

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 4
Date: February 3, 2010

TO: Honorable Mayor and Members of the City Council
FROM: Robin Bettin, Assistant Director of Community Services
SUBJECT: Occupancy Agreement for Disc Golf Course in Kit Carson Park

RECOMMENDATION:

Approve Resolution 2010-15 authorizing the Director of Community Services to execute a occupancy agreement with the San Diego Disc Golf Association (Association) for installation and maintenance of a Disc Golf course at Kit Carson Park (Park).

FISCAL ANALYSIS:

No impact. The agreement requires that the Association raise all funds for the purchase of the equipment and agree to maintain the course, in return for the ability to hold group tournaments and events at the course.

BACKGROUND:

The Association approached staff in June of 2008 to see if there was interest in placing a disc golf course in the Park. The Association made a presentation to the Community and Older Adults Commission at the June 26, 2008, meeting. The Commission approved the concept and directed staff to work with the Association to research the feasibility of the course. Over the course of several months, staff worked with the Association to finalize the course lay out, by meeting with parks staff, notifying residents on the North West border of the Park, and conducting public information meetings on the concept.

Several modifications to the course were made in consideration of the neighbors. Tree and shrubs will be added along the western border of the course, to further buffer the neighbor's yards from the course. Additionally, the Association will be placing signs on the neighbor's fences bordering the course, warning players to stay out of private property. The Association is aware that if issues arise with neighbors, they will be required to revise the course as necessary.

The Association will be responsible for constructing and maintaining all improvements related to the course and will provide the maintenance services for all existing and future baskets, tees and signage for the course at their sole expense. This course will be open to the public and the Association will

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hold periodic educational events to promote the sport and the course to the public. The length of the contract is eighteen months, with an option for a on-year renewal.

Staff recommends approval of the agreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robin Bettin', with a stylized, sweeping flourish extending to the right.

Robin Bettin

RESOLUTION NO. 2010-15

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE DIRECTOR OF
COMMUNITY SERVICES TO EXECUTE AN
OCCUPANCY AGREEMENT FOR
INSTALLATION AND MAINTENANCE OF A
DISC GOLF COURSE IN KIT CARSON PARK

WHEREAS, the City of Escondido ("City") has a variety of recreational amenities located within Kit Carson Park; and

WHEREAS, the City has interest in providing additional amenities for the public's use; and

WHEREAS, the San Diego Aces Disc Golf Association agreed to install and maintain, a disc golf course, at no cost to the City, in exchange for the ability to hold tournaments, educational events and similar events related to disc golf on the course; and

WHEREAS, the Director of Community Services has recommended an Occupancy Agreement ("Agreement") with the San Diego Aces Disc Golf Association to exclusively install and maintain said disc golf course.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the City Council accepts the recommendation of the Director of Community Services.

3. That the Director of Community Services is authorized to execute, on behalf of the City, an Agreement with the San Diego Aces Disc Golf Association for the installation and maintenance of a disc golf course in Kit Carson Park. A copy of the Agreement is attached as Exhibit "1" and is incorporated by this reference.

OCCUPANCY AGREEMENT

This Occupancy Agreement ("Agreement") is entered into this 3rd day of February, 2010, by and between the CITY OF ESCONDIDO, a municipal corporation ("City"), and San Diego Aces Disc Golf Association ("Association"), with regard to the following:

RECITALS

A. The Association seeks to construct, maintain certain improvements and provide services, as detailed below, for the purpose of establishing a disc golf course in Kit Carson Park ("Premises") in the City;

B. In exchange for sponsorship from the Rotary Club of Escondido, the disc golf course located on the Premises shall be named The Rotary Club of Escondido Disc Golf Course ("Course");

C. As consideration for construction, maintenance, improvements and services provided by Association to the Course and for free use of the Course by the public, Association seeks permission from City to hold group tournaments, educational events and other similar events related to disc golf on the Course;

D. The City and the Association desire to enter into such an agreement for the Association's non-exclusive occupancy of the Course under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and of the Recitals, it is mutually agreed by and between the parties as follows:

1. Maintenance of Course and Signage. The Association will provide maintenance services for all existing and future baskets, tees and signage for the Course at their sole expense.
2. Improvements. The Association may install certain improvements to the Course upon receiving the prior approval of the Assistant Director of Community Services ("Director"), including but not limited to, new tee boxes and tee box surfaces, steps, benches, native trees and shrubs, additional pin locations, signage for additional pin locations, trash receptacles and an informational kiosk ("Kiosk"). The Association will design, construct and fund, at their sole expense, improvements made to the Course after receiving the approval of the Director. Any and all improvements must meet all City standards, including but not limited to, City standards for materials used and construction. Ownership of all improvements made to the Course shall transfer to the City upon their completion and the inspection, approval and acceptance by the Director.

