof.

All personal property of IBLL remaining upon the Park premises thirty (30) days after the expiration or termination of this Agreement shall be, at its election, become the property of City.

7. Consideration for Use of Concession Operation

In consideration of the City granting IBLL the right to store and sell food, snacks, drinks and other related items from the concession stand area, IBLL shall use all net proceeds from the concession stand sales exclusively for the benefit of and for the purpose of supporting IBLL related activities in accordance with this Agreement. IBLL will also comply with all Health and Safety codes for the equipment and personnel in the operation of the concession stand.

Upon 24 hour notice, the City shall retain the right to use said concession stand area for the purpose of selling food, snacks, drinks and other related items when not in use by IBLL. The City will not use any consumable products owned by IBLL without prior consent of IBLL. Both IBLL and the City will be responsible to repair any fixtures, appliances, and equipment damaged by their use. Both IBLL and the City agree to leave said concession stand area in a clean and sanitary condition after every use.

Net revenue earned by City from concession sales shall be used by City to offset cost of services provided by City in the Sports Park.

8. Use

IBLL shall only use the Park for sports league activities as scheduled and approved by the City in advance. However, any fields not in use (regardless if scheduled but subsequently not used) shall be available for use by City, other authorized leagues, the general public, or private groups pursuant to the policies, rules and regulations of the City. Any unscheduled use of fields will be considered temporary and immediately terminated if and when the approved scheduled league or user arrives at the field.

City and IBLL will endeavor to develop and adopt user policies and procedures for annual and seasonal recreational scheduling of designated fields including a 2-3 week time period in December for extended field maintenance and recovery. City will meet annually (in November and/or December) to set the schedule for the upcoming year and meet at other times as necessary to finalize each season's schedule. No later than December 15 of each year, IBLL shall present its tentative schedule for the upcoming year to the City. The City recognizes that IBLL's peak periods of use will be during the months of January - June for spring competition activities. In order to schedule each season's league play in a timely manner, IBLL shall provide City reasonable advance notice of their desired field use schedule including information on fee amount charged to participants, number of age divisions, team names in each division, player names, player residency, names of coaches and managers and contact information. A minimum of fifty percent (50%) of IBLL league players must be Imperial Beach residents.

IBLL shall not, nor shall IBLL permit employees, agents or representatives of the IBLL or individuals participating in IBLL's programs to violate provisions of the Imperial Beach Municipal Code when using the Park, or allow the Park to be used for civil insurrection, events contrary to acceptable community standards, or to contribute to general immorality.

9. Dispute Resolution

The City desires to reach consensus with and between the authorized leagues regarding scheduled use of the Park fields. In the event the league(s) and the City cannot reach agreement on a Park field use schedule within a reasonable time period prior to the start of each league's season then the City's Recreation Coordinator will decide the upcoming season's schedule. If IBLL desires to appeal the decision of the Recreation Coordinator they must do so in writing to the City Manager within five business days of the decision. The City Manager will then appoint an appeal panel of three representatives to hear the appeal. The decision of the appeal panel will be final.

All other non-schedule related disputes between leagues and/or the City will be decided by the Recreation Coordinator. Any appeal of non-schedule related disputes shall be directed to the City Manager or his/her designee. The decision of the City Manager or his/her designee will be final.

10. Compliance with Laws

IBLL expressly agrees at all times during the term of this Agreement to comply, and cause compliance, with the Imperial Beach Municipal Code, and any and all present and future laws, general rules, or regulations of any governmental authority now, or at any time during the term of this Agreement, in force relating to sanitation or public health, safety, or welfare; and IBLL shall at all times faithfully obey and comply with all laws, rules and regulations applicable

thereto, adopted by federal, state, or other governmental bodies or departments or officers thereof.

11. Maintenance and Care

IBLL shall be responsible for dragging and chalking athletic fields for all their designated youth activities and trash pick-up during and after each athletic event. City shall be responsible for all electricity costs associated with field and park facility lighting, except for electricity costs for concession stand operations, which shall be the responsibility of the IBLL.

City shall be responsible for daily maintenance and repair of all recreational fields Park grounds, parking lots, landscaping, turf maintenance, field lighting maintenance and housekeeping activities for all Park and grounds structures, including structural concession stand area maintenance.

