Council Meeting of
February 24, 2009

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the City Council:

SUBJECT: **Community Services - Approve a Contract Services Agreement for Baseball and Softball Instruction.**

Expenditure: $51,450

RECOMMENDATION

Recommendation of the Community Services Director that City Council approve a contract services agreement in the amount not to exceed $51,450 with the South Bay Sports Academy for Youth Baseball and Softball instruction.

FUNDING

Funding is available in the Parks and Recreation Enterprise Fund

BACKGROUND

In May of 2004, Your Honorable Body approved an operating plan for the Wilson Park Batting Cages and Skateboard Park facilities. The operating plan included the hiring of a contractor to provide onsite baseball and softball instruction. The contract was then awarded to the South Bay Sports Academy (SBSA). In 2008 the Community Services Department sought the services of a vendor to operate the Batting Cage facility. In November 2008, the City entered into a Concessionaire Agreement with Tyler Sports, Inc., causing SBSA to find an alternate location.

ANALYSIS

Prior to the approval of the Concessionaire Agreement, staff met with SBSA president Murphy Su'a to confirm his interest in finding an alternate location in Torrance. Staff also consulted the new batting cage operator, Tyler Sports, Inc., who indicated that they would not object to a competing academy in the City, and encouraged Mr. Sua to continue his operation. Columbia Park was identified as a possible location, provided that SBSA could limit its operation to the infield during times when the grass area was being used for soccer and other activities.

Staff consulted the two primary users of Columbia Park, AYSO Region 16 and North Torrance Little League, to determine what the impact might be to their existing programs. As the SBSA requires only the infield for their drills, AYSO was comfortable

with sharing the space, provided safety procedures were identfied. North Torrance Little League also agreed that SBSA was welcome to the fields after their permitted times were complete.

The proposed Contract Services Agreement (Attachment A) is specifically for the provision of baseball and softball instruction at Columbia Park. The fee structure is the same as from previous agreements: 75% of all revenue to the contractor after registration fees have been deducted. Based on the current profit and loss statement provided (Attachment B), staff anticipate $69,000 in revenue over the next 10 months, minus approximately $400 in registration fees. The maximum payment for this agreement is $51,450, with all costs covered by revenue.

Staff will use this 10 month period to evaluate the success of the program and its effects on Columbia Park. Staff are considering storage of equipment for the program, including a portable batting cage and screens, and are working to identify funding for the associated costs. In addition, the agreement requires that SBSA incorporate the City's regular registration process prior to the end of the contract term.

The City has enjoyed a positive relationship with Murphy Su'a and the South Bay Sports Academy since its inception in 2004. While staff initially feared the loss of a quality program, Mr. Su'a has committed SBSA to the Torrance community. The Community Services Director recommends approval of a Contract Services Agreement with the South Bay Sports Academy for a not-to-exceed amount of $51,450, all of which will be fully offset by fees.

Respectfully submitted,
JOHN JONES
Community Services Director

By: _____
Jason Minter
Senior Business Manager

CONCUR:

_____
John Jones
Community Services Director

_____
LeRoy J. Jackson
City Manager

Attachments: A) Contract Services Agreement
B) Estimated Profit and Loss Statement
C) Columbia Park Map with location of SBSA

JM:tlk:x\contract classes\2009\approve contract svcs agreement for baseballsoftball instruct 2-24-09ci

ATTACHMENT A

CONTRACT SERVICES AGREEMENT

This CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into as of February 24, 2009 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Murphy Su'a, dba South Bay Sports Academy ("CONTRACTOR").

RECITALS:

A. CITY wishes to retain the services of an experienced and qualified CONTRACTOR to provide softball and baseball training at Columbia Park.

B. CONTRACTOR represents that it is qualified to perform those services.

AGREEMENT:

1. SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR will provide the services listed in the Scope of Services attached as Exhibit A. CONTRACTOR warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through December 31, 2009.

