

Attachment A



Monterey County

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1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-12686

Upon motion of Supervisor Phillips, seconded by Supervisor Potter and carried by those members present, the Board of Supervisors hereby:

- a. Approved the Manzanita County Park Sport Complex Concession Agreement between the County of Monterey and the North County Youth Recreation Association retroactively beginning on August 1, 2011 and for a period of ten (10) years from the date of execution of the agreement by the County;
- b. Authorize the Chair of the Board of Supervisors to sign the agreement; and
- c. Directed staff to return in July or August with status report on ADA issues.

PASSED AND ADOPTED on this 21st day of April 2015, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas and Potter
NOES: Supervisor Parker
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 78 for the meeting on April 21, 2015.

Dated: April 22, 2015
File ID: A 15-084

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

**Manzanita County Park
Sports Complex Concession Agreement
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MANZANITA COUNTY PARK

SPORTS COMPLEX CONCESSION AGREEMENT

This Manzanita County Park Sports Complex Concession Agreement ("Agreement") is made and entered into by and between the County of Monterey, hereinafter called "County," and North County Youth Recreation Association, hereinafter called "Association."

RECITALS

Whereas, County is the owner in fee of Manzanita County Park, located in North Monterey County, near Prunedale, California, described as the "Property" in Exhibit "A," attached hereto and made a part of this Agreement by reference; and,

Whereas, Association has for approximately thirty years through a series of agreements with County managed, controlled and developed a portion of the Property (the "Premises") more particularly described and depicted in Exhibit "B," attached hereto and made a part of this Agreement by reference; and,

Whereas, the last such agreement, Manzanita County Park Concession Agreement No. A-08676, expired on July 31, 2011, and Association desires to renew that agreement, as amended, for purposes of continuing to develop, operate and maintain a youth sports complex at the Property for the use and enjoyment of the general public, particularly the youth, who reside in the unincorporated area of North Monterey County; and,

Whereas, the County agrees to renew said agreement with revisions; and,

Whereas, Association agrees that said updated and revised agreement is for the betterment and mutual benefit of both County and Association; Now, therefore,

County and Association agree as follows:

DEFINITIONS

1. AGREEMENT:

This Manzanita County Park Sports Complex Concession Agreement.

2. AGREEMENT DOCUMENTS:

Concession agreements, exhibits, special events, memorandum of understandings, amendments, and addenda to any of the above.

3. ASSOCIATED ACTIVITIES:

All activities that promote increased community involvement and volunteer participation and recognition for the benefit of Manzanita Park.

4. ASSOCIATION:

North Monterey County Youth Recreation Association, a recognized 501c4 non-profit organization, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

5. BOARD OF SUPERVISORS:

The Board of Supervisors of the County of Monterey.

6. COUNTY:

The County of Monterey, a political subdivision of the State of California.

7. COUNTY WATER SYSTEM:

The County owned water distribution system on the Property from the Well to the Pump Station.

8. DIRECTOR:

The Director of Parks, County of Monterey, or his or her designees.

9. PARK VOLUNTEERS:

Individuals participating in the County of Monterey Parks Department live-on volunteer program and in compliance with all the requirements thereof.

10. PREMISES:

A portion of Manzanita County Park, more specifically depicted and described in Exhibit "B."

11. PROJECT:

The development, construction, and/or installation of new facilities that have been approved by the County, and work on existing facilities that improves, rehabilitates, renovates, or restores the quality or function of such facilities and that has been approved by the County.

12. PROPERTY:

Manzanita County Park, County of Monterey, depicted in Exhibit A.

13. PUMPSTATION:

The booster pump station for water located on the Property.

14. UTILITY SERVICE or UTILITIES:

Generally, the provision of water (potable or non-potable), electricity, telephone, natural gas, and other services commonly understood to be "utilities", to the Property or Premises.

15. WELL:

The current source of water on and for the Property.

ARTICLE I - CONCESSION

SECTION 1 - GRANT OF CONCESSION

- A. Association is hereby granted an exclusive concession to control, manage, operate, develop and maintain the Premises under the terms and conditions, and for the purposes, set forth in this Agreement.
- B. The general purpose of this Agreement is for the Association to control, manage, operate, develop and maintain a youth sports complex at Manzanita County Park.
- C. Association agrees that this Agreement is a Concession Agreement and not a lease. The Agreement confers only permission to occupy and use the Premises in accordance with the terms and conditions herein specified, without granting or reserving to Association any interest except as provided herein. The expenditure of capital and/or labor in the course of use and occupancy shall not confer any interest in the premises by virtue of said use, occupancy and/or expenditure of capital thereon except as provided herein. It is the intention of both parties to limit the right of use granted herein to a personal, revocable and, except as provided herein, nonassignable/nontransferable privilege of use in the areas designated and for the purposes stated. At no time shall Association subject the Property or Premises to any lien or encumbrance superior to the rights of County.

SECTION 2 - WARRANTY OF TITLE

- A. County warrants that it has fee simple title to the Premises and that such Premises are free and clear of all claims.

- B. County and Association agree that this Agreement shall in no way limit County's right to develop other recreational facilities and other compatible uses at any time within the Property and/or adjacent to the Premises.

SECTION 3 - QUIET ENJOYMENT

- A. Association, paying the Concession fee and performing and observing the terms and conditions herein, may peaceably enjoy the use of the Premises during the term hereof to perform the functions and services specified herein.
- B. The County, its officers, agents, and employees shall have the right to enter upon the Premises at all times and for any official purpose, including but not limited to inspection for compliance with the terms and conditions of this Agreement. However, the County, its officers, agents, and/or employees shall not unreasonably interfere with Association's Concession operation.

ARTICLE II - TERM AND FEE

SECTION 1 - TERM

The term of this Agreement shall begin on August 1, 2011 and shall extend for a further period of ten (10) years from and after the first day following the day of execution of this Agreement by County.

SECTION 2 - FEE

Association agrees to prepay to County as Concession payment for use of the Premises, the sum of one dollar (\$1.00) per year for a total of ten dollars (\$10.00) within 30 days of the Board of Supervisors' approval of this agreement. Should the agreement be terminated early pursuant to Article VIII, Association shall receive a pro-rated refund of the fee.