No later than December 15 of each year, IBLL will submit a project list to the City to be considered for inclusion in City's next succeeding fiscal year Capital Improvement Project (CIP) Plan. This list shall include any desired major maintenance or repair items for recreational fields, grounds or structures (i.e., playing fields, dugouts, fencing, etc.) or any other public facility improvements for the following contract year. In the event IBLL's CIP list differs from the City's CIP Plan, the City's CIP Plan shall prevail.

IBLL may perform minor maintenance or repair for certain recreational grounds or facilities if approved by the City in advance. IBLL shall provide notice to City regarding any proposed minor maintenance or repair and such minor maintenance or repair shall be subject to prior approval by the City and will become the property of the City unless otherwise agreed to in writing.

12. Specialty Leagues and/or Traveling Teams

Any specialty leagues or traveling teams directly or indirectly associated with IBLL are not included in this agreement and are subject to the same procedures, rules and regulations as other non-recognized groups in regards to use of the Park.

13. Operating Rules and Procedures

IBLL shall provide a copy of the rules, regulations, operating policies and procedures for its sports league activities to the City upon request.

14. Security and Reporting

All violations of law, abuse or damage to the Park, or injuries to the public or IBLL's agents or employees, shall be reported immediately to the City.

15. IBLL's Employees and Equipment

IBLL has secured or will secure at IBLL's own expense all persons, employees, and equipment required to perform the services required under this Agreement and that all such services will be performed by IBLL, or under IBLL's supervision, by persons authorized by law to perform such services. IBLL covenants and agrees to comply with all local, state and federal laws in the employment of persons and equipment, and to require any of its sub-contractors to likewise comply.

16. Responsibility for Equipment

City shall not be responsible nor held liable for any damage to person or property consequent upon the use, misuse, or failure of any equipment used by IBLL or any of IBLL's employees or sub-contractors, even if such equipment has been furnished, rented, or loaned to IBLL by City. The acceptance or use of any such equipment by IBLL, IBLL's employees, or sub-contractors shall be construed to mean that IBLL accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

17. Independent Contractor

IBLL is, for all purposes arising out of this Agreement, an independent contractor. IBLL has and shall retain the right to exercise full control and supervision of all persons assisting the IBLL in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither IBLL nor IBLL's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, IBLL being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

18. Hold Harmless

IBLL shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officers, agents, employees and volunteers, from and against any and all claims for loss, damage or expense, by reasons of any act or omission of any employee, servant agent or sub-contractor of IBLL, including those, if any, originally employed by City and utilized by IBLL, and IBLL agrees to defend, at IBLL's own expense, any suit or suits that may be brought against City by reason of any such act or omission.

IBLL shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officers, agents, employees and volunteers, from and against, and shall assume full responsibility for payment of all Federal and State income taxes with respect to IBLL and IBLL's employees engaged in performance of this Agreement. City and its agents and employees shall not be, nor be held, liable for any liabilities, penalties, or forfeitures, or for any damage to the goods, properties or personal injury to or death of them, whether caused by, or resulting from, any negligent act or omission of IBLL.

IBLL shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officers, agents, employees and volunteers, from and against any and all of the foregoing obligations and liabilities, and any and all costs and expenses incurred by City on

which any claim arising therefrom is based. It is intended by both parties that IBLL shall indemnify and hold City harmless from all claims arising by reason of the work done, or by reason of any act or omission of IBLL its agents, employees and sub-contractors, excepting those which arise out of the sole active negligence of City.

19. Insurance

IBLL agrees to maintain such insurance as will fully protect both IBLL and City from any and all claims under any workers' compensation act or employer's liability laws, and from any or all other claims of whatsoever kind or nature for the damage to property or from personal injury, including death, made by anyone whomsoever, which may arise from operations carried on under this Agreement, whether by IBLL, any sub-contractor or by anyone directly or indirectly engaged or employed by either of them.

IBLL shall, throughout the period of this Agreement, provide public liability and property damage insurance covering all operations of the IBLL, its agents and employees, including but not limited to, bodily injury, personal injury and property damage with minimum liability limits of \$1,000,000 per occurrence.

IBLL agrees to provide City at or before the effective date of this Agreement with a Certificate of Insurance of the policy or policies specified above and to keep insurance in effect during the entire term of this Agreement. Said policy or policies shall provide for thirty (30) days written notice to City of cancellation or material change thereto. Additionally, except for policies of workers' compensation and employer liability, City shall be named as an additional insured in said policy.

