ITEM NO. 7

STAFF REPORT

CITY OF OCEANSIDE

DATE: March 2, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Economic & Community Development Department/ Property Management

SUBJECT: **AMENDMENT 1 TO THE PROPERTY USE AGREEMENT AND AMENDMENT 1 TO THE SERVICE, MAINTENANCE AND OPERATIONS AGREEMENT WITH THE OCEANSIDE BOYS AND GIRLS CLUB FOR THE SPEED SOCCER FACILITY, EXTENDING THE TERM OF THE AGREEMENTS 10 YEARS**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Property Use Agreement and Amendment 1 to the Service, Maintenance and Operations Agreement with the Oceanside Boys and Girls Club for the Speed Soccer Facility located at 401 and 415 Country Club Lane, extending the term of the Agreements from May 15, 2011, to May 15, 2021; and authorize the City Manager to execute the amendments.

BACKGROUND

On May 16, 2001, the City entered into a Property Use Agreement and Service, Maintenance and Operations Agreement ("Agreements") with the Boys and Girls Club of Oceanside for the premises at 401 and 415 Country Club Lane. The term of the Agreements, if not extended, expires on May 15, 2011.

The City, in cooperation with the Oceanside Boys and Girls Club, built a speed soccer facility. The size of the facility precluded its being sited completely on Boys and Girls Club property; therefore, a small sliver of adjacent City-owned property was used to complete the site requirements.

The City was responsible for all phases of construction, from design through completion of the project. The Boys and Girls Club has the responsibility of operating and maintaining the facility.

ANALYSIS

Staff received a letter from the Boys and Girls Club requesting to extend the Agreements 10 years. The two proposed Amendments extend the terms of the

Agreements through May 15, 2021. The Boys and Girls Club does not pay any rent under the existing Agreements. The facility has been offered to the City Parks and Recreation Department, but has not been used to date based on inadequate City Staff for programming. Currently the facility is used for a variety of purposes including the Boys and Girls Club's afterschool and summer programs, as well as a practice field for local soccer clubs and a youth lacrosse club.

FISCAL IMPACT

The programs, services and activities provided by the Boys and Girls Club at the Property are considered valuable consideration received from the Boys and Girls Club for use of the public property, and the provision of the programs, services and activities constitutes rent to be paid by the Boys and Girls Club for its use and occupation of the Property.

Funding for the facility was provided by the City through a $241,900 loan from the General Fund and a $306,950 Community Development Block Grant (CDBG) loan totaling $548,850 to the Boys and Girls Club in the FY 2000-01 budget. The term of the forgivable loan is 20 years, starting in 2001. No payments shall be due on the loan as long as the Boys and Girls Club complies with all the terms and conditions contained in the Loan Agreement, Property Use Agreement and Service and Maintenance Agreement, and the loan shall be considered paid in full at the completion of the loan term. The Boys and Girls Club has and will continue to provide quarterly and annual accounting reports for the operation of the facility to the City, including reports for program income revenue and expenditures.

INSURANCE REQUIREMENTS

The City's standard insurance requirements have been and will continue to be met.

CITY ATTORNEY'S ANALYSIS

The City Attorney has reviewed and approved all documents as to form.

COMMISSION OR COMMITTEE REPORT

Does not apply.

RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 to the Property Use Agreement and Amendment 1 to the Service, Maintenance and Operations Agreement with the Oceanside Boys and Girls Club for the Speed Soccer Facility located at 401 and 415 Country Club Lane, extending the term of the Agreements from May 15, 2011, to May 15, 2021; and authorize the City Manager to execute the amendments.

PREPARED BY:

Curtis M. Jackson
Property Agent

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic & Community Development Director

Douglas E. Eddow, Real Property Manager

Margery Pierce, Neighborhood Services Director

Attachment:
Property Use Agreement Amendment 1
Service, Maintenance and Operations Amendment 1

AMENDMENT NO. 1 TO PROPERTY USE AGREEMENT

This Amendment No. 1 to Property Use Agreement is made this 9 day of February 2011, by and between the City of Oceanside ("City") and Boys and Girls Club of Oceanside, a non-profit corporation, ("Permittee").

RECITALS

WHEREAS, City and Permittee entered into a Property Use Agreement, dated May 16, 2001 ("Agreement"), for real property located at 401 Country Club Lane, Oceanside, CA; and

WHEREAS, City and Lessee are desirous of extending the term of the Agreement for an additional ten (10) year period.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto agree as follows:

1. The Agreement shall be amended by deleting Section 2.02 and amending Section 2.01 to read as follows:

2.01 Term. The term of this Agreement shall be for a total of twenty (20) years having commenced on May 16, 2001 and terminating on May 15, 2021.

If during the term of this Agreement Permittee is dispossessed of the Premises for any reason whatsoever, City shall not be liable to Permitee for any loss or damage resulting therefrom.

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2. All other terms, conditions, covenants and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms of the original Agreement and this Amendment No.1 to the Agreement, the terms of this Amendment No. 1 shall control.

"City"

THE CITY OF OCEANSIDE,
a Municipal corporation

Date: _____

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

"Permittee"

Boys and Girls Club of Oceanside

Date: 2/9/11

By: _____

Name: TAMMY WALZ

Title: CEO

NOTARY ACKNOWLEDGEMENT OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego

On Feb. 9, 2011 (Date) before me, Joleine R.G. Panther, Notary Public (Here Insert Name and Title of the Officer),
personally appeared Tammy S. Walz (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

JOLEINE R. G. PANTHER
Commission # 1915949
Notary Public - California
San Diego County
My Comm. Expires Dec 9, 2014

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: joleine r.g. panther (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amendment No. 1 to Property Use Agreement
Document Date: Feb. 9, 2011 Number of Pages: 2
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Tammy S. Walz	Signer's Name: _____
☐ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☒ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: _____	Signer Is Representing: _____
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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BOYS & GIRLS CLUBS
OF OCEANSIDE

On February 17th, 2011 the Boys & Girls Club of Oceanside's Board approve the request for an extension to "Amendment No. 1 to Service, Maintenance and Operations Agreement" between the Boys & Girls Club of Oceanside and the City of Oceanside as pertains to the continuation of the existing agreement having commenced on May 16, 2001 and terminating on May 15, 2021.