SECTION 3 - OPTION TO RENEW

Association shall have a single option to renew this Agreement for an additional ten (10) year term, subject to the following conditions:

- A. Association shall give written notice to County of its intention to exercise the option to renew no later than ninety (90) days prior to the expiration of the term.
- B. County, after being duly notified of Association's intent to exercise the option to renew, shall review the Agreement terms and conditions with the Association to determine if any amendment to its terms and conditions are necessary or appropriate.

- C. If no amendments are proposed to the terms and conditions of the Agreement, it shall be renewed for the additional ten (10) year term.
- D. If amendments are proposed to the terms and conditions, a renewal for the additional ten (10) year term shall be subject to the approval by the Board of Supervisors.

ARTICLE III - ASSOCIATION'S RIGHTS AND OBLIGATIONS

SECTION 1 - RECREATION AND ANCILLARY USES

- A. Association shall have the right to develop, construct, maintain and operate the Premises for the following recreation and ancillary uses:

- | | |
|---|---|
| <ul style="list-style-type: none"> 1) <u>Park and Recreation Uses:</u> Soccer Baseball Football Community Center Indoor Sports Batting Cages BMX Track Other Youth Sports & Activities as approved in writing by the Director | <ul style="list-style-type: none"> 2) <u>Ancillary Park and Recreation Uses:</u> Food Concession Facilities /Services Restrooms Associated Activities Parking Maintenance/Equipment Storage Infrastructure Systems Fencing, Signage, Sports Field needs |
|---|---|

- B. The Association shall not allow activities that are excluded by or exceed any deed or use restrictions.

SECTION 2 - RESPONSIBILITY FOR PREMISES

The development, operation, and maintenance of the grounds and structural facilities on the Premises shall be at the sole expense, and the sole responsibility, of the Association, except as provided for under the County's maintenance responsibilities outlined in Exhibit "D".

SECTION 3 - PRIMARY USE OF PREMISES BY ASSOCIATION

- A. The ultimate purpose of this Agreement is to provide for the recreational benefit of youth activities and the general public. The complete and continuous use of the Premises and all facilities and services shall be made available to the public without discrimination as to race, sex, creed, religion, or disability.
- B. Association shall have the first right of priority to schedule the use of the Premises, in accordance with this Article.

- C. Association shall have the right to operate food and soft drink concession facilities. However, all food and drink preparation and sale must meet and conform to any and all applicable State and County Health regulations and requirements.
- D. When not in use for a scheduled activity, or subject to routine or extraordinary maintenance activity, the access gate shall remain closed. The Premises shall be open to the reasonable use by the general public, provided, however, that said reasonable use shall not include vehicular access, except during those times the Association has opened the gate for its scheduled activities..
- E. Association shall have the responsibility for and shall at all times during the term provide adequate security measures to reasonably protect persons and property on the Premises.

SECTION 4 - American with Disabilities Act Compliance

1. At their sole cost and expense Association shall erect an informational sign at the entrance to the Premises advising any person, designated as disabled pursuant to California and federal law, to call the provided phone number for vehicular access to the Premises.

2. The provided phone number shall be to the Monterey County Parks Department and the wording for the sign shall be developed in cooperation with the County.

3. The Association shall provide a live-on volunteer to reside within the Premises on "pads" established for that purpose by County. The live-on volunteer (Volunteer) shall be a part of, and subject to, the County Parks Volunteer Program.

4. The Volunteer shall perform such duties as may be assigned by Association including providing vehicular access to the Premises for disabled persons when so advised by the Monterey County Parks Department.

5. The Association and the County, via the Monterey County Parks Department, shall reasonably cooperate with respect to phone numbers, times of unavailability, and all matters necessary to provide reasonable, convenient and timely ADA access to the Premises, from 8:30 a.m. to one-half (1/2) before sunset, seven (7) days a week, except for national holidays.

6. At such times as the County has been advised by the Volunteer that the Volunteer is unavailable to provide ADA access, the County through its own live-volunteer or other staff person shall provide ADA access.

7. The foregoing shall be reviewed six (6) months from the date of implementation and, if necessary for ADA compliance, shall be modified as the parties may reasonably agree.

SECTION 5 - SIGN AND ADVERTISING PLAN AND APPROVAL

- A. Association may develop a concession sign and site advertising plan for written approval by County. The Association will obtain such written approval before installation or erection of any signs not previously approved by prior written agreement.
- B. The signage and advertising program must comply with all applicable County sign regulations, and should include, but not necessarily be limited to, vehicular directional signs, park and facility entrance signs, signs located on Premises, team sponsor signs, banners, etc.

SECTION 6 - SCHEDULES

- A. The Premises shall be developed in accordance with the Development Program requirements, attached hereto as Exhibit "C".
- B. The Premises shall be operated and maintained in accordance with the Operation Maintenance Schedule requirements, attached hereto as Exhibit "D".
- C. The Premises shall be used in accordance with the Sport Activity Schedule attached hereto as Exhibit "E".
- D. To the extent feasible, all schedules shall be developed, maintained and updated on a calendar year basis. All schedules shall be submitted to the Director not later than 30 days prior to the start of the calendar year. The information may be posted on the Parks Department website and/or the applicable NCYRA web site.
- E. Association shall inform the Director of any modifications of the schedules and what those modifications are immediately as known to the Association, and transmit to the Director any modified schedule.

- E. Upon receipt of a modified schedule(s), the new version shall be incorporated into this Agreement by reference.

SECTION 7 - PROJECTS

Association may undertake Projects on the Premises subject to the provisions of this Section.

- A. Association shall submit to County and obtain written approval of plans and specifications for all planned Projects in accordance with Exhibit "F", Design and Plan Approval Process, attached hereto and made a part of this Agreement.
- B. County reserves the right to enter the Premises to inspect Association's Projects for compliance with Exhibit F.
- C. All Projects undertaken by Association shall be designed, constructed, installed and maintained on the Premises at no cost to County.
- D. All facilities and/or fixed improvements constructed or caused to be constructed on the Premises by Association shall be owned by Association until expiration or sooner termination of this Agreement. The County and Association agree to continue negotiations to transfer facilities and/or fixed improvements and amend upon mutual agreement to terms.
- E. Association shall not remove any facilities or fixed improvements from the Premises, nor waste, destroy, or modify any facilities or improvements on the Premises except as permitted by this Agreement.
- F. All facilities and/or fixed improvements, at any time constructed or placed upon any part of the Premises, whether by Association or any other person or entity, shall become the sole and exclusive property of the County upon expiration or sooner termination of this Agreement.
- G. County agrees upon request of Association to execute, as the legal owner of the Property and Premises, documents which are required by State, Federal, or County laws or regulations required in connection with the undertaking of any Projects approved pursuant to this Agreement.