In no event will any document other than a Certificate of Insurance be acceptable as evidence of insurance. Failure to provide such document shall be grounds for immediate termination or suspension of this Agreement and use of the fields.

It is agreed that any insurance maintained by the City of Imperial Beach shall apply in excess of and not contribute with insurance provided by IBLL as required under this Agreement. Each insurance policy required of IBLL under this Agreement shall acknowledge this by an appropriate clause of similar statement.

20. Waiver of Subrogation

City agrees to continue fire and liability insurance coverage on Sports Park Recreation Center, concession stand and all City contents within; IBLL shall provide any insurance necessary for equipment owned by IBLL and placed in Park facilities.

21. Notices

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to:

IBLL: Imperial Beach Little League
P.O. Box 1041
Imperial Beach, CA 91933

City: City Manager
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach CA 91932

The address to which notices shall or may be mailed as aforesaid by either party, shall or may be changed by written notice given by such party to the other as herein provided.

22. Nondiscrimination and Nonsegregation

IBLL and IBLL's employees, agents and sub-contractors, shall not segregate or discriminate because of race, religion, color, creed, ancestry, sex, age, national origin, marital status, or physical handicap against any person or group of persons by refusing to furnish such person any accommodation, facility, service, or privilege offered to or enjoyed by the general public.

IBLL, its employees and agents are also prohibited from establishing or permitting the establishment of any practice or policy involving segregation or discrimination with respect to the use of the Park.

23. City Manager

The City Manager or his/her designee shall be the contract officer and shall receive communications from the IBLL and render decisions, unless otherwise stated by this Agreement, on behalf of the City of Imperial Beach.

24. Approvals

Approvals required by City shall not be unreasonably withheld.

25. Modification

Notwithstanding any of the provisions of this Agreement, City and IBLL may hereafter, by mutual consent, agree in writing to any lawful modification, addition or deletion of the terms and conditions of this Agreement.

26. Assignments

No transfer or assignment by the IBLL that affects this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first consented to in writing by City.

27. California Law; Venue

This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in San Diego County, California. IBLL hereby waives any and all rights it might have pursuant to Section 394 of the California Code of Civil Procedure.

28. Severability

If any part of this Agreement is/should be held unenforceable or void, in whole or in part, then such unenforceable or void provision or part shall be deemed separable from the remaining provisions and shall in no way affect the validity of the remainder of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed:

City of Imperial Beach:

Signature on File

City Manager

3/8/07

Date

Imperial Beach Little League (IBLL)

Signature on File

League President

12/19/06

Date

Approved as to Content:

Signature on File

Assistant City Manager

ATTACHMENT 3

**SPORTS PARK FIELD USE AGREEMENT
BETWEEN THE CITY OF IMPERIAL BEACH
AND IMPERIAL BEACH GIRL'S SOFTBALL**

This Agreement is made and entered into by and between the City of Imperial Beach, a municipal corporation (hereinafter referred to as "City") and Imperial Beach Girls' Softball - a 501(c)(3) nonprofit corporation (hereinafter referred to as "IBGS").

1. Purpose

The purpose of this Agreement is to provide for certain terms and conditions for the use by IBGS of the City's Sports Park fields and facilities.

2. Facility Description

City's Sports Park facility is located at 425 Imperial Beach Boulevard, Imperial Beach, California (hereinafter referred to as the "Park").

IBGS shall have certain limited rights to use designated athletic recreational fields, facilities and grounds at the Park (with the exception of the Gym Complex and Sports Park Picnic Area) for sports league activities. Fields "A", "B", "C", "D", "E", and "F" are generally available for seasonal use by organized leagues as approved and scheduled by the City in advance. In addition, the City will make the northern portion of the concession stand area (as shown on Exhibit "A") available for IBGS use during approved league play.

3. Other Activities

IBGS agrees to acquire necessary Special Event Permits and Noise Amplification Permits, pursuant to provisions of the Imperial Beach Municipal Code and subject to approval by the City, for activities of IBGS which require said permits (e.g., Opening and Closing Day ceremonies, league tournaments, etc.) other than those authorized by this Agreement.