3. Use.

- A. Association's use of the Course on the Premises shall be limited to conducting the sport of disc golf. Any other activities that Association desires to conduct on the Course must receive the prior written approval of the Director.
- B. The Course shall be open for free use by the public at all times except during Association's scheduled events. Association shall schedule its events subject to the terms and limitations set forth in Paragraph 13.
- C. Association shall not use, nor permit the use of, the Course other than described in Paragraph 3A above. In any case where Association is, or should reasonably be, in doubt as to the propriety of any particular use, Association may request, and will not be in breach or default if Association abides by, the written determination of the Director that such use is or is not permitted.
- D. Noncompliance by Association with any provision of this Paragraph 3 shall allow City to terminate this Agreement pursuant to Paragraph 5B below.

4. Term and Renewal. The term of this Agreement shall be for eighteen (18) months, commencing on February 15, 2010. Association shall have the option to renew this Agreement, subject to City's written consent, for five (5) additional terms of one (1) year per term ("Renewal Term") by delivering to City written notice of their intent to renew at least ninety (90) days prior to the expiration of this Agreement or expiration of any Renewal Term.

5. Termination.

- A. Each party shall have the right to terminate this Agreement without cause for any reason by giving ninety (90) days prior written notice to the other party.
- B. City shall have the right to terminate this Agreement by giving ten (10) days prior written notice to Association for violating terms of any of the following paragraphs:
 - 1) Use, Paragraph 3
 - 2) Insurance, Paragraph 10
 - 3) No Assignment, Paragraph 17
 - 4) Compliance with Law, Paragraph 18
 - 5) Nondiscrimination, Paragraph 20
 - 6) Americans with Disabilities Act (ADA), Paragraph 21
- C. The parties agree that if the Course is not constructed within a reasonable period of time as defined herein, City would not otherwise enter into this Agreement. Therefore, Association and City agree that the Course must be constructed and operational no later than six (6) months from the date of execution of this Agreement. The determination as to whether or not the Course is in fact constructed and operational shall be made by the

City, with the exercise of reasonable discretion, but in no event shall the six (6) month period set forth in this paragraph be extended. Such notice shall be delivered as provided in Paragraph 26. The failure to comply with this paragraph shall result in the Agreement becoming automatically null and void and Association shall have no further right of occupancy of the Course and/or Premises.

6. Course Layout. Association may establish the layout of the Course in the manner set forth by the layout map attached as Exhibit A, which is incorporated by this reference. Layout of the Course includes but is not limited to, placement of tee boxes/pads pin locations, baskets and anticipated flight path of discs. City reserves the right to modify the Course layout at any time at the discretion of the Director.
7. Informational Kiosk. The Association will be responsible for construction, physical maintenance and informational updating of the Kiosk as necessary. Any and all construction and maintenance of the Kiosk shall be considered an "Improvement" for purposes of this Agreement and shall be subject to the mandatory approvals set forth in Paragraph 2. The completed Kiosk shall be considered a part of the Course for purposes of this Agreement.
8. Educational Events. The Association may hold and offer to the public educational events relating to the sport of disc golf. The Association is granted free non-exclusive use of the Course to hold these events. Participation in educational events shall be open to the public subject to reasonable registration requirements and compliance with Paragraph 20, Nondiscrimination and Paragraph 21, Americans with Disabilities Act (ADA). The terms of this paragraph shall be subject to the limitations set forth in Paragraph 13.
9. Tournament Events. The City grants the Association free use of the Course to hold single or multi-day tournaments. Participation in tournaments shall be open to the public subject to reasonable registration requirements and compliance with Paragraph 20, Nondiscrimination and Paragraph 21, Americans with Disabilities Act (ADA). The terms of this Paragraph shall be subject to the limitations set forth in Paragraph 13.
10. Insurance. Association must have insurance in the following amounts at all times during this Agreement:
 - A. General liability insurance with at least \$1 Million combined single-limit coverage per occurrence for bodily injury and property damage; and
 - B. Workers' compensation insurance and employers' liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship, if, at any time, Association employs any person or persons who are not considered unpaid volunteers.