Signed: _____

Title: Board President

Date: 2/17/11

Administrative Office ~ P.O. Box 1601, Oceanside, CA 92051 ~ (760) 433-8920 ~ Fax (760) 433-2260
Townsite Branch ~ 401 Country Club Lane, Oceanside, CA 92054 ~ (760) 433-8920 ~ Fax (760) 433-2260
Junior Seau Teen Center ~ 450 Country Club Lane, Oceanside, CA 92054 ~ (760) 433-4475 ~ Fax (760) 433-2260
Junior Seau Fitness Center ~ 448 Country Club Lane, Oceanside, CA 92054 (760) 433-8968 ~ Fax (760) 433-2260

CITY OF OCEANSIDE PROPERTY USE AGREEMENT WITH THE BOYS AND GIRLS CLUB OF OCEANSIDE FOR USE OF CITY OWNED PROPERTY

THIS PROPERTY USE AGREEMENT, hereinafter called "AGREEMENT", is executed between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "CITY", and the **BOYS AND GIRLS CLUB OF OCEANSIDE,** hereinafter called "PERMITTEE".

R E C I T A L S

WHEREAS, CITY is owner of the real property described hereinbelow; and

WHEREAS, PERMITTEE is a recognized public services organization providing certain children's recreational and educational services and/or other related services, programs and activities to the general public, including the citizens of the CITY; and

WHEREAS, CITY hereby acknowledges said programs, services and or activities provided by PERMITTEE as valuable consideration received from PERMITTEE in return for its use of said real property in accordance with the terms, covenants, conditions and provisions contained hereinbelow.

A G R E E M E N T

NOW THEREFORE, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

SECTION 1: USES

1.01 Premises. CITY hereby authorizes PERMITTEE, in accordance with the terms, covenants, conditions and provisions of this Agreement, the non-exclusive use of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as the **southeastern landfill limit adjacent to the western boundary of the Boys and Girls Club of Oceanside located at 401 Country Club Lane, Oceanside, CA.** and as more particularly illustrated in Exhibits "A" and "B" and attached hereto and by this reference made part of this Agreement. Said real property is hereinafter collectively called the "PREMISES". In return for this permission, PERMITTEE hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement.

1.02 Uses. It is expressly agreed that the premises shall be **used jointly by the CITY and PERMITTEE solely and exclusively for the purpose of a Speed Soccer Facility for use in connection with PERMITTEE's public service purposes and programs**, and for such other related or incidental public welfare purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

PERMITTEE covenants and agrees to use the premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. In the event that PERMITTEE fails to continuously use the PREMISES for said purposes, or uses the PREMISES for purposes not expressly authorized herein, the PERMITTEE shall be deemed in default under this Agreement.

SECTION 2: TERM

2.01 Commencement. The Term of this Agreement shall be Ten (10) years commencing on the Effective Date hereof.

2.02 Renewal Option. The PERMITTEE may request an extension of the term hereof for an additional Ten- (10) year period by providing written notice to the City at least One Hundred Eighty (180) days prior to the expiration of the term of this Agreement. The renewal or extension of the term of this Agreement shall require the approval of the Oceanside City Council, which approval shall not be unreasonably withheld.

2.03 Termination Provisions. Notwithstanding any other provisions contained in this Agreement, there are no special termination provisions.

SECTION 3: PROPERTY USE PAYMENT

3.01 Property Use Payment. CITY hereby agrees that the programs, services and activities provided by PERMITTEE at the PREMISES are valuable consideration received from PERMITTEE, that the provision of such programs, services and activities shall constitute all the property use payment to be paid by PERMITTEE for its use of the premises in accordance with the terms, covenants, conditions and provisions of this Agreement, and that PERMITTEE shall not be required to pay any monetary payments to CITY for its use and occupation of the PREMISES.

3.03 Annual Program Report. PERMITTEE shall be required to provide CITY with a written annual financial and operations report regarding all phases of PERMITTEE use and occupation of the PREMISES. PERMITTEE shall submit said report to CITY within sixty (60) days of each anniversary date of this Agreement.

SECTION 4: RECORDS

4.01 Inspection of Records. PERMITTEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine PERMITTEE's compliance with this Agreement. These records and accounts will be made available by PERMITTEE at the PREMISES and will be complete and accurate showing all income and receipts from the use of the PREMISES. PERMITTEE's failure to keep and maintain such records and make them available for inspection by CITY shall be deemed a default of this Agreement. PERMITTEE shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. PERMITTEE shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the PERMITTEE or its employees, agents, or others in connection with its use and occupation of the PREMISES under this Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the CITY, its officers, agents, or employees. PERMITTEE's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, PERMITTEE at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees.

5.02 Insurance. PERMITTEE shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

a. PERMITTEE shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	$1,000,000
General Aggregate	$1,500,000

b. All insurance companies affording coverage to the PERMITTEE shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement.

c. All insurance companies affording coverage to the PERMITTEE shall be insurance organizations acceptable to the CITY, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide **30 days** written notice to the City of Oceanside should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. PERMITTEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

f. PERMITTEE shall provide a substitute certificate of insurance no later than **30 days** prior to the policy expiration date. Failure by the PERMITTEE to provide such a substitution and extend the policy expiration date shall be considered a default by PERMITTEE and may subject the PERMITTEE to a termination of this Agreement.

g. Maintenance of insurance by the PERMITTEE as specified in this Agreement shall in no way be interpreted as relieving the PERMITTEE of any responsibility whatever and the PERMITTEE may carry, at its own expense, such additional insurance as it deems necessary.

h. If PERMITTEE 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. PERMITTEE 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(s) and rate of interest. Said reimbursement and interest shall be paid by PERMITTEE on the **first (1st) day** of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by PERMITTEE to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

i. CITY, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving PERMITTEE **60 days** prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the PREMISES. PERMITTEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.

5.03 Accident Reports. PERMITTEE shall, within **72 hours** after occurrence, report to CITY any accident causing property damage or any injury requiring a doctor's attention to persons on the PREMISES. 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.

SECTION 6: GENERAL PROVISIONS

6.01 Maintenance. With respects to PERMITTEE's operations at or on the PREMISES, PERMITTEE shall make all repairs and replacements necessary to maintain and preserve the PREMISES in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

If heating, ventilation or air conditioning is added to the building, PERMITTEE will retain a contractor for maintenance.