4. Condition of Park

IBGS agrees during the term of this Agreement to maintain and operate those designated ball fields and concession stand areas of the Park in a clean, safe, and sanitary condition, free of trash. IBGS will inspect their designated ball fields and concession stand area after each use to ensure they are maintained in a clean, safe, and sanitary condition, free of trash.

IBGS will solely be responsible for dragging the infield and chalking the base lines before each game. City agrees to provide daily litter control and trash disposal services for Park facility. However, IBGS will be responsible for emptying full trash cans during their activities and trash pick-up after each athletic activity.

An inspection and report on the condition of the Park, fields, facilities, and concession stand, based on a joint inspection between the City and IBGS, will be completed not later than December 15 of each year. In addition, IBGS shall report any immediate maintenance issues to the City as they are identified.

5. Inspection, Entry and Control

The City, shall maintain control over, have access to, and have the right at any time to inspect and assess the conditions of all facilities within the Sports Park. The City reserves the

unfettered right of ingress and egress to its Park by authorized City representatives for the purpose of repairs, preservation and maintenance of its Park and its facilities. If such repairs, preservation or maintenance would interrupt IBGS's use of Park, except in emergency situations requiring immediate work, IBGS will be given reasonable notice when such work may become necessary and shall adjust operations in such a manner that City may proceed expeditiously.

IBGS shall not change, modify or re-key any locks at the Park, structures, facilities or gates without prior approval from the City. At all times the City shall have key access to the entire Park including structures, facilities, buildings, storage rooms or gates on City property.

6. Term

This Agreement shall commence on January 1, 2007 and continue through December 31, 2009 for a total contract period of three (3) years. The City shall have the option to extend this Agreement for an additional two (2) one (1) year increments after the end of the current term. Should City desire to exercise an option to extend, it shall give IBGS thirty (30) days notice prior to the end of the then current term.

Notwithstanding the above, this Agreement may be terminated by either party without cause upon delivery and receipt of written notice one hundred twenty (120) calendar days prior to the proposed termination. City may terminate this Agreement for cause, without notice, should IBGS be in default of any covenant or condition hereof.

All personal property of IBGS remaining upon the Park premises thirty (30) days after the expiration or termination of this Agreement shall be, at its election, become the property of City.

7. Consideration for Use of Concession Operation

In consideration of the City granting IBGS the right to store and sell food, snacks, drinks and other related items from the concession stand area, IBGS shall use all net proceeds from the concession stand sales exclusively for the benefit of and for the purpose of supporting IBGS related activities in accordance with this Agreement. IBGS will also comply with all Health and Safety codes for the equipment and personnel in the operation of the concession stand.

Upon 24 hour notice, the City shall retain the right to use said concession stand area for the purpose of selling food, snacks, drinks and other related items when not in use by IBGS. The City will not use any consumable products owned by IBGS without prior consent of IBGS. Both IBGS and the City will be responsible to repair any fixtures, appliances, and equipment damaged by their use. Both IBGS and the City agree to leave said concession stand area in a clean and sanitary condition after every use.

Net revenue earned by City from concession sales shall be used by City to offset cost of services provided by City in the Sports Park.

8. Use

IBGS shall only use the Park for sports league activities as scheduled and approved by the City in advance. However, any fields not in use (regardless if scheduled but subsequently not used) shall be available for use by City, other authorized leagues, the general public, or private groups pursuant to the policies, rules and regulations of the City. Any unscheduled use of fields will be considered temporary and immediately terminated if and when the approved scheduled league or user arrives at the field.

City and IBGS will endeavor to develop and adopt user policies and procedures for annual and seasonal recreational scheduling of designated fields including a 2-3 week time period in December for extended field maintenance and recovery. City will meet annually (in November and/or December) to set the schedule for the upcoming year and meet at other times as necessary to finalize each season's schedule. No later than December 15 of each year, IBGS shall present its tentative schedule for the upcoming year to the City. The City recognizes that IBGS's peak periods of use will be during the months of January - June for spring competition activities. In order to schedule each season's league play in a timely manner, IBGS shall provide City reasonable advance notice of their desired field use schedule including information on fee amount charged to participants, number of age divisions, team names in each division, player names, player residency, names of coaches and managers and contact information. A minimum of fifty percent (50%) of IBGS league players must be Imperial Beach residents.

IBGS shall not, nor shall IBGS permit employees, agents or representatives of the IBGS or individuals participating in IBGS's programs to violate provisions of the Imperial Beach Municipal Code when using the Park, or allow the Park to be used for civil insurrection, events contrary to acceptable community standards, or to contribute to general immorality.

