

**REIMBURSEMENT AGREEMENT FOR**  
**TENANT IMPROVEMENTS OF LEASED FACILITY**

BETWEEN  
THE CITY OF SAN MARCOS  
AND  
BOYS AND GIRLS CLUB

THIS REIMBURSEMENT AGREEMENT FOR TENANT IMPROVEMENTS OF LEASED FACILITY ("Agreement"), is made and entered into as of \_\_\_\_\_, the "Effective Date", by and between the City of San Marcos, a chartered municipal corporation ("CITY"), and Boys and Girls Club, a California non-profit organization, ("BGC"), relating to reimbursement of funds as required for tenant improvements to the Boys and Girls Club leased facility owned by the City located at 413 Autumn Drive ("Project"). The parties hereto are referenced individually as PARTY and collectively as PARTIES, with regard to the following:

**RECITALS**

Whereas, the Project is anticipated to begin upon execution of this Agreement, with an initial estimated budget of \$1,017,673 attached hereto as Exhibit A and incorporated by reference; and

Whereas, the CITY's Council has agreed and approved that CITY will fund a maximum of \$500,000 of the cost to manage and complete the Project, the applicable Project construction contract, the BGC lease of the Project, and this Agreement by Resolution \_\_\_\_\_, which documents BGC had previously reviewed and approved; and

Whereas, the BGC has committed to fund all Project costs over \$500,000 up to and including completion of the Project; and

Whereas, this Agreement establishes the reimbursement process for the budgeted costs of the Project above the \$500,000 funded by the City; and

Whereas, this Agreement documents the PARTIES' understanding regarding each PARTY's role in the reimbursement and construction process as it relates to the Project; and

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and in the Recitals, which are incorporated herein by this reference, it is mutually agreed by and between the PARTIES as follows:

1. **Responsibilities.**

1.1 **CITY Responsibilities.** CITY's responsibilities under this Agreement shall include, but not be limited to, the following:

- (a) Execute & manage the management and construction contracts for the Project.

- (b) Manage the overall Project budget and change orders.
- (c) Review, circulate, and approve (as applicable) any change orders and applicable supporting documents required to complete the Project, all of which require the joint approval of the PARTIES. CITY shall be protected in reasonably acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons.
- (d) Process and pay Project invoices and at such time.
- (e) Invoice BGC and prepare reimbursement invoice with applicable supporting documentation for any and all costs or expenses over \$500,000 to BGC for remittance.
- (f) Maintain and retain records of Project including, but not limited to, construction documents, invoices, and disbursements in accordance with City's records retention schedule.
- (g) If, during the course of construction, Project costs are projected to exceed the estimated budget attached hereto as Exhibit A, CITY shall notify BGC in writing for which additional costs above and beyond estimated budget shall be borne by BGC and billed by CITY in the manner described in (e) above.

1.2 BGC Responsibilities. BGC's responsibilities under this MOU shall include, but not be limited to, the following:

- (a) Receive and review CITY Reimbursement Invoice and remit payment to CITY within net thirty (30) days of receipt.
  - a.1 Wire Transfer Payment as follows:
    - Account Title:
    - Bank Name:
    - Bank Address:
    - Account Number:
    - Routing Number:
  - a.2 Alternative Payment Delivery Options. If payment is not made by wire transfer, they should be mailed or delivered to: CITY address identified in Section 5 below.
- (b) Remit payment to the CITY within thirty (30) days of receipt for any Project costs over \$500,000 until the completion of the Project.
- (c) Remit payment to CITY for Project costs above estimated budget represented by change orders jointly approved by the PARTIES, if any, within net thirty (30) days of receipt of Invoice.

- (d) Review and approve any change orders required to complete the Project, all of which require the joint approval of the PARTIES. BGC will make itself reasonably available for such review and approval activities.

## 2. Term

The term of this MOU shall be effective from the date first written above and shall continue in full force and effect until Project completion, and issuance of all applicable Certificates of Occupancy for the Project.

## 3. No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other similar relationship between the PARTIES hereto or cause either PARTY to be responsible in any way for the debts or obligations of the other PARTY.