In the event that the PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, upon written notice to PERMITTEE, to have any necessary maintenance work done at the expense of PERMITTEE, and PERMITTEE shall promptly pay any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said PREMISES in a decent, safe, healthy, and sanitary condition. PERMITTEE shall make payment no later than **thirty (30) days**

after written notice from the CITY. Further, if at any time CITY determines that said PREMISES are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, upon written notice, require PERMITTEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. PERMITTEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Agreement imposed on CITY.

6.02 Sign. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the PREMISES, PERMITTEE shall remove the item at its expense within 24 hours of written notice thereof by CITY, or CITY may thereupon remove the item at PERMITTEE's cost.

6.03 Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the PREMISES, including, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE or levied by reason of the business or other PERMITTEE activities related to the PREMISES, including any licenses or permits.

PERMITTEE recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on such interest, and that PERMITTEE shall pay all such possessory interest taxes.

6.04 Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:

City of Oceanside
Property Management
300 North Coast Highway
Oceanside, CA 92054

To PERMITTEE:

Executive Director
BOYS AND GIRLS CLUB OF OCEANSIDE
401 Country Club Lane
P.O. Box 1601
Oceanside, CA 92054

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.05 City Approval. The City Manager shall be the CITY's authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing PERMITTEE in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the Senior Property Agent of the Community Services Department.

6.06 Entire Agreement. This Agreement comprises the entire integrated understanding between CITY and PERMITTEE concerning the use and occupation of the PREMISES and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the PREMISES, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The PERMITTEE shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.07 Agreement Modification. This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Assignment and Subletting-No Encumbrance. This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the PERMITTEE's duties be delegated, without the express written consent of CITY. Any attempt to assign or delegate this Agreement without the express written consent of CITY shall be void and of no force or effect. A consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

6.09 Defaults and Termination. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within **thirty (30) days** of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within **thirty (30) days** of the notice, or, if more than **thirty (30) days** are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within **ten (10) days** of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

CITY may also terminate this Agreement upon written notice to PERMITTEE in the event that:

- PERMITTEE has previously been notified by CITY of PERMITTEE's default under this Agreement and PERMITTEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or

- PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or

- PERMITTEE shall be adjudicated a bankruptcy, or

- PERMITTEE shall make a general assignment for the benefit of creditors.

Upon termination, CITY may immediately enter and take possession of the PREMISES.

6.10 Other Regulations. All use of the PREMISES under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicative rules and regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by State or Federal law.

SECTION 7: SPECIAL PROVISIONS

7.01 Ancillary Uses and Services. No additional uses or services, other than those provided for under Section 1.02 of this Agreement, shall be provided by PERMITTEE from or at the demised PREMISES.

7.02 Standards of Operation. PERMITTEE agrees that it shall operate and manage the services and facilities offered upon or from the PREMISES in a first class manner and comparable to other similar facilities within the San Diego County and Southern California areas which provide like products and services.

7.03 PERMITTEE's Employees. PERMITTEE shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by PERMITTEE on the PREMISES. PERMITTEE shall ensure that its employees shall at all times conduct themselves in a creditable manner, and they shall conform to all rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the CITY, provided that such rules, regulations and requirements are not in conflict with the terms of this Agreement. PERMITTEE shall maintain a staff in adequate size and number, to CITY's reasonable satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the PREMISES.

7.04 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the PREMISES which are in any way explosive or hazardous, except that ordinary business materials that may be classified as hazardous may be kept in or on the PREMISES if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said PREMISES, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised PREMISES or other premises and the improvements thereon; provided, however, that if anything done by PERMITTEE causes an increase in the rate of insurance on the PREMISES, PERMITTEE may, at its option, pay such increase and PERMITTEE shall not thereafter be considered in default under this Agreement.

No machinery or apparatus shall be used or operated on or about the PREMISES which will in any way injure the PREMISES or improvements thereon, or adjacent or other PREMISES, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude PERMITTEE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the CITY.

7.05 Merchandise and Equipment. CITY retains the right to require the PERMITTEE to discontinue the sale or use of those items that are of a quality unacceptable to the CITY.

7.06 Continued Occupancy. PERMITTEE covenants and agrees to, and it is the intent of this Agreement that the PERMITTEE shall, continuously and uninterruptedly during the term of the Agreement, occupy and use the PREMISES for the purposes hereinabove specified, except while PREMISES are untenantable by reason of fire, flood, or other unavoidable casualty, and, in that event, CITY shall be promptly notified by PERMITTEE.

REMAINDER OF PAGE BLANK

CITY OF OCEANSIDE PROPERTY USE AGREEMENT
WITH THE BOYS AND GIRLS CLUB OF OCEANSIDE
FOR USE OF CITY OWNED PROPERTY

SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the LESSEE and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

CITY
THE CITY OF OCEANSIDE

Date 5-17-01 By _____ City Manager

APPROVED AS TO FORM:

By _____, City Attorney

LESSEE

Date 3/30/01 By _____

Date 4/02/01 By _____

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

AMENDMENT NO. 1 TO
SERVICE, MAINTENANCE AND OPERATIONS AGREEEMENT

This Amendment No. 1 to Service, Maintenance and Operations Agreement is made this 9 day of February 2011, by and between the City of Oceanside ("City") and Boys and Girls Club of Oceanside, a non-profit corporation, ("Service Provider").

RECITALS

WHEREAS, City and Service Provider entered into a Service, Maintenance and Operations Agreement, dated May 16, 2001 ("Agreement"), for real property located at 415 Country Club Lane, Oceanside, CA; and

WHEREAS, City and Service Provider are desirous of extending the term of the Agreement for an additional ten (10) year period.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto agree as follows:

1. The Agreement shall be amended by deleting Section 1 and amending Section 1 to read as follows:

1. Term. The term of this Agreement shall be for a total of twenty (20) years having commenced on May 16, 2001 and terminating on May 15, 2021.

If during the term of this Agreement Service Provider is dispossessed of the Premises for any reason whatsoever, City shall not be liable to Service Provider for any loss or damage resulting therefrom.

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2. All other terms, conditions, covenants and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms of the original Agreement and this Amendment No.1 to the Agreement, the terms of this Amendment No. 1 shall control.