9. Dispute Resolution

The City desires to reach consensus with and between the authorized leagues regarding scheduled use of the Park fields. In the event the league(s) and the City cannot reach agreement on a Park field use schedule within a reasonable time period prior to the start of each league's season then the City's Recreation Coordinator will decide the upcoming season's schedule. If IBGS desires to appeal the decision of the Recreation Coordinator they must do so in writing to the City Manager within five business days of the decision. The City Manager will then appoint an appeal panel of three representatives to hear the appeal. The decision of the appeal panel will be final.

All other non-schedule related disputes between leagues and/or the City will be decided by the Recreation Coordinator. Any appeal of non-schedule related disputes shall be directed to the City Manager or his/her designee. The decision of the City Manager or his/her designee will be final.

10. Compliance with Laws

IBGS expressly agrees at all times during the term of this Agreement to comply, and cause compliance, with the Imperial Beach Municipal Code, and any and all present and future laws, general rules, or regulations of any governmental authority now, or at any time during the term of this Agreement, in force relating to sanitation or public health, safety, or welfare; and IBGS shall at all times faithfully obey and comply with all laws, rules and regulations applicable

thereto, adopted by federal, state, or other governmental bodies or departments or officers thereof.

11. Maintenance and Care

IBGS shall be responsible for dragging and chalking athletic fields for all their designated youth activities and trash pick-up during and after each athletic event. City shall be responsible for all electricity costs associated with field and park facility lighting, except for electricity costs for concession stand operations, which shall be the responsibility of the IBGS.

City shall be responsible for daily maintenance and repair of all recreational fields Park grounds, parking lots, landscaping, turf maintenance, field lighting maintenance and housekeeping activities for all Park and grounds structures, including structural concession stand area maintenance.

No later than December 15 of each year, IBGS will submit a project list to the City to be considered for inclusion in City's next succeeding fiscal year Capital Improvement Project (CIP) Plan. This list shall include any desired major maintenance or repair items for recreational fields, grounds or structures (i.e., playing fields, dugouts, fencing, etc.) or any other public facility improvements for the following contract year. In the event IBGS's CIP list differs from the City's CIP Plan, the City's CIP Plan shall prevail.

IBGS may perform minor maintenance or repair for certain recreational grounds or facilities if approved by the City in advance. IBGS shall provide notice to City regarding any proposed minor maintenance or repair and such minor maintenance or repair shall be subject to prior approval by the City and will become the property of the City unless otherwise agreed to in writing.

12. Specialty Leagues and/or Traveling Teams

Any specialty leagues or traveling teams directly or indirectly associated with IBGS are not included in this agreement and are subject to the same procedures, rules and regulations as other non-recognized groups in regards to use of the Park.

13. Operating Rules and Procedures

IBGS shall provide a copy of the rules, regulations, operating policies and procedures for its sports league activities to the City upon request.

14. Security and Reporting

All violations of law, abuse or damage to the Park, or injuries to the public or IBGS's agents or employees, shall be reported immediately to the City.

15. IBGS's Employees and Equipment

IBGS has secured or will secure at IBGS's own expense all persons, employees, and equipment required to perform the services required under this Agreement and that all such services will be performed by IBGS, or under IBGS's supervision, by persons authorized by law to perform such services. IBGS covenants and agrees to comply with all local, state and federal laws in the employment of persons and equipment, and to require any of its sub-contractors to likewise comply.

16. Responsibility for Equipment

City shall not be responsible nor held liable for any damage to person or property consequent upon the use, misuse, or failure of any equipment used by IBGS or any of IBGS's employees or sub-contractors, even if such equipment has been furnished, rented, or loaned to IBGS by City. The acceptance or use of any such equipment by IBGS, IBGS's employees, or sub-contractors shall be construed to mean that IBGS accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

17. Independent Contractor

IBGS is, for all purposes arising out of this Agreement, an independent contractor. IBGS has and shall retain the right to exercise full control and supervision of all persons assisting the IBGS in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither IBGS nor IBGS's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, IBGS being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

18. Hold Harmless

IBGS shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officers, agents, employees and volunteers, from and against any and all claims for loss, damage or expense, by reasons of any act or omission of any employee, servant agent or sub-contractor of IBGS, including those, if any, originally employed by City and utilized by IBGS, and IBGS agrees to defend, at IBGS's own expense, any suit or suits that may be brought against City by reason of any such act or omission.