SECTION 8 - MECHANIC'S LIENS

- A. Association shall at all times indemnify and save County harmless from any and all claims for labor or materials in connection with demolition, construction, repair, alteration, or installation of structures, improvements, equipment, or facilities at the Premises, and from the cost of defending against such claims, including attorney's fees.

- B. In the event a lien is imposed upon the Premises as a result of such demolition, and/or construction, repair, alteration, or installation, Association shall procure and record a surety bond, or other security approved by County, naming County as obligee, which frees the Premises from the claim of the lien and from any action brought to foreclose the lien.
- C. Should Association fail to procure and record said security within thirty (30) days after the filing of any such lien, this Agreement shall be in material default of this Agreement, and it shall be subject to immediate termination by County, anything in this Agreement to the contrary notwithstanding.

SECTION 9 - ENVIRONMENTAL PROTECTION

- A. At its sole cost and expense, Association shall take all precautions to prevent all toxic substances, and petroleum products of any nature, from being discharged on grounds of the Property and Premises, and shall have all trash, litter or garbage generated or placed on the Premises or Property as a result of the activities carried out by the Association pursuant to this Agreement to be removed in a timely manner.
- B. At its sole cost and expense, Association shall comply with all conditions and mitigation measures set forth in the certified Environmental Impact Report and all present and future conditional use permits for Manzanita County Park by any appropriate Federal, State, County, or local regulatory agency.

SECTION 10 - REPAIR OF DAMAGED FACILITIES

- A. Association shall promptly and diligently repair, restore or replace as required, all damages to any part of the improvements or facilities resulting wholly or in part from damages caused by fire or other causes up to the amount covered by extended coverage insurance.
- B. The complete work of maintenance, repair, restoration, or replacement shall be equal in value, quality and use to the condition of the improvements before the event, giving rise to the work, except as expressly provided to the contrary in this Agreement.

SECTION 11 - MAINTENANCE OF PREMISES

- A. Throughout the term of this Agreement, Association shall, at its sole cost and expense, assume the maintenance and operation responsibilities of the Premises on a year around basis.

- B. The Association shall maintain the Premises and all improvements, installations, facilities, and common areas on the Premises, including landscape improvements and painting of equipment and structures, in first class condition and repair, ordinary wear and tear expected, and in accordance with all applicable laws, rules, ordinances, and regulations of Federal, State, County, governmental agencies or other regulatory agencies and insurance companies having or claiming jurisdiction.

SECTION 12 - COMPLIANCE WITH LAWS AND REGULATIONS; FINANCIAL RECORDS

- A. Association shall at all times observe and comply with, and shall cause all its employees, associates, volunteers, suppliers, and agents to observe and comply with all applicable laws, ordinances, regulations, orders and decrees of all public authorities having jurisdiction over operations under this Agreement, whether now in force or which may hereafter be in force.
- B. Association shall, at all times, maintain its status as a recognized and valid 501c4 non-profit organization. In the event that Association loses such status, it shall be in material breach of a requirement of this Agreement. Association shall immediately notify County of that fact and rectify that situation by curing that condition. Article XII shall apply to such situation.
- C. Association upon request will provide County with annual copies of financial filings and disclosures and other such financial records generated in the course of normal business that may provide the County with adequate information to evaluate the Associations fiscal soundness.

SECTION 13- TAXES, ASSESSMENTS, AND FEES

- A. Association shall pay promptly all taxes and assessments of any kind whatsoever assessed or levied for or upon the Premises, including taxes and assessments assessed or levied upon any machines, appliances, property, property interest, possessory interest, or improvement of any kind erected, installed maintained upon, or used in connection with the Premises. The payment of such taxes, assessments, fees, or charges shall not constitute cause for modification of fees payable by Association to County.
- B. Association shall also pay promptly any taxes levied upon the business or other activities of Association, upon or in connection with the Premises.
- C. Association shall promptly pay any fees imposed by law for any licenses or permits for any business or activity of Association upon the Premises.

- D. This Agreement may create one or more taxable possessory interests pursuant to California Revenue and Taxation Code. The Association shall be solely responsible for such taxes, if any, and the County shall have no responsibility.

SECTION 14 - REVENUES

- A. All revenues generated from activities at the Premises and collected by the Association shall be held in trust by the Association for the sole and exclusive uses set forth in this Agreement, and for no other uses except as may be agreed to in writing by the Board of Supervisors. Upon termination of this Agreement, any such revenues still held by the Association shall be transferred to the County to be used solely and exclusively for the operation, maintenance or improvement of Manzanita County Park.
- B. The County shall have the right at all times and upon reasonable notice to inspect and audit the books and records of the Association to determine compliance with this Section.

ARTICLE IV - COUNTY'S RIGHTS AND OBLIGATIONS

SECTION 1 - ERECTION OF FACILITIES

County retains the right to erect facilities or make improvements within the Premises. Location of these facilities or improvements shall be at the sole discretion of County, providing their location does not interfere with existing or proposed operations of Association.

SECTION 2 - INSPECTION OF PREMISES

During reasonable hours, County, its agents or employees shall have the right, but not the obligation, to enter upon and inspect the Premises and the Association's operations, and may make written demand upon Association to perform its obligations under this Agreement. Such demand shall specify the obligations to be performed.

SECTION 3 - MAINTENANCE

County reserves the right to enter the Premises to maintain, repair, remove and replace, add to or generally improve County-owned facilities, provided, however, that such entry shall not unreasonably interfere with Association's use of the Premises.

SECTION 4 - PHYSICAL DAMAGE CAUSED BY COUNTY

County will reimburse, restore, or repair, at its sole discretion, for physical damages caused by County to Association-owned improvements located on the Premises only if

such damaged Association-owned improvements are located and built in accordance with plans and specifications as have been approved by County.