"City"

THE CITY OF OCEANSIDE,
a Municipal corporation

Date: _____

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

"Permittee"

Boys and Girls Club of Oceanside

Date: 2/9/11

By: _____

Name: Tammy Walz

Title: CEO

NOTARY ACKNOWLEDGEMENT OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego

On Feb. 9, 2011 (Date) before me, Joleine R.G. Panther, Notary Public, (Here Insert Name and Title of the Officer)

personally appeared Tammy S. Walz (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

JOLEINE R. G. PANTHER
Commission # 1915949
Notary Public - California
San Diego County
My Comm. Expires Dec 9, 2014

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: joleine rg panther (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amendment No. 1 to Service, Maintenance and Operations Agreement

Document Date: Feb. 9, 2011 Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Tammy S. Walz

☒ Individual
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
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CITY OF OCEANSIDE
SERVICE, MAINTENANCE AND OPERATIONS AGREEMENT

PROJECT: SPEED SOCCER FACILITY 415 COUNTRY CLUB LANE, OCEANSIDE, CA.

THIS AGREEMENT is made and entered into this 16th day of May 2001, ("Effective Date") by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "City", and the BOYS AND GIRLS CLUB OF OCEANSIDE, hereinafter designated as "Service Provider" and at times "Subrecipient".

RECITALS

WHEREAS, the City, at the request of the Service Provider has caused the construction of a Speed Soccer Facility on portions of property owned by both parties and for the benefit and enjoyment of the citizens of the City of Oceanside and the general public; and

WHEREAS, City is the lawful owner of a portion of that certain real property on which a Speed Soccer Facility has been constructed and is more particularly described hereinbelow; and

WHEREAS, the Service Provider agrees to operate and maintain the Speed Soccer Facility and appurtenant improvements, fixtures and equipment in accordance with the terms, conditions, covenants and provisions of this Agreement; and

WHEREAS, City is recipient of funds from the United States Department of Housing and Urban Development (hereinafter "HUD") pursuant to Title I of the Housing and Community Development Act of 1974 (41 USC 5301-5320) as amended (hereinafter "ACT"); and

WHEREAS, the construction of the Speed Soccer Facility was funded through a loan in the total amount of $548,850 by the City, of which $306,950 was Community Development Block Grant (CDBG) funds, for the purpose of providing recreational opportunities for youth from low-income households; and

WHEREAS, the Service Provider further acknowledges that as a condition of being a Subrecipient of CDBG funds for the construction of said facility and appurtenances it is required to maintain certain records, reports and accounts pertaining to, but not limited to, program income derived from the use and operation of said facility.

NOW THEREFORE, in consideration thereof, and for valuable and other considerations set forth herein the parties mutually agree as follows:

1. Term. The Term of this Agreement shall be Ten (10) years commencing on the Effective Date hereof. The Service Provider may request an extension of the term hereof for an additional Ten- (10) year period by providing written notice to the City at least One Hundred Eighty (180) days prior to the expiration of the term of this Agreement. The renewal or extension of the term of this Agreement shall require the approval of the Oceanside City Council, which approval shall not be unreasonably withheld.

1.01 Premises. City hereby agrees to allow the Service Provider to develop and use, in accordance with the terms, conditions, covenants, and provisions of this Agreement and a concurrently executed ground lease, all that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as the southeastern landfill limit and more particularly described in Exhibits "A" and "B" attached hereto and by this reference made part of this Agreement, as well as the real property improvements constructed and known as the "Speed Soccer Facility" located at 401 Country Club Lane, Oceanside, CA. described in Exhibit "C" and also attached hereto and by this reference made part of this Agreement. Said real property is hereinafter called the "PREMISES."

2. Maintenance and Operation. The program (and sometimes referred to herein as "project") is more particularly described below.

2.1. Maintenance and Operation. The Service Provider agrees to assume full responsibility and cost for the operation and maintenance of the Speed Soccer Facility in a first class condition throughout the term of this Agreement. The City shall not be obligated for any expense for the maintenance or operation of the improvements and that the Service Provider shall not call upon the City for any disbursement or outlay whatsoever in connection therewith except as set forth elsewhere herein, and expressly releases and discharges City of and from any liability therefor.

Service Provider will make all repairs, replacements and renovations necessary to maintain and preserve the Facility, any and all buildings, furnishings, fixtures, equipment, improvements and appurtenances which are bought, constructed or placed at, in or upon the Facility in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws.

Service Provider shall make repairs, replacements and renovations to improvements as often as it may be necessary in order to keep the Speed Soccer Facility and other property, which is the subject matter of this Agreement in first class repair and condition to the satisfaction of City. Appropriate codes and standards of City, state and federal agencies shall be observed in all maintenance, repairs and replacements made to the Facility.

For the purpose of keeping the PREMISES in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the PREMISES. In the event that City finds that the PREMISES are not in a decent, safe, healthy, and sanitary condition, Service Provider must perform the necessary maintenance, repair or replacement work within **ten (10) days** after written notice from City. In the event Service Provider fails to perform such work, City shall have the right, upon written notice to Service Provider, to have any necessary maintenance work done at the expense of Service Provider, and Service Provider shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said PREMISES in a decent, safe, healthy, and sanitary condition. Service Provider shall make payment no later than **thirty (30) days** after City's written demand therefor. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the PREMISES. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Agreement.

2.2. Utilities and Services. The Service Provider shall order, obtain, and pay for all utilities and services and installation charges in connection with the development and operation of the Speed Soccer Facility.

2.3. Alterations or Modifications. The Service Provider expressly agrees that the purpose of this Agreement is for the construction, erection, installation, maintenance and operation of a public recreational facility, appurtenances, and providing recreational, educational and other related activities and programs to the general public, i.e. the Speed Soccer Facility (the "program"). Any addition, alteration, deletion, deviation or removal of said facilities and appurtenances shall first be approved by the Oceanside City Council.

2.4 Assignment. The Service Provider shall not assign its interest in or to this Agreement or any part hereof or any of its obligations contained herein without first obtaining City's prior written approval, which approval shall not be unreasonably withheld. However, in no event shall a private/for-profit organization or entity operate the Speed Soccer Facility.

2.5 City Recreational Programs. The City reserves the right to schedule the use of the Speed Soccer Facility for City and City-sponsored uses and events. A master schedule of the dates and times for the City's use of the Speed Soccer Facility shall be established in advance at annual scheduling meetings during October of each year between the City and Service Provider. The schedule shall be arranged to avoid conflict between Service Provider and City use.

The Service Provider's use of the Premises shall be paramount to the extent that the use meets the HUD national objective of the service for low and moderate income persons and households.