IBGS shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officers, agents, employees and volunteers, from and against, and shall assume full responsibility for payment of all Federal and State income taxes with respect to IBGS and IBGS's employees engaged in performance of this Agreement. City and its agents and employees shall not be, nor be held, liable for any liabilities, penalties, or forfeitures, or for any damage to the goods, properties or personal injury to or death of them, whether caused by, or resulting from, any negligent act or omission of IBGS.

IBGS shall exonerate, defend, indemnify, and hold harmless City and City's elected and appointed officers, agents, employees and volunteers, from and against any and all of the foregoing obligations and liabilities, and any and all costs and expenses incurred by City on

which any claim arising therefrom is based. It is intended by both parties that IBGS shall indemnify and hold City harmless from all claims arising by reason of the work done, or by reason of any act or omission of IBGS its agents, employees and sub-contractors, excepting those which arise out of the sole active negligence of City.

19. Insurance

IBGS agrees to maintain such insurance as will fully protect both IBGS and City from any and all claims under any workers' compensation act or employer's liability laws, and from any or all other claims of whatsoever kind or nature for the damage to property or from personal injury, including death, made by anyone whomsoever, which may arise from operations carried on under this Agreement, whether by IBGS, any sub-contractor or by anyone directly or indirectly engaged or employed by either of them.

IBGS shall, throughout the period of this Agreement, provide public liability and property damage insurance covering all operations of the IBGS, its agents and employees, including but not limited to, bodily injury, personal injury and property damage with minimum liability limits of \$1,000,000 per occurrence.

IBGS agrees to provide City at or before the effective date of this Agreement with a Certificate of Insurance of the policy or policies specified above and to keep insurance in effect during the entire term of this Agreement. Said policy or policies shall provide for thirty (30) days written notice to City of cancellation or material change thereto. Additionally, except for policies of workers' compensation and employer liability, City shall be named as an additional insured in said policy.

In no event will any document other than a Certificate of Insurance be acceptable as evidence of insurance. Failure to provide such document shall be grounds for immediate termination or suspension of this Agreement and use of the fields.

It is agreed that any insurance maintained by the City of Imperial Beach shall apply in excess of and not contribute with insurance provided by IBGS as required under this Agreement. Each insurance policy required of IBGS under this Agreement shall acknowledge this by an appropriate clause of similar statement.

20. Waiver of Subrogation

City agrees to continue fire and liability insurance coverage on Sports Park Recreation Center, concession stand and all City contents within; IBGS shall provide any insurance necessary for equipment owned by IBGS and placed in Park facilities.

21. Notices

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to:

IBGS: Imperial Beach Girls' Softball (IBGS) (ASA Affiliated)
P.O. Box 1358
Imperial Beach, CA 91933

City: City Manager
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach CA 91932

The address to which notices shall or may be mailed as aforesaid by either party, shall or may be changed by written notice given by such party to the other as herein provided.

22. Nondiscrimination and Nonsegregation

IBGS and IBGS's employees, agents and sub-contractors, shall not segregate or discriminate because of race, religion, color, creed, ancestry, sex, age, national origin, marital status, or physical handicap against any person or group of persons by refusing to furnish such person any accommodation, facility, service, or privilege offered to or enjoyed by the general public.

IBGS, its employees and agents are also prohibited from establishing or permitting the establishment of any practice or policy involving segregation or discrimination with respect to the use of the Park.

23. City Manager

The City Manager or his/her designee shall be the contract officer and shall receive communications from the IBGS and render decisions, unless otherwise stated by this Agreement, on behalf of the City of Imperial Beach.

24. Approvals

Approvals required by City shall not be unreasonably withheld.

25. Modification

Notwithstanding any of the provisions of this Agreement, City and IBGS may hereafter, by mutual consent, agree in writing to any lawful modification, addition or deletion of the terms and conditions of this Agreement.

26. Assignments

No transfer or assignment by the IBGS that affects this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first consented to in writing by City.

27. California Law; Venue

This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in San Diego County, California. IBGS hereby waives any and all rights it might have pursuant to Section 394 of the California Code of Civil Procedure.