## 4. Indemnification

To the fullest extent permitted by law, each PARTY agrees to hold harmless, defend and indemnify the board, officers, agents, and employees of the other PARTY ("collectively, INDEMNIFIED PARTIES") against any and all actions, claims, or demands for injury, death, loss or damages where such injury, death, loss, or damage was due to the active negligence or willful acts or omissions of such PARTY relating to or arising out of this Project and/or this Agreement. It is understood that such indemnity shall survive the termination of this MOU, and shall be effective through the expiration of all applicable limitations periods.

## 5. Notice and Termination

Notices shall be sent to the PARTIES at the addresses set forth below. Notices shall be in writing and made to the PARTIES at the addresses set forth below. All notices given pursuant to this Agreement shall either be personally delivered, sent by first class U.S. mail (postage prepaid), or by facsimile (with a copy mailed the same day) to the addresses or facsimile number specified below. Mailed notice shall be deemed received two business days after deposit in the mail. Facsimile notice shall be deemed received on the day sent and confirmed, unless received after business hours, in which case on the following business day. If any notice is personally delivered, it shall be deemed given upon the date of such delivery. Any PARTY may change its address for notice by delivering written notice to the other PARTY. In the event either PARTY receives any stop notice, mechanic's lien, complaint, cross-complaint, subpoena or other legal process regarding this Agreement or the Project, such PARTY shall provide prompt written notice thereof to the other PARTY.

Should either PARTY wish to terminate this MOU prior to the end of the Term, it shall be limited to termination by reason of default of the other PARTY. In that event, the PARTY wishing to terminate must provide written notice of such termination at least thirty (30) days in advance of the termination date to the other PARTY at the address set forth below, or to such other address as the PARTIES may direct from time to time pursuant to this notice procedure. Upon the expiration of

the thirty (30) day notice period, each PARTY's rights and obligations to the other as set forth shall cease and be of no further force or effect. Notwithstanding the foregoing, after the tenant improvement related contract(s) for the Project is/are executed with the contractor(s) by CITY (c/o IDS Real Estate Group as Construction Manager), the PARTIES are obligated to bear their share of Project costs including those set forth in Exhibit A, all jointly approved change orders executed prior to the effective date of the notice period set forth above, as well as an equal share of any demobilization costs associated with cessation of work on the Project.

The Boys and Girls Club (BGC)

Attention:

Address:

Facsimile:

City of San Marcos (CITY)

Attention: Real Property Services

1 Civic Center Drive, San Marcos, CA 92069-2918

Facsimile: 760-744-9520

#### 6. Modification

This Agreement may not be changed, altered, or modified except in writing signed by the authorized representatives of all PARTIES.

#### 7. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same Agreement. The counterparts of this Agreement and all other actions and documents executed in connection herewith may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received. The parties agree that the electronic signature of a party to this Agreement and any other actions and documents related to this Agreement, shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files.

#### 3. Severability, Interpretation, Venue

In the event any provision of this Agreement should be determined by a court of competition to be unenforceable or void under applicable law, that provision shall be deleted, but the remaining provisions of this Agreement shall remain in full force and effect. This Agreement shall be interpreted and construed in accordance with California Law, and venue for any action against any PARTY relating to this Agreement shall be maintained in the appropriate court in San Diego County, California.

4. Time of Essence.

Time is of the essence with respect to obligations set forth in this Agreement, and the PARTIES each individually agree to punctually and diligently perform and pursue the responsibilities and obligations set forth herein.

**[SIGNATURES APPEAR ON NEXT PAGE]**

5. Authority

The undersigned individuals executing this Agreement represent and warrant that they are authorized to enter into and execute the same on behalf of such PARTIES, the appropriate corporate resolutions or other consents have been duly passed and/or obtained, and that this Agreement is binding on the PARTY on whose behalf they execute this document.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be entered into and effective as of the date first set forth above.

**CITY:**  
CITY OF SAN MARCOS,  
a chartered municipal corporation

**BGC :**  
BOYS AND GIRLS CLUB,  
a non-profit 501(c)(3) corporation

By: \_\_\_\_\_

Jack Griffin, City Manager

Attest:

\_\_\_\_\_  
Phillip Scollick, City Clerk

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**PROJECT BUDGET**