3. Obligations as Subrecipient

3.1. The Service Provider shall primarily utilize the facility to provide recreational opportunities for youth, ages 5 to 18, from low-income households. The Service Provider may utilize the facility for adults or adult leagues, but in no event shall more than 40% of the facility time be scheduled for that purpose in any single quarter.

3.1.1. Facility Usage Fees. Subrecipient may charge reasonable fees for persons, teams, leagues or other organizations to use the facility except that it may not charge a facility usage fee for any youth under the age of 18 who is from a low-income household. (Low-income household is defined as a household earning less than 80% of the area median income as determined by HUD and adjusted annually.) No youth shall be denied participation in league activities based on his or her inability to pay league fees. The Subrecipient may include a 11.5% surcharge on non-member team fees to provide for a capital reserve fund described in section 3.1.2.a. below.

3.1.2. Program Income. The gross revenue derived from the operation of the facility, less the reasonable costs incidental to operation and maintenance of the facility shall be considered "program income" and is subject to regulations at 24CFR 570.504 et seq. governing the use of program income.

a. On a monthly basis, Subrecipient shall pay to the City 55% of the program income or 10% of the gross revenue collected from non-member team registration fees and facility rental, whichever is greater. The City shall maintain a non-interest bearing capital reserve fund for the total amount of funds paid by the Subrecipient to the City. As federal regulations do not allow an actual cash

reserve to be maintained, the City shall maintain the reserve funds as a liability account on its balance sheet. Annually, the City shall appropriate funds from its CDBG entitlement funds, contingency funds, or any other fund designated by the City Council in an amount equal to the funds paid to the City by the Subrecipient in the prior year.

b. The capital reserve fund may only be used for capital improvements to the speed soccer facility as approved by the City, or at such time as the capital reserve exceeds a $100,000 threshold, then that amount in excess of the threshold may be allocated to other CDBG-eligible capital projects proposed by the Subrecipient and approved by the City.

c. Subrecipient may retain that portion of the program income not due to the City, which it may then use to provide CDBG-eligible programs and services to youth. Prior to July 1st of each year Subrecipient shall submit a budget to the City for the proposed use of the following fiscal year's estimated annual program income.

d. Subrecipient shall provide monthly financial statements, quarterly facility usage reports, and annual accounting reports for operation of the facility to the City. Said statements and reports shall be submitted in a form prescribed by the City and shall be due within 30 days of the close of the period covered by the report (e.g., the January to March quarterly report is due by April 30th). The annual accounting report is due on or before July 30th of each year.

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f. Subrecipient shall substantially expend all retained program income revenue before reimbursement under any agreement for the use of CDBG funds may occur. Any program income on hand when this agreement expires, or received after this Agreement's expiration, shall be paid to the City as required by Section 6 of this Agreement and 24 CFR 507.503(B).

3.1.3. Lobbying. Subrecipient shall not use any funds received pursuant to this Agreement for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the

awarding of any Federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

3.2. Budget. Subrecipient represents that the budget (the "Budget") for the program includes only allowable costs and an accurate analysis of costs applicable to CDBG funds pursuant to 24 CFR 502, which includes requirements for compliance with the following in addition to other requirements:

> OMB Circular No. A-122, "Cost Principles for Non Profit Organizations" or OMB Circular No. A-21, "Cost Principles for Educational Institutions", as applicable, and certain Attachments to OMB Circular No. A-110.

The budget shall be in sufficient detail to provide a sound basis for the City to effectively monitor performance under the Agreement.

3.3. Records and Reports. The Subrecipient shall maintain the following records and reports to assist City in maintaining its record-keeping requirements:

a. Records:

i. Documentation of the number of persons participating in activities in the facility and information about those persons, including: age (youth, adult, senior), income level, and ethnicity.

ii. Documentation of all CDBG funds received from City.

iii. Documentation of all revenue collected from facility users.

iv. Any such other related records as City shall require.

b. Reports:

i. Quarterly and annual financial reports.

ii. Quarterly statistical reports on facility usage, including the demographic information on the facility users and the schedule of usage, on forms prescribed by the City.

iii Quarterly and annual statistical reports on facilities hours of use and number of users by income level and ethnicity. (City to prescribe report form).

iv. Annual financial and operations report regarding all phases of the use and operation of the Speed Soccer Facility. Said report shall be submitted to the City's Recreation Division Manager within sixty (60) days following each anniversary date of this Agreement.

v. Any other reports, as City shall reasonably require.

3.4. Uniform Administrative Requirements. The Subrecipient shall comply with applicable uniform administrative requirements as described in 24 CFR 570.502.

3.5. Separation of Accounts. All funds received by Subrecipient from City pursuant to this Agreement and all program income shall be maintained separate and apart from any other funds of Subrecipient or of any principal or member of Subrecipient in an account in a federally insured banking or savings and loan institution. No monies shall be withdrawn from such account except for expenditures authorized by this Agreement.

3.6. Retention of Records. All accounting records and evidence pertaining to all costs of Subrecipient and all documents related to this Agreement shall be kept available at Subrecipient's office or place of business for the duration of the Agreement and thereafter for three (3) years after completion of an audit. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this Agreement, or (b) costs and expenses of this Agreement to which City or any other governmental agency takes exception, shall be retained beyond the three (3) years until resolution or disposition of such appeals, litigation claims, or exceptions.

3.7. Compliance with Applicable Laws. Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants). Subrecipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient shall secure any new permits required by authorities herein with jurisdiction over the project, and shall maintain all presently required permits. The Subrecipient shall ensure that the requirements of the California Environmental Quality Act are met for any permits or other entitlements required to carryout the terms of this Agreement.

3.8. Drug Free. Subrecipient agrees to comply with all applicable Federal, State and local laws, regulations, and policies governing the prohibition of tobacco, alcohol and illegal drug possession and or use at the Speed Soccer Facility.

3.9 Availability of Records. The Service Provider agrees to make any and all records and accounts available to the City for inspection at all reasonable times, so that City can determine Service Provider's compliance with this Agreement. These records and accounts will be made available by the Service Provider at its offices and shall be complete and accurate showing all income and receipts from the use of the Speed Soccer Facility. Service Provider's failure to keep and maintain such records and make them available for inspection by City shall be deemed a default of this Agreement. Not withstanding the provisions of Section 3 of this Agreement, Service Provider shall maintain all such records and accounts for a minimum period of five (5) years. The provisions of this Section 10.5 shall survive the expiration or termination of this Agreement.