SECTION 5 - ROLE OF PARK VOLUNTEERS

- A. Park Volunteers shall be assigned and scheduled by the Director in accordance with their knowledge, skills, and capabilities. Park Volunteers are not peace officers, and shall not and do not act in that capacity.
- B. Park Volunteers' work schedules shall be developed in accordance with and subject to the provisions outlined in Exhibit "D" - Operation and Maintenance Schedule, Paragraph D.
- D. It is not the intent or purpose of the County's Live-on Volunteer Program at Manzanita Park to relieve the Association of its duties to maintain, operate, secure and protect the Association's physical facilities or the Premises in accordance with the provisions of this Agreement.

ARTICLE V - UTILITIES

SECTION 1 - COUNTY'S RESPONSIBILITIES

- A. County shall be responsible for the delivery of a reasonable quantity of potable water to the Pump Station. In the event of a failure of the County Water System, County shall repair the County Water System as expeditiously as possible, subject to the \$200,000 as referenced below.
- B. In the event of a failure of the Well to deliver potable water, or a failure of the County Water System, either of which requires repairs costing in excess of \$200,000, County and Association shall immediately engage in good faith negotiations for a period not to exceed 180 days to determine the long-term feasibility of supplying water to the Premises. The County shall not be obligated by this Agreement to make or cause to be made deliveries of potable water or any repairs to the County Water System costing in the aggregate in excess of \$200,000. During the good faith negotiation period, the County agrees to supply interim potable water to the Premises provided that the cost for the interim potable water shall be included in the not-to-exceed cost of \$200,000 for repairs. It is understood and agreed to by the parties that the not-to-exceed cost of repair is for a catastrophic failure of the County Water System or of the Well, and are a not part of any expected routine maintenance or service.
- C. Notwithstanding the above, in the event that the County Water System cannot be repaired for the not-to-exceed price of \$200,000, or the County determines in its sole discretion that the Well is no longer operational or cannot otherwise provide water to the Premises, and water to the Premises must be provided from another

source or provider (other than the County of Monterey), the County and Association shall enter into good faith negotiations to determine an equitable operational and financial solution for a long-term water supply to the Premises. Such negotiations shall not exceed an additional 60 days. In the event the parties cannot agree upon an operational and financial solution for a long-term water supply to the Premises, this Agreement shall terminate immediately upon the expiration of the additional 60 day period.

- D. Except as specifically set forth herein, County shall have no responsibility to provide or pay for Utilities or Utility Service to the Premises.

SECTION 2 - ASSOCIATION'S RESPONSIBILITIES

- A. Association shall pay connection fees and charges for all Utilities, including but not limited to, water from the pump house, power for the Pump Station, sewer, electricity, telephone, or any other service required by Association on the Premises.
- B. If a planned improvement or facility is not served by a separate meter for electrical service, Association shall at its own expense have a separate electrical meter installed and all charges derived there from shall be billed to the Association's noticed address and shall be timely paid by Association, as per the billing agency requirements.

SECTION 3 - UTILITY EASEMENT OR RIGHTS-OF-WAY

- A. Association shall permit any County authorized public utility company or district to run natural gas, water, sewer, electric, or telephone conductors, pipes, conduits, or duct work where necessary or desirable over, under or through the Premises in a manner which will not unreasonably interfere with the Association's use of the Premises.
- B. All Utilities must be brought to the Premises over County-approved public utility easements or rights-of-way granted for the purpose of serving the Premises.

ARTICLE VI - INDEMNIFICATION, DEFENSE AND HOLD HARMLESS

SECTION 1 - INDEMNITY, DEFENSE AND HOLD HARMLESS

- A. Association shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting from any of the activities authorized to be undertaken pursuant to this Agreement, and from any

and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Association's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County.

- B. If Association enters into any agreement that contains a defense, indemnification and hold harmless clause in favor of the Association, Association shall require such clause to also be in favor of the County, its officers, agents and employees similar to that described in paragraph A, above.

ARTICLE VII - INSURANCE COVERAGE

SECTION 1 - INSURANCE DURING TERM OF AGREEMENT

- A. Without limiting Association's defense, indemnification and hold harmless obligation described in Article VII, above, Association shall maintain in force at all times during the performance of this Agreement a policy of insurance as follows and in the minimum limits of liability as stated herein:
1. Comprehensive General Liability -

Comprehensive General Liability, including but not limited to premises, personal injuries, products, and completed operations for combined single limit of not less than \$1,000,000 per occurrence.
 2. Comprehensive Automobile Liability -

Comprehensive Automobile Liability for Association owned vehicles, including but not limited to property damage, bodily injury and personal injuries for combined single limit of not less than \$1,000,000 per occurrence.
 3. Fire and Extended Coverage -
 - a) All improvements owned by Association located on the Premises shall be kept insured against loss or damage by fire and such other risks as are now or hereafter included in extended coverage endorsements in common use for commercial structures, including vandalism and malicious mischief.
 - b) The amount of such insurance shall be sufficient to prevent County from becoming a coinsurer under the provisions of the policies, but in no event shall the amount be less than one hundred percent (100%) of the actual replacement cost.

- c) If any dispute arises whether the amount of insurance complies with the above, which cannot be resolved by agreement between County and Association, the County may, but not more often than once every twelve (12) months, request the carrier of the insurance then in force to determine the full insurable value as defined in this provision, and the resulting determination shall be conclusive between the parties for the purpose of this Agreement.

4. Workers' Compensation -

Workers' Compensation covering statutory requirements of the State of California and Employer's Liability of not less than \$1,000,000 per occurrence.

- B. Association shall require any agreement entered into for the use of the Premises by any organized group or entity to require Comprehensive General Liability coverage as described in paragraph A.1, above.

SECTION 2 - ADDITIONAL INSUREDS

All liability policies required pursuant to Section 1, above, shall provide an endorsement naming the County of Monterey, its officers, agents and employees as additional insureds and shall provide 30 days notice to County of Monterey in advance of cancellation or nonrenewal of said policies.

SECTION 3 - PRIMARY INSURANCE

Liability policies shall be endorsed to provide that such insurance is Primary Insurance and that no insurance of the additional insureds shall be called upon to contribute to a loss covered by Provider's Insurance.