3. COMPENSATION

A. CONTRACTOR's Fee.

For services rendered pursuant to this Agreement, CONTRACTOR will be paid in accordance with the Compensation Schedule attached as Exhibit B, provided, however, that in no event will the total amount of money paid the CONTRACTOR, for services initially contemplated by this Agreement, exceed the sum of $51,450 ("Agreement Sum"), unless otherwise first approved in writing by CITY.

B. Schedule of Payment.

Provided that the CONTRACTOR is not in default under the terms of this Agreement, upon presentation of an invoice, CONTRACTOR will be paid the fees described in Paragraph 3.A. above, according to the Compensation Schedule. Payment will be due within 30 days after the date of the invoice.

4. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.

2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONTRACTOR will:

   a. cease operations as directed by CITY in the notice;
   b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
   c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of such termination for CITY's convenience, CONTRACTOR will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY may, at the expense of the CONTRACTOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys

due the CONTRACTOR under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONTRACTOR or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

5. <u>FORCE MAJEURE</u>

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. <u>RETENTION OF FUNDS</u>

CONTRACTOR authorizes CITY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONTRACTOR's acts or omissions in performing or failing to perform CONTRACTOR's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONTRACTOR, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONTRACTOR to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. CITY REPRESENTATIVE

Carl Kaemerle is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONTRACTOR.

8. CONTRACTOR REPRESENTATIVE(S)

The following principal(s) of CONTRACTOR are designated as being the principal(s) and representative(s) of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Murphy Su'a

9. INDEPENDENT CONTRACTOR

The CONTRACTOR is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees, except as otherwise set forth in this Agreement. The CONTRACTOR may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. BUSINESS LICENSE

The CONTRACTOR must obtain a City business license prior to the start of work under this Agreement, unless CONTRACTOR is qualified for an exemption.

11. OTHER LICENSES AND PERMITS

CONTRACTOR warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. FAMILIARITY WITH WORK

By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONTRACTOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONTRACTOR must immediately inform CITY of that fact and may not proceed except at CONTRACTOR's risk until written instructions are received from CITY.

13. CARE OF WORK

CONTRACTOR must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

14. CONTRACTOR'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of the CONTRACTOR's time pertaining to the project, and records of accounts between CITY and the CONTRACTOR, will be kept on a generally recognized accounting basis. CONTRACTOR will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONTRACTOR will maintain these records for three years after final payment.

15. INDEMNIFICATION

CONTRACTOR will indemnify, defend, and hold harmless CITY, the Redevelopment Agency of the City of Torrance, the City Council, each member thereof, present and future, members of boards and commissions, its officers, agents, employees and volunteers from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract,

bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONTRACTOR's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONTRACTOR and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONTRACTOR will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONTRACTOR will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

16. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of CITY will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY or for any amount that may become due to CONTRACTOR.

17. INSURANCE

A. CONTRACTOR and its subcontractors must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

   a. Primary Bodily Injury with limits of at least $500,000 per person, $500,000 per occurrence; and

   b. Primary Property Damage of at least $250,000 per occurrence; or

   c. Combined single limits of $1,000,000 per occurrence.

2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least $1,000,000 per occurrence.

3. Workers' Compensation with limits as required by the State of California and Employer's Liability with limits of at least $1,000,000.

B. The insurance provided by CONTRACTOR will be primary and non-contributory.

C. CITY ("City of Torrance"), the Redevelopment Agency of the City of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. CONTRACTOR must provide certificates of insurance and/or endorsements indicating appropriate coverage, to the City Clerk of the City of Torrance before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

18. SUFFICIENCY OF INSURERS

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONTRACTOR agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONTRACTOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

19. CONFLICT OF INTEREST

A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation,

auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

20. NOTICE

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONTRACTOR	Murphy Su'a dba South Bay Sports Academy 4603 Halison St. Torrance, CA 90503 Fax: 310.316.8787
CITY:	City Clerk City of Torrance 3031 Torrance Boulevard Torrance, CA 90509-2970 Fax: (310) 618-2931

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONTRACTOR without the prior written consent of the other.

22. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

23. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

26. GOVERNING LAW; JURISDICTION

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. COMPLIANCE WITH STATUTES AND REGULATIONS

CONTRACTOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

28. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

29. ATTORNEY'S FEES

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. YOUTH SENSITIVE SAFETY CLAUSE

CONTRACTOR, along with any employees or agents that provide any services enumerated in this Agreement, is required to be fingerprinted at the Torrance Police Department before commencing any service.

31. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

32. CONTRACTOR'S AUTHORITY TO EXECUTE

The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly

authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

CITY OF TORRANCE
a Municipal Corporation

_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers
City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By:_____

Murphy Sua
A Sole Proprietor

By:_____
Murphy Su'a
Owner

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Compensation Schedule

Revised: 10/29/2008

Exhibit A

Scope of Services

The CONTRACTOR will provide baseball and softball instruction at Columbia Park on the infield of Ballfield #4. Any additional areas of the park or other parks must be permitted by the Director of the Community Services Department.

The CONTRACTOR will provide instruction between the hours of 6:00pm and 9:00pm Monday through Thursday during the spring (February through May) and between the hours of 4:00pm and 9:00pm during the rest of the year (June through December).

The CONTRACTOR will collect participation fees for baseball and softball instruction and submit all fees to the Registration Office on a bi-weekly basis. Registration fees will include a $4.00 fee for all new participants. This process will proceed until such time as representatives from the CONTRACTOR and the CITY agree to process all Registration through the Registration System, including Walk-In, Phone-In, and Internet. This process shall be initiated prior to the start of the next contract, or before January 1, 2010.

The CONTRACTOR will have exclusive use of the facility during the times listed above, provided they maintain proper safety procedures, including, but not limited to:

- No live hitting (outside of an approved batting cage)
- Activities that occupy the dirt infield area only
- All field work engaged by an instructor in a controlled environment
- Activities that do not present a hazard to passive participants at the park

The CONTRACTOR will provide all of the necessary equipment for the program. During this contract period, the CONTRACTOR will work with the CITY to evaluate the use and storage of a portable batting cage and practice nets/screens for the program. The CITY may offer, with the consent of the Director of Community Services, storage opportunities to the CONTRACTOR, provided an agreement can be made as to the assumption of cost for the proposed improvements associate with said storage.

Exhibit B

Compensation Schedule

The CONTRACTOR will receive 75% of the Participation Fees, less a registration fee of $4.00 for all new participants, until such time as the Registration Office begins accepting all registration through the Registration Process. At that time, the CONTRACTOR will receive 70% of the Participation Fees, less the $4.00 registration fee for ALL participants, and other related registration fees.