4. Nondiscrimination Policy.

4.1. Provision of Program Services.

a. Subrecipient shall not on the ground of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age,

marital/familial status, or status with regard to public assistance exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination under any program or activity funded in whole or in part with CDBG funds.

b. Subrecipient shall not under any program or activity funded in whole or in part with CDBG funds, on the ground of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance:

i. Deny any facilities, services, financial aid or other benefits provided under the program or activity.

ii. Provide any facilities, services, financial aid or other benefits, which are different or are provided in a different form from that provided to others under the program or activity.

iii. Subject to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

iv. Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

v. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

vi. Deny an opportunity to participate in a program or activity as an employee.

c. Subrecipient, in determining the site or location of housing or facilities provided in whole or in part with CDBG funds, may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, marital/familial status, or status with regard to public assistance, or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Civil Rights Act of 1964 and amendments thereto.

d. Nothing contained herein shall be construed to prohibit any Subrecipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

4.2. Employment Discrimination.

a. Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. Subrecipient shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training including apprenticeship. Subrecipient agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

b. Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that all qualified applications will receive consideration for employment without regard to race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance.

c. Subrecipient shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by City's contracting officers advising the labor union or workers' representative of Subrecipient's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

d. Subrecipient shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. Subrecipient shall furnish to the City all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended and by the related rules, regulations, and orders.

f. In the event of Subrecipient's failure to comply with any rules, regulations, or orders required to be complied with pursuant to this Agreement, City may cancel, terminate, or suspend in whole or in part its performance and Subrecipient may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. Subrecipient shall include the provisions of Section A.10.b., "Employment Discrimination", paragraphs (1) through (6) in every sub-contract or purchase order unless exempted by rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, so that such provisions will be binding upon each sub-contractor or vendor. Subrecipient shall take such action with respect to any sub-contract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for non-compliance; Provided, however, that in the event Subrecipient becomes involved in, or is threatened with, litigation

with a sub-contractor or vendor as a result of such direction by the City, Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

h. Subrecipient shall not discriminate on the basis of age in violation of any provision of the Age Discrimination Act of 1975 (42 USC 6101 et seq.) or with respect to any otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 USC 794).

i. Subrecipient shall also provide ready access to and use of all CDBG fund assisted buildings to physically handicapped persons in compliance with the standards established in the Architectural Barriers Act of 1968 (42 U.S.C 4151 et seq.).

4.3. Remedies. In the event of Subrecipient's failure to comply with any rules, regulations, or orders required to be complied with pursuant to this Agreement, the City may cancel, terminate, or suspend in whole or in part its performance and Subrecipient may be declared ineligible for further government contracts and any such other sanctions as may be imposed and remedies invoked as provided by law.

5. Suspension and Termination. In accordance with 24 CFR 85.43, suspension or termination may occur if Subrecipient materially fails to comply with any term of this Agreement and/or the award, and the Agreement and/or the award may be terminated for convenience in accordance with 24 CFR 85.44.

6. Reversion of Assets. Upon the termination or expiration of the term of this Agreement, the Subrecipient shall transfer to the City any CDBG funds on hand at the time of such termination or expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of twenty-five thousand dollars ($25,000.00) shall either be:

a. Used to meet one of the national objectives stated in 24 CFR 570.901 until five (5) years after termination or expiration of this Agreement, or for such longer period of time as determined to be appropriate by the City; or

b. Disposed of in a manner that results in the City's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Reimbursement to the City shall not be required after the period of time specified in Section 6.a. of this Agreement.

7. **Independent Contractor.** The Service Provider's relationship to the City shall be that of an independent contractor. The Service Provider shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless specifically authorized in writing by the City Engineer, and after the construction and installation of the improvements the City's Recreation Division Manager. The Service Provider shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. The Service Provider shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. The Service Provider shall report to the City any and all employees, agents and consultants performing work in connection with this project, and all shall be subject to the approval of the City.

8. **Liability Insurance.**

8.1. The Service Provider shall maintain throughout the duration of this Agreement comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of the Service Provider, its agents and employees, performed in connection with this Agreement including but not limited to premises.

a. The Service Provider shall maintain the following minimum limits:

i. General Liability Combined Single Limit

Per Occurrence	$1,000,000
General Aggregate	$1,500,000

ii. Workers' Compensation At statutory limits

8.2. City as Additional Insured. All insurance companies affording the provided coverage in Section 3.2 to the Service Provider shall be required to add the City of Oceanside as "additional insured" under the insurance policy for all work performed in accordance with this Agreement. Each company shall provide 30-day written notice to City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration date shall be considered a cancellation.

8.3. AA Rating. All insurance companies affording coverage to the Service Provider shall be AA rated insurance organizations admitted by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

9. **Service Provider's Indemnification Of City.** The Service Provider shall indemnify and hold harmless the City and its officers, agents and employees

against all claims for damages to persons or property arising out of the negligent acts, errors or omissions by the Service Provider, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement.

The Service Provider's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. The Service Provider's indemnification of City shall not be limited by any prior or subsequent declaration by the Service Provider.

10. Consideration.

10.1. Compensation. The Service Provider hereby agrees that the construction, installation and provision of the improvements consisting of the Speed Soccer Facility and appurtenances by the City are valuable consideration and shall constitute the compensation due the Service Provider's for all work performed by it in accordance with this Agreement. The City shall not be required to pay any monetary compensation to the Service Provider for its operation and maintenance of the Speed Soccer Facility or any expenses related to the provision programs, services and activities therefrom. For convenience only, consideration as set forth in this Section 10 may be referred to as compensation.

10.2. Fees and Charges. The Service Provider shall establish and provide the programs, services and activities contemplated herein to the general public, on a non-discrimination basis, accept for reasonable admission fees and service charges that are usual and customary for similar services. No person shall be denied the use of the facility based solely on his or her inability to pay such fee or service charge. The Service Provider shall furnish the City's Recreation Division Manager with a current copy of all fees and service charges related to the Speed Soccer Facility.