- C. Each insurance policy required above must be acceptable to the City Attorney:
- 1) Each policy must name the City specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.
 - 2) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - 3) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
- D. Association agrees to deposit with City, on or before the effective date of this Agreement, one Certificate of Insurance for each of the policy or policies necessary to satisfy the insurance provisions of this Agreement and to keep such insurance in effect during the entire term of this Agreement. Said Certificate of Insurance shall be reviewed by, and acceptable to, the City Attorney, prior to commencement of the Agreement. Association will also deposit with the City within 60 days of the Effective Date of this Agreement, an Additional Insured Endorsement naming City specifically and separately as an "additional insured", with the exception of the workers' compensation policy. The appropriate endorsements described in Paragraph 10C above shall follow within sixty (60) days.
- E. City shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the City, the insurance provisions in this Agreement do not provide adequate protection for City and for members of the public using the Premises, City may require Association to obtain insurance sufficient in coverage, form and amount to provide adequate protection from and against the kind and extent of risks which exist or are foreseeable at the time a change in insurance is required. City's requirements shall be reasonable, but shall be designed to assure adequate protection of the City's interests. City shall notify Association in writing of changes in the insurance requirements and, if Association does not deposit with City within sixty (60) days of receipt of such notice a new Certificate of Insurance for each policy or policies of insurance incorporating such changes, this Agreement shall be deemed in default without further notice to Association and may be forthwith terminated by City.
- F. The procuring of such required policy or policies of insurance shall not be construed to limit Association's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, Association shall be obligated for the full and total amount of any damage, injury or loss

attributable to any act or omission of it or its agents, customers or guests in connection with this Agreement or with use or occupancy of the Premises.

G. Noncompliance by Association with any provision of this Paragraph 10 shall allow the City to terminate this Agreement pursuant to Paragraph 5B above.

11. Indemnification. Association shall defend, indemnify, and hold harmless City, its officers, agents, and employees from and against any and all claims, demands, and liabilities for loss of any kind or nature which City, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with this Agreement or with the occupancy and use of the Premises by Association, its invitees, visitors, or any other persons whatsoever. Association further agrees to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees incurred by City on account of any such claims, demands, or liabilities. However, the provisions of this Agreement shall not be construed to indemnify City for claims or acts arising from City's sole negligence.
12. Attorney's Fees, Costs and Expenses. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.
13. Scheduling. The Association shall schedule all tournament events three (3) months in advance. Educational and other events shall be scheduled one (1) month in advance. Any and all Association events must first be approved in writing by the Director.
14. Trash and Course Maintenance. The Association will be responsible for cleaning trash and other such debris in areas in and around the Course that results from Association's use of the Course. In the event Association fails to properly maintain the Course as required by City, then City may notify Association in writing of said failure. In the event Association fails to perform said maintenance within fifteen (15) days after such notice by City, City may perform such maintenance, and the cost thereof including, but not limited to, the cost of labor, material and equipment, shall be paid by Association to City within ten (10) days from receipt by Association of a cost statement from City.
15. Severability. If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law if enforcement would not frustrate the overall intent of the parties.

16. Parties Not Affiliated. Nothing contained in this Agreement shall be deemed or construed to create a partnership, agency relationship, joint venture or any other similar relationship between the parties or cause either party to be responsible in any way for the debts or other obligations whatsoever of the other party.
17. No Assignment. Operation and maintenance of the Course shall be conducted exclusively by the Association and these duties may not be assigned or sublet in any manner under any circumstances without the prior written consent of the Director. Any such assignment or subletting without such consent shall be void and shall, at the option of City, terminate this Agreement pursuant to Paragraph 5B above.
18. Compliance with Law. The Association agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal laws. Noncompliance by Association with any provision of this paragraph shall allow the City to terminate this Agreement pursuant to Paragraph 5B above.
19. Applicable Law; Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Diego, North County Branch. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Southern District of California, in San Diego.
20. Nondiscrimination. Association herein covenants that this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of physical or mental disabilities, race, color, creed, religion, sex, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the Course. Association shall not establish or permit any such practice of discrimination or segregation with respect to its use of the Premises. Noncompliance by Association with any provision of this paragraph shall allow the City to terminate this Agreement pursuant to Paragraph 5B above.
21. Americans with Disabilities Act (ADA). It is the duty of the Association, while operating under this Agreement, to comply with all local, state and federal laws, including, but not limited to, the Americans with Disabilities Act and to indemnify City from any violation of such law. Failure to comply with a provision of local, state, or federal law is grounds for City's termination of this Agreement pursuant to Paragraph 5B above.
22. Supersedure. This Agreement, upon becoming effective, shall supersede any other agreements heretofore made or issued for use of the Premises between City and Association.