ATTACHMENT B

City of Torrance Community Services Department
Recreation Services Division

CONTRACT AMOUNT NOT TO EXCEED	$	51,450.00

Program **South Bay Sports Academy**

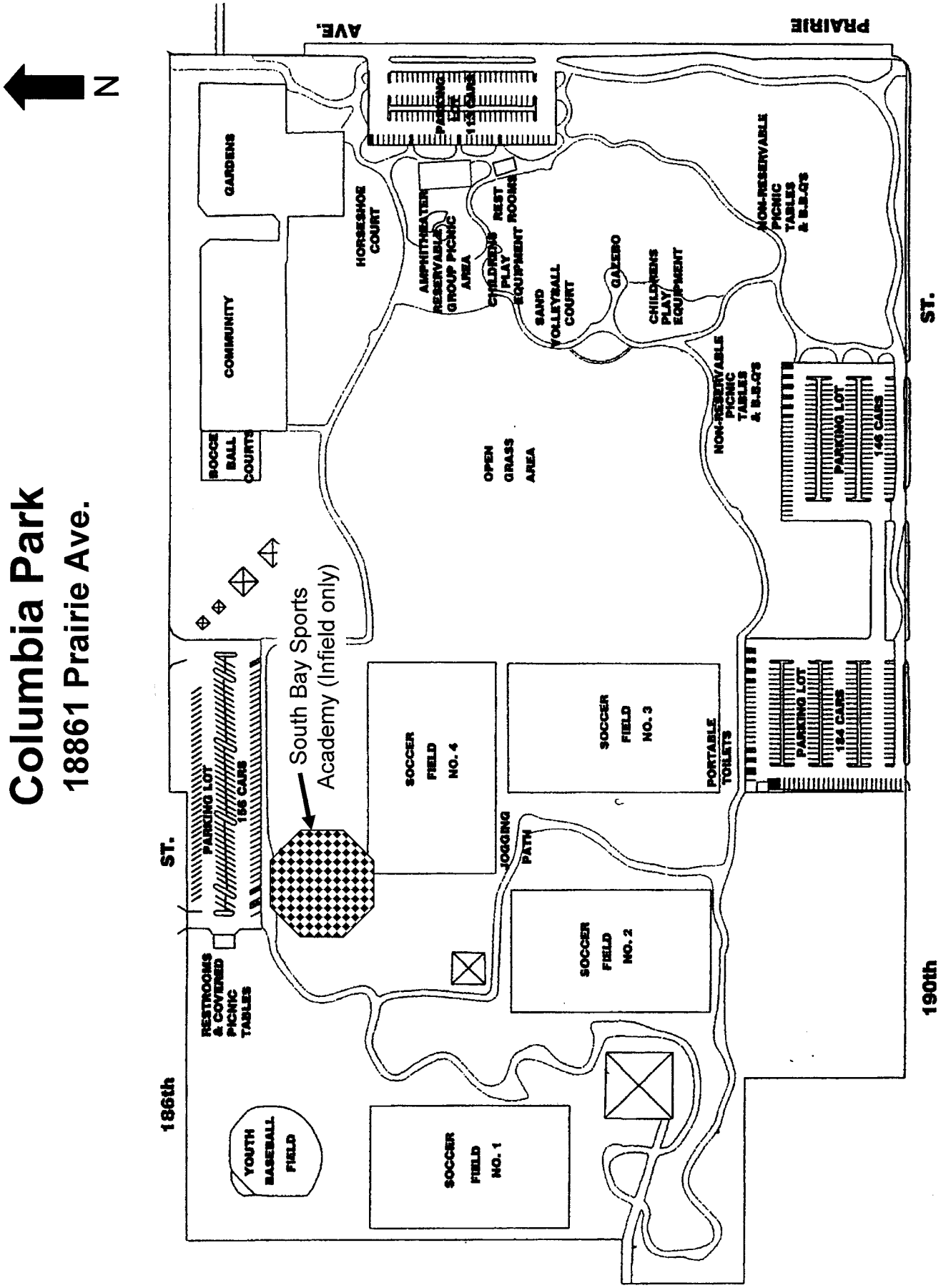
Location **Columbia Park**

TERM OF CONTRACT	SUPERVISOR	DIVISION
3-1-09 to 12-31-09	Carl Kaemerle Sr. Supervisor	Recreation Svcs.

Max Projected Revenue	**Months**	**Avg. Revenue**		**Revenue**
March-May	3	$ 10,000.00	$	30,000.00
June-August	3	$ 8,000.00	$	24,000.00
September-December	3	$ 5,000.00	$	15,000.00
	0	$ -	$	-
Total Maximum Revenue			**$**	**69,000.00**

Revenue	$	69,000.00
minus registration fee ($4.00 x 100 new students)	$	400.00
Total for split between contractor and city	$	68,600.00
75% Contractor	***$***	***51,450.00***

Maximum City Revenue by Section/Division

Registration fee to Administrative Services	$	400.00
Program fee to Recreation Services Division (25%)	$	17,150.00
Total maximum revenue to the City	**$**	**17,550.00**

ATTACHMENT C