11. Entire Agreement. This Agreement comprises the entire integrated understanding between City and the Service Provider concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

12. Interpretation Of The Agreement. The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to City.

12.1. Compliance with Laws. The Service Provider shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

12.2. Invalidity. Should any term, covenant, condition, or provision herein be found or deemed to be invalid, void, or unenforceable by a court of competent jurisdiction, the Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

12.3. Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:	**To PERMITTEE:**
City of Oceanside	**Executive Director**
Property Management	**OCEANSIDE BOYS AND GIRLS CLUB**
300 North Coast Highway	**P.O. Box 1601**
Oceanside, CA 92054	**Oceanside, CA 92054**

Either party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

13. Agreement Modification. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

14. Number and Gender. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

15. Captions. The Agreement outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Agreement.

16. Legal Fees. In the event of any litigation regarding this Agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

17. **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 Lease whenever occasion shall arise and request for such instruments shall be made.

18. **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Service Provider and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures as of the day written herein below.

BOYS AND GIRLS CLUB OF OCEANSIDE

Dated: 3/30/01

By: _____

By: _____

City OF OCEANSIDE

Dated: 5-17-01

By: _____
City Manager

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Attorney

NOTARY ACKNOWLEDGMENT OF SERVICE PROVIDER'S SIGNATURE MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO } ss.

On MARCH 30, 2001 (Date), before me, ALYSON CLARE PEARCE NOTARY PUBLIC (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared DEREK L. RIPPY (Name(s) of Signer(s)),

☐ personally known to me
☑ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

ALYSON CLARE PEARCE
Commission #1167159
Notary Public - California
San Diego County
My Comm. Expires Jan 1, 2002

Place Notary Seal Above

Alyson Clare Pearce
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Service, Maintenance + Operations Agreement

Document Date: 3-30-01 Number of Pages: 15

Signer(s) Other Than Named Above: Emily Perez Wichman

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☑ Corporate Officer — Title(s): Vice President
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: Boys & Girls Club

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of SAN DIEGO } ss.

On APRIL 2, 2001 (Date), before me, ALYSON CLARE PEARCE NOTARY PUBLIC (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared EMILY PEREZ WICHMAN (Name(s) of Signer(s)),

☐ personally known to me
☑ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

ALYSON CLARE PEARCE
Commission #1167159
Notary Public - California
San Diego County
My Comm. Expires Jan 1, 2002

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: Service, Maintenance & Operations Agreement
Document Date: 3-30-01 Number of Pages: 15
Signer(s) Other Than Named Above: Derek h. Rippy

Capacity(ies) Claimed by Signer
Signer's Name:
☐ Individual
☑ Corporate Officer — Title(s): Vice-President
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing: Boys & Girls Club

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A"

LEGAL DESCRIPTION

APN: 148-260-17

THAT PORTION OF PARCEL MAP NO. 16962 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON SEPTEMBER 25,1992 AS FILE NO. 92-610937 SHOWN AS REMAINDER PARCEL, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID REMAINDER PARCEL;

THENCE (1) NORTHERLY ALONG THE EASTERLY LINE OF SAID REMAINDER PARCEL NORTH 03°49'46" EAST, 285.56 FEET TO AN ANGLE POINT THEREIN ALSO BEING THE NORTHWEST CORNER OF PARCEL 1 AS SHOWN ON PARCEL MAP NO. 8805 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY JUNE 14, 1979 AS FILE NO. 79-246284;

THENCE (2) SOUTH 16°00'29" WEST, 141.10 FEET;

THENCE (3) SOUTH 01°19'19" WEST, 150.05 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID REMAINDER PARCEL BEING A NON-TANGENT CURVE CONCAVE SOUTHERLY, A RADIAL LINE TO WHICH BEARS NORTH 3°29'07" WEST, 382.53 FEET;

THENCE (4) EASTERLY ALONG SAID CURVE AND SAID SOUTHERLY LINE THROUGH A CENTRAL ANGLE OF 3°29'32" AN ARC DISTANCE OF 23.32 FEET TO THE **POINT OF BEGINNING.**

CONTAINING 5,994 SQUARE FEET MORE OR LESS.

ATTACHED HERETO AND MADE A PART OF THIS LEGAL DESCRIPTION, IS A PLAT LABELED EXHIBIT "B".

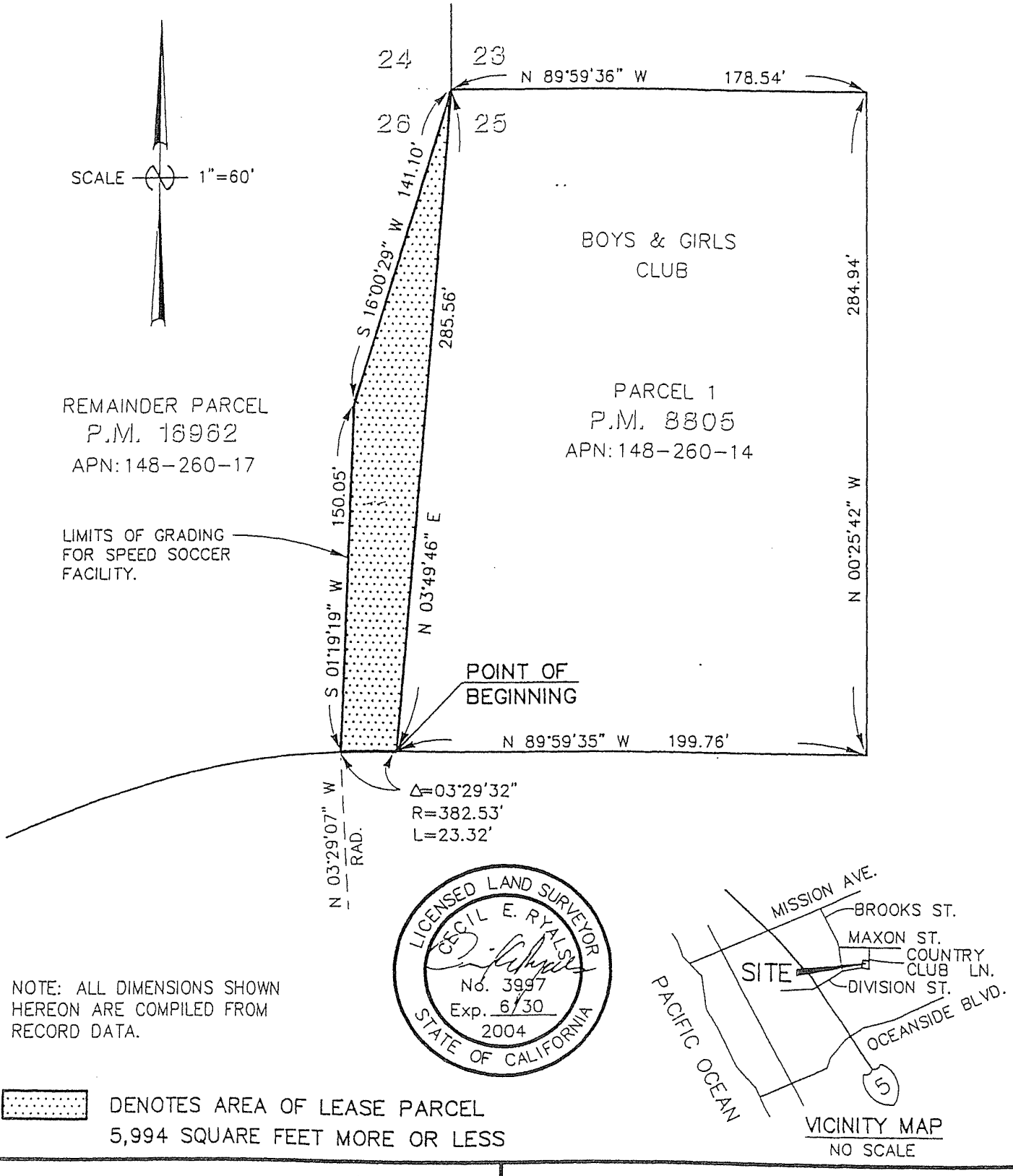
THIS REAL PROPERTY DESCRIPTION AND PLAT HAVE BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