SECTION 4 - COPIES OF INSURANCE POLICIES

- A. A current Certificate of Insurance policy, including all applicable endorsements and endorsement pages must be on file with the County's Contracts/Purchasing Division.
- B. All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Contracts/Purchasing Officer.

- C. Acceptance or approval of insurance shall in no way modify or change the Indemnity and Hold Harmless Clauses in this Agreement, which shall continue in full force and effect.
- D. Certificates of Insurance from any groups other than Association must be submitted thirty (30) days prior to any event or activity held by such groups.

SECTION 5 - FAILURE TO OBTAIN INSURANCE

If Association is unable to obtain insurance for any reason, the Association shall be in material breach of this Agreement, and the Association shall immediately cease operations or use of the Premises until the required insurance is obtained. If the required insurance is not obtained within 60 days, the County may terminate this Agreement immediately, notwithstanding any other provision of this Agreement.

ARTICLE VIII - DEFAULT OR BREACH

SECTION 1 - CONSTRUCTION OF AGREEMENT TERMS

Each term and each condition of this Agreement is to be kept, observed or performed by Association and shall be construed to be both a covenant and a condition.

SECTION 2 - NOTICE OF DEFAULT OR BREACH

- A. If Association shall default or breach any covenant or condition to be kept, observed, or performed by Association, County shall give written Notice of Default or Breach to Association. Association shall have thirty (30) days after service of the notice in which to cure, remedy, and correct the default or breach, or in which to commence and diligently pursue the performance of the thing or work required to be done to cure, remedy, and correct the default or breach.
- B. Should Association fail to so cure, remedy, and correct the default or breach, or to commence to diligently pursue such corrective remedial action within and during said thirty (30) day period, or should thereafter fail to diligently pursue such corrective action, County shall have the right, but not the obligation to terminate this Agreement.

SECTION 3 - NOTICE OF TERMINATION

If the County determines to terminate this Agreement pursuant to the provisions of Section 2.B, above, the County shall deliver a notice to the Association setting a date and time by which the Association shall vacate the Premises, and the Association shall immediately cease all activities on the Premises. At the noticed date and time, the Association shall surrender possession of the Premises to the County.

ARTICLE IX - NOTICES AND PAYMENTS

SECTION 1 - NOTICES AND PAYMENTS

A. All notices and communications required under this Agreement shall be in writing, and all payments shall be by first class U.S. Mail or other overnight delivery service to the following addresses, and all notices may be made by one of the following methods:

1. All notices to Association:

North County Youth Recreation Association
P.O. Box 1051
Castroville, CA 95012

2. All payments and notices to County:

County of Monterey
Parks Department
P.O. Box 5249 (93915)
855 E. Laurel Drive, Building G
Salinas, CA 93905
Telephone: (831) 755-4895
Facsimile: (831) 755-4914
Email: parks@co.monterey.ca.us

ARTICLE X - MISCELLANEOUS

SECTION 1 - CONSTRUCTION OF AGREEMENT

A. The Director is designated as County's representative and agent to administer this Agreement.

B. This Agreement embodies the complete understanding of the parties hereto and cannot be amended or modified except in writing signed by each party hereto. Except as set forth herein, there are no other oral or written agreements, representations or warranties, expressed, or implied.

C. This Agreement shall be governed by, and enforced in accordance with, the laws of the State of California. The parties stipulate that this Agreement was entered into in the County of Monterey, in the State of California. The parties further stipulate that the County of Monterey, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

This Agreement shall insure to the benefit of, and be binding upon, the Association and the County, or their respective successors and permitted assigns.

SECTION 2 - MEMORANDUM OF UNDERSTANDING

The Director, acting on behalf of the County, and the President of the Association acting, on behalf of his Board, may from time to time, enter into a Memorandum of Understanding to address, clarify, or otherwise resolve specific questions or issues that arise between County and Association on areas of development, maintenance and operation in which this Agreement is silent unless such action is specifically required by the Board of Supervisors. In doing so, the intent of this Agreement shall be preserved.

SECTION 3 - AMENDMENTS

Amendments to this Agreement shall be in writing, approved by the Board of Supervisors and the Board of Directors of Association, and executed by their authorized representatives.

SECTION 4 - COOPERATION AMONG COUNTY AND ASSOCIATION

- A. County and Association shall conduct their respective operation in the spirit of cooperation with each other.
- B. County and Association shall cooperate with other governmental agencies that have jurisdiction over various aspects of the operations on the Premises.
- C. Association shall obtain all permits, licenses, and/or approvals required for any Project, including but not limited to use and performance permits and/or licenses. Association shall bear the cost of any such permits, licenses and/or approvals, however County shall assist Association in the processing of such permit requirements and wherever possible, obtain a waiver of scheduled fees.

SECTION 5 - RELATIONSHIP OF PARTIES

Nothing contained herein shall deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of the Fee nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any business relationship between the parties other than the relationship of concessionaire and the grantee of a concession.

SECTION 6 - SUBJECT TO OTHER AGREEMENTS

This Agreement and all rights conveyed herein shall be subject to any deed restrictions and/or the provisions and requirements of any existing agreement between the County,

the State of California, or the United States regarding the acquisition, development, or use of the Premises. Copies of all applicable documents are on file at the office of the Monterey County Parks Department.

SECTION 7 - ASSIGNMENT OF AGREEMENT

Association shall not assign this Agreement or any interest in the Premises or any right or privilege appurtenant thereto without the prior written approval of County. Because this Agreement is being entered into by the parties due to a special relationship and special skills and abilities, neither party shall assign, sell, mortgage, hypothecate, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the other party. County reserves the right, in its sole, absolute and unfettered discretion, to approve or disapprove the proposed assignment or transfer. None of the services covered by this Agreement shall be subcontracted without the prior written consent of the County. Notwithstanding any such subcontract, the Association shall continue to be liable for the performance of all requirements of this Agreement.

SECTION 8 - SAVINGS CLAUSE

If any provision or provisions of this Agreement are for any reason adjudged to be unenforceable or invalid, it is the specific intent of the parties that the remainder shall subsist, be and remain in full force and effect.