23. Headings. The headings in this Agreement are inserted only as a matter of convenience, and in no way define, limit, extend or interpret the scope of this Agreement or of any particular provision hereof.
24. Authority. Those persons executing this Agreement warrant and represent that they have obtained all necessary approvals to enter into this Agreement and are authorized to execute this Agreement and bind their respective entities to the terms herein.
25. Business License. The parties agree that Association is a non-profit organization. In the event Association becomes a business for profit, Association agrees to obtain a business license in accordance with the terms set forth in Exhibit B, attached and incorporated by this reference.
26. Notices. Notices under this agreement shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States Mail, registered or certified, postage prepaid, and addressed to the party to whom the notice is directed at the address set forth below:

CITY: City of Escondido
Attn: Jerry VanLeeuwen, Director of Community Services
201 North Broadway
Escondido, CA 92025

ASSOCIATION: San Diego Aces Disc Golf Association
Attn: Jeff Nichols, President
1489 Kory lane
Ramona, Ca 92065

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

CITY OF ESCONDIDO

Date: _____

Jerry VanLeeuwen
Director of Community Services

SAN DIEGO DISC GOLF ASSOCIATION

Date: 12/5/2009

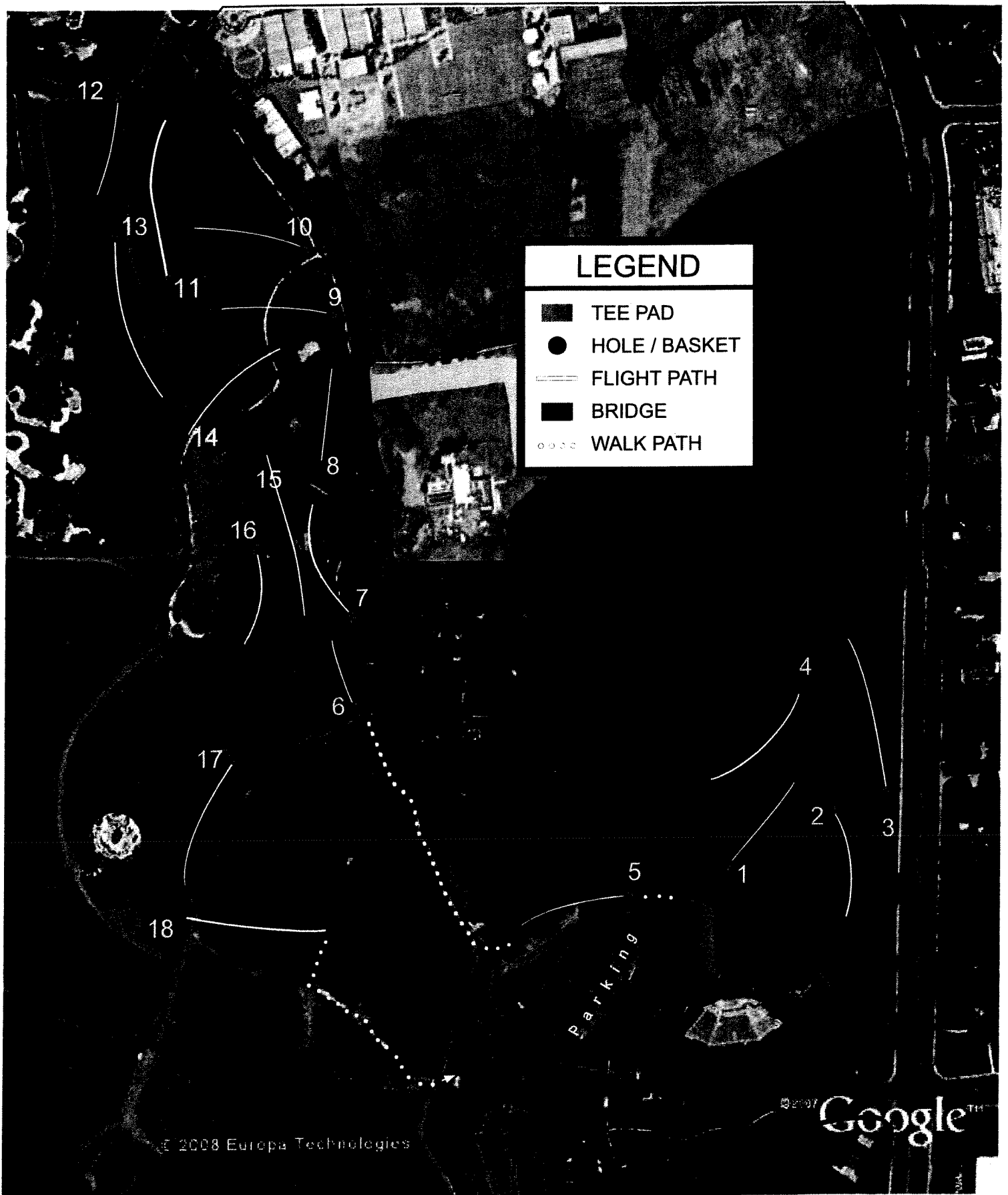
Jeff Nichols, President

Date: 12/5/09

Carl Renda, Secretary

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____



Revision No. 2010-15

EXHIBIT 1

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1" ≈ 400ft