SIGNATURE _____
LICENSED LAND SURVEYOR

DATE 10/30/00

C:\My Documents\LEGALS\SOCCER_LEASE.doc

EXHIBIT "B"



VICINITY MAP
NO SCALE

NOTE: ALL DIMENSIONS SHOWN HEREON ARE COMPILED FROM RECORD DATA.

DENOTES AREA OF LEASE PARCEL
5,994 SQUARE FEET MORE OR LESS

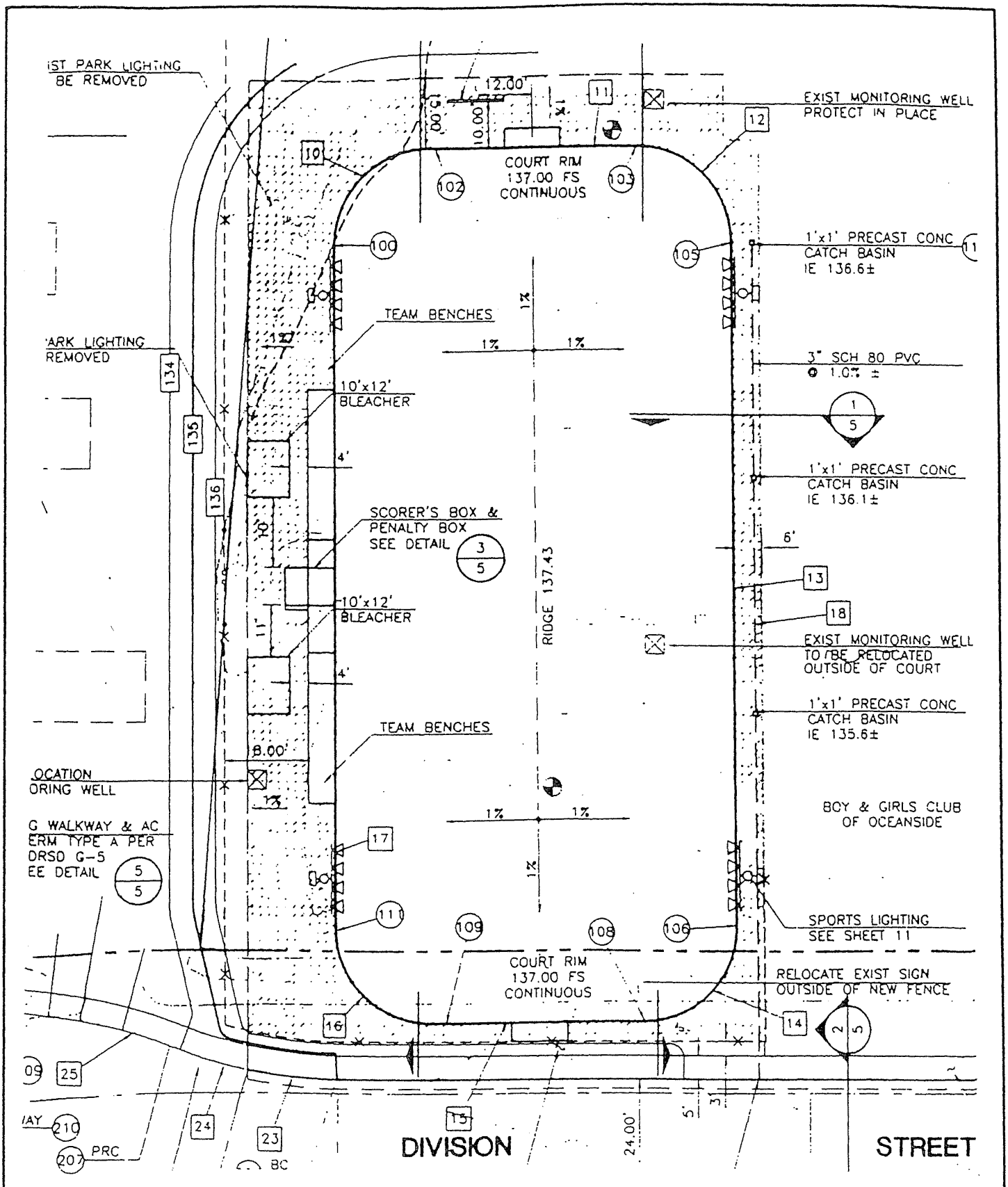
Right-Of-Way Engineering Services, Inc.
Land Surveying
4167 Avenida de la Plata Ste. 114 • Oceanside, CA 92056
(760) 732-1366 FAX (760) 732-1367
Drawing file name: Soccer_lease.dwg

CITY OF OCEANSIDE

VESTING: CITY OF OCEANSIDE

DATE: OCTOBER 30, 2000

SHEET 1 OF 1



Revision	By	Approved	Date

CITY OF OCEANSIDE

SPEED SOCCER FACILITY

EXHIBIT "C"

CITY ENGINEER Date

SUPPLEMENTAL DRAWING NO.