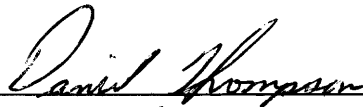
SECTION 9 - BINDING PROVISIONS


Each and all of the terms and conditions of this Agreement to be performed, kept and observed by County and Association shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of County and Association, and all rights, privileges and benefits arising under this Agreement in favor of County and Association shall be available in favor of the heirs, executors, administrators, successors, and assigns thereof respectively.

IN WITNESS WHEREOF the parties have executed this Concession Agreement as of the date set forth above.

NORTH COUNTY YOUTH
RECREATION ASSOCIATION

County OF MONTEREY

By: 
Title: President

By: 
Title: Chair, Monterey County
Board of Supervisors

Approved as to Form:
County Counsel

By: 



EXHIBIT A
PROPERTY

EXHIBIT "A" - PROPERTY

PROPERTY: MANZANITA PARK FACILITY - COUNTY OF MONTEREY

PREMISES: ASSOCIATION'S AREA OF RESPONSIBILITY UNDER CONCESSION AGREEMENT

EXHIBIT B - PREMISES

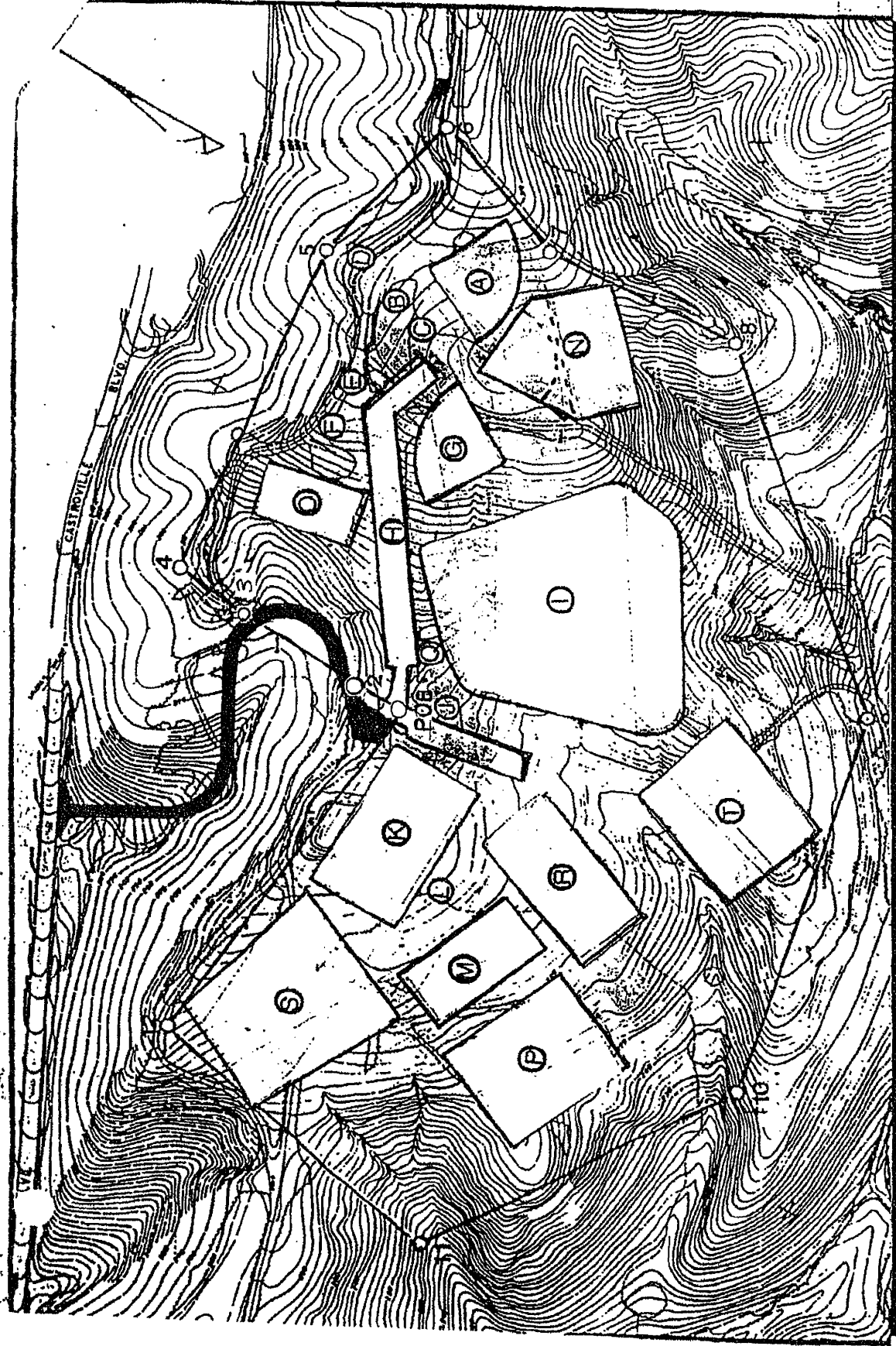


Exhibit "B" - Premises

- KEY**
- A-BASEBALL FIELD
 - B-ACTIVITY AREA
 - C-CONCESSION STAND
 - F-VOLUNTEER HOUSING
 - G-BASEBALL FIELD
 - H-BARKING LOT
 - I-K-SOCCER FIELD
 - J-L-CONCESSION STAND
 - K-M-SOCCER FIELD
 - L-P-B.M.X.
 - M-Q-CONCESSION STAND
 - N-R-SOCCER FIELD
 - O-SOCCER FIELD
 - P-ULTIMATE DEVELOPMENT

**NORTH COUNTY YOUTH RECREATION ASSOCIATION
DESCRIPTION OF PREMISES**

Beginning at a corner of the PREMISES, said point being a part of the PROPERTY owned by the County of Monterey and more particularly located at North 545,300 East 1,215,560 using the California Grid Coordinate System, Zone 4, thence to,

- 1) North 545,410 East 1,215,560, a distance of 110 feet, said point being Point 2, and,
- 2) Continuing generally in a Northerly direction along an agreed upon outside alignment of the main Park entrance road to Point 3, located at North 545,705 East 1,215,580, an approximate distance of 340 feet, thence to,
- 3) North 545,875 East 1,215,600, a distance of 180 feet, said point being Point 4, thence to,
- 4) North 545,890 East 1,216,382, a distance of 790 feet, said point being Point 5, thence to,
- 5) North 545,855 East 1,216,760, a distance of 390 feet, said point being Point 6, thence to,
- 6) North 545,514 East 1,216,630, a distance of 370 feet, said point being Point 7, thence to,
- 7) North 545,050 East 1,216,655, a distance of 460 feet, said point being Point 8, thence to,
- 8) North 544,390 East 1,216,065, a distance of 890 feet, said point being Point 9, thence to,
- 9) North 544,225 East 1,215,075, a distance of 910 feet, said point being Point 10, thence to,
- 10) North 544,680 East 1,214,520, a distance of 800 feet, said point being Point 11, thence to,
- 11) North 545,390 East 1,214,670, a distance of 730 feet, said point being Point 12, thence to,
- 12) North 545,300 East 1,215,560, a distance of 900 feet, said point being Point of Beginning.

The approximate acreage described herein being Fifty six (56) acres, more or less.

EXHIBIT C - DEVELOPMENT PROGRAM

The primary purpose of this program is to facilitate the development of a first-class public facility for its patrons. The Association shall make every effort to develop the Premises in this manner.

The intent of the Association's Development Program is to provide basic planning information to the County. It shall be the County's duty and right to approve the development program, and/or projects, subject to modification from time-to-time as herein provided, and it shall be the Association's duty and obligation, to follow all prescribed requirements of this Agreement in general and more specifically, follow the guidelines found in Exhibit "F", Design and Plan Approval Process.

The Association's development program shall be submitted to County ninety (90) days after execution of this agreement. Modifications to the Development Program shall be submitted to the County in writing as project timing dictates.

EXHIBIT D - OPERATION AND MAINTENANCE SCHEDULE

The primary purpose of this schedule is to provide guidance for the ongoing operation of a first-class public facility for its patrons. The Association shall make every effort to operate and maintain the Premises in this manner. Throughout the term of this Agreement, Association shall, at their sole expense, assume the maintenance and operation responsibilities of the Premises on a year-round basis.

The following general list of maintenance responsibilities shall act as a guideline to the Association in fulfilling their duties toward operating and maintaining the Premises.

A. MAINTENANCE OF ATHLETIC FIELDS

As appropriate to the specific activity listed below, the Association shall have the duty to install, construct, renovate, repair, replace, mow, schedule, apply and inspect the following:

- 1) Turfgrass program (see Paragraph "D" for additional Agreement provisions);
- 2) Irrigation system;
- 3) Fertilization program;
- 4) Erosion, animal, weed and insect control program; and
- 5) Playfield equipment to include backstops, bleachers, scoreboards, etc.

B. MAINTENANCE OF GROUNDS

As appropriate to the specific activity listed below, the Association shall have the duty to install, construct, repair, replace, remove, schedule, apply, and inspect the following:

- 1) Garbage, litter and trash removal from the PROPERTY;
- 2) Ground cover, shrub and tree care program;
- 3) Domestic water system;
- 4) Planned activity areas;
- 5) Fences, signs, and footpaths; and
- 6) Erosion, animal, weed, and insect control program

C. MAINTENANCE OF BUILDINGS AND STRUCTURES

As appropriate to the specific activity listed below, the Association shall have the duty to repair, paint, clean, schedule, and inspect the following:

- 1) Restroom buildings;
- 2) Concession stands;

- 3) Roadways and parking areas; and
- 4) Equipment storage and maintenance building

D. USE OF PARK VOLUNTEERS IN TURF MAINTENANCE PROGRAM

This paragraph and its provisions define the responsibilities of both the Association and the County for the use of County live-on volunteers in the turf maintenance program.

- 1) The Association shall maintain, repair and keep in good repair and safe operating condition, all mowing equipment utilized by the volunteers.
- 2) The Association shall repair all turf watering system breaks, as well as any other damages caused to the Premises by the mowing operation.
- 3) All Association equipment used by the volunteers shall be inspected as per the provisions of California Law, at the beginning of each operational day.
- 4) Any Volunteers utilizing Association equipment shall be trained by the Supervising Park Ranger or County designee before the Volunteer is allowed to operate the equipment without supervision.
- 5) The Park Ranger or Volunteer shall promptly notify the Association if the mowing equipment becomes inoperable and/or repair is needed.
- 6) The utilizing Volunteers shall be responsible for routine oil, water, and tire air pressure checks of the mowing equipment.
- 7) A schedule shall be established by County and the Association utilizing Volunteers' assigned duties in the turf mowing operation. In no event shall the turf mowing operation exceed eight (8) hours per week of volunteer's time.
 - a) If there is no Volunteer available because of volunteer vacancies at Manzanita County Park, or the discontinuance of the Volunteer program, then the Association shall be responsible for the mowing operation.
 - b) If there is no Volunteer at Manzanita County Park who has the ability or desire to operate the mowing equipment, then the Association shall be responsible for the mowing operation.

- 8) The Volunteers shall be covered by the County Volunteer insurance coverage program and, in addition, shall be covered by Monterey County's liability insurance program while operating the mowing equipment on the premises.

EXHIBIT E - SPORT ACTIVITY SCHEDULE

SECTION 1 - SCHEDULING OF SPORT ACTIVITIES

- A. The Association shall submit to the Director, a schedule of seasonal uses, which are planned for various groups each calendar year during the term of this Agreement.
- B. The Association shall inform the Supervising Ranger for Manzanita County Park at least fifteen (15) days before the beginning of the respective sport season, including practice periods.

SECTION 2 - SPECIAL EVENTS

- A. The Association shall inform the Director and/or the Supervising Ranger for Manzanita County Park of any planned special event(s) sponsored by the Association.
- B. The Association shall meet with the Supervising Ranger at the early stages of the special event planning process to minimize potential conflicts or to schedule volunteer time and equipment. The lead time for any special event planning should be a minimum of thirty (30) days in advance of the event.
- C. Any Association sponsored special events utilizing all or portions of the Property shall be approved by the Director and such approved use shall be covered by Association's insurance policies and with indemnification and hold harmless clauses in full force and effect.
- D. Special Events require a Special Event Permit, and may require an independent promoter to independently comply with the insurance and indemnification provision of the Agreement.

EXHIBIT F - DESIGN AND PLAN APPROVAL PROCESS

SECTION I

PLAN SUBMITTAL GENERAL INFORMATION

A. INTENT AND PURPOSE

The Plan and Specification approval process contained herein is intended as minimum procedures and requirements for site development and improvement projects on all properties managed under the jurisdiction of the Monterey County Parks Department. These criteria are in addition to all other applicable codes, ordinances and requirements of County, State, and Federal agencies.

B. DEFINITIONS

1) CONTRACT DOCUMENTS:

Contracts, Construction Drawings, Construction Specifications, Amendments, and Addenda to any of the above.

2) COUNTY:

The County of Monterey. Also, any of its authorized departmental representatives operating on behalf of the County.

3) BOARD OF SUPERVISORS:

The Board of Supervisors of the County of Monterey.

4) DIRECTOR:

The Monterey County Parks Director or his authorized representative.

5) ASSOCIATION:

An individual/company/agency supplying construction, labor, services, materials, programs, and/or management services to the County, and referred to as vendor, contractor, architect/engineer, concessionaire or Association as the project dictates.

- 6) DESIGN PROFESSIONAL:
A Civil, Structural, Mechanical, or Electrical Engineer, an Architect, or a Landscape Architect or other professional properly registered or licensed by the State of California acting within his scope of training, experience and limitation of law.

- 7) PROJECT:

Includes development, construction, and/or installation of new facilities that have been approved by the County. Also includes projects on existing facilities that improves, rehabilitates, renovates or restores the quality or function of such property and has been approved by the County.

- 8) STANDARDSPECIFICATIONS:

a) The current editions of the State of California Standard Department of Transportation Specifications, the Uniform Building, Plumbing and Electrical Codes, as well as any other applicable Uniform Code publication as adopted by the County, are incorporated herein by reference. By means of Special Provisions, the project specifications are tailored to the individual job requirements.

SECTION II

PLAN APPROVAL REQUIREMENTS

A. GENERAL

- 1) All permits, approvals and/or authorizations required for a Project shall be acquired by the Association. The Association shall comply with all conditions and mitigation measures set forth in any conditional use permit issued by the Monterey County Planning and Building Department.

- 2) The Director shall not permit any work to proceed on any County-owned property until all permits and approvals have been obtained by the Association.

- 3) The Association shall comply with any and all health, safety and public welfare laws, general rules or regulations within the jurisdiction of any governmental/regulatory agency at any time during the term of this Agreement.

- 4) In the event the contract and the plans and specifications have differing or conflicting requirements, the Contract Document shall be the controlling document.
- 5) The Association may request a variance, if in the opinion of the Association or his Design Professionals, alternate styles, of architecture, standards of constructions, kinds of materials or procedures would be beneficial to the function or aesthetic qualities of his proposed development.

B. PLAN REVIEW

1) PERMITS

For permit purposes, the Association must be aware of the requirements of the Monterey County RMA-Planning and Building Inspection Departments and/or any other governmental regulatory agencies having jurisdiction over the project site. In some cases, the approving agencies listed under item 2 and 3 below, will also issue the necessary permits/approvals/authorizations.

2) REVIEW AND APPROVAL AUTHORITY - COUNTY PARKS

Typical components of the plan approval process include, but are not necessarily limited to the following areas:

- Architectural theme
- Landscape design
- Suitability of proposed uses with respect to permitted uses.
- Functional adequacy with respect to the size of the facilities for intended development.
- Traffic and Pedestrian Circulation Patterns
- Operation and Maintenance Requirements
- Development Capacities
- Sign Programs
- Schematic, Preliminary and Construction Plans and Specifications
- Design and Construction Time Schedule
- Compliance with Agreement Documents
- Compliance with Conditional Use Permit, if any

3) REVIEW AND APPROVAL AUTHORITY - OTHER REGULATORY AGENCIES

Typical regulatory agencies and their specific areas of review and approval responsibilities include, but are not necessarily limited to the following:

<u>Agencies</u>	<u>Projects Affecting</u>
Planning Depts.	Environmental Impact Reports Conditional Use Permits
Building and Inspection Depts.	Building Permits Grading Permits Project Inspection
Environmental Health Depts.	Health and Safety Matters
Public Works Dept.	Traffic Impacts
Rural Fire Districts	Fire Protection Water Flow Adequacy
Air Pollution Control District	Air Quality
Water Resources Agency	Plain and Use of Reservoirs
Water Quality Control Board	Water Quality
State Fish and Game	Use of Reservoirs

NOTE: The above regulatory agencies are those that may have jurisdiction over project improvements under management of the Monterey County Parks Department. In some instances, Monterey County will not be the lead review and approval regulatory agency. The State Coastal Commission may be involved in project review and approval.

SECTION III

PREPARATION AND SUBMITTAL OF PLANS AND SPECIFICATIONS

A. GENERAL

The Association is cautioned not to proceed with Construction Documents prior to obtaining approval of the Schematic Design Phase and Preliminary Design

Phase as described herein. Any work commenced on succeeding phases before approval of the preceding phase is entirely at the Association's risk.

B. PLANSUBMITTALS

1) Schematic Design Documents:

This phase of development incorporates sufficient professional design effort through a program narrative and graphic media to accurately identify project scope, design intent, general project costs, benefits and development problems.

The Director will require a minimum of fifteen (15) days for schematic plan review.

2) Preliminary Design Documents:

This phase of development involves detailed site layout of the project area including the precise location of all existing and proposed facilities, easements, pertinent topographic features and a more detailed project cost estimate.

These documents will be submitted after approval of the Schematic Plan Phase. The Director will require a minimum of thirty (30) days for preliminary plan review.

3) Construction Documents:

This phase of development is comprised of final, complete working drawings, specifications, bid documents and engineer's/architect's final project cost estimate.

These documents will be submitted after approval of the Preliminary Plan Phase. The Director will require a minimum of thirty (30) days for construction plan review.

4) As-Built Drawings (Recorded Documents):

A complete set of as-built drawings shall be submitted to the County Parks Department upon completion of all project improvements.