

REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT (“**Agreement**”) is entered into as of August 18, 2015 (the “**Effective Date**”), by and between the CITY OF CALISTOGA, a California municipal corporation (“**City**”), and THE BOYS & GIRLS CLUBS OF ST. HELENA AND CALISTOGA, a California nonprofit corporation (“**Club**”). City and Club are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. City and Club have entered into a Lease Disposition and Development Agreement dated as of August 18, 2015, to provide for the (1) Club’s ground lease of a portion of certain real property located at Logvy Park from City (the “**Club Site**”); (2) Club’s development of a Boys and Girls Club facility on the Club Site; and (3) the terms under which the Parties would provide for community use of the project (the “**Lease DDA**”).

B. Section 2.15 of the Lease DDA provides that the City will retain a portion of the overall site for the construction and installation of a recreation services or other City building (the “**City Site**”). A depiction of the property indicating the Club Site and the City Site is attached as Exhibit A, incorporated herein by reference. The entire property is referred to herein as the “**Site**.”

C. Club is in the process of preparing design and engineering plans and specifications for infrastructure to be constructed on the Club Site (the “**Club Infrastructure Work**”). In order to achieve cost savings and plan the development of the Site in a cohesive manner, Club has agreed to incorporate plans and specifications for infrastructure on the City Site together with its plans and to construct and install the infrastructure improvements simultaneously. The City has agreed to reimburse Club for the costs of all work on the City Site. Said reimbursement shall be in the form of reduced impact and/or connection fees charged to the Club in an amount equal to the costs associated with the City Improvements as described in this Agreement.

D. City and Club desire to enter into this Agreement in order to set forth the terms and conditions relating to Club’s design, engineering and completion of the City Improvements on the City Site, at City’s cost and expense.

AGREEMENT

Based upon the foregoing Recitals, which are incorporated into this Agreement by this reference, and for good and valuable consideration, the adequacy of which is hereby acknowledged by both Parties, City and Club hereby agree as follows:

1. Preparation of Plans. Together with the preparation of its plans for the Club Infrastructure Work, Club shall prepare engineering plans and specifications for the infrastructure improvements on the City Site, as further described in Exhibit B, attached hereto and incorporated herein by this reference (the “**City Improvements**”). The City shall review and approve the plans and specifications for the City Improvements, with such approval not to be

unreasonably withheld, conditioned, or delayed, prior to Club's contracting for any work on the Site.

2. Bidding of Work.

2.1 Club shall seek bids from contractors for both the City Infrastructure Work, as defined in Section 3 below, and the Club Infrastructure Work, with each to be separately itemized. Club shall provide City with the bid estimates prior to entering into a construction contract. City may terminate this Agreement after receipt of the estimate, but shall remain responsible for any costs incurred by Club in connection with the City Infrastructure Work prior to such termination.

2.2 The specifications and bid and contract documents for the City Infrastructure Work shall require, that the selected contractor and each subcontractor shall be registered with the California Department of Industrial Relations as a public works contractor and shall pay prevailing wages to its workers (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and otherwise comply with all applicable provisions of the California Labor Code and implementing regulations pertaining to public works projects.

3. Installation of Improvements. Club shall construct, install and complete, or cause to be constructed, installed and completed, at City's expense as described below, the City Improvements, in accordance with the approved plans, all applicable federal, state and local laws and regulations, and to the satisfaction of the City Engineer, in his or her reasonable discretion. Club will also supply all labor and materials therefor, in accordance with the terms and conditions of this Agreement. The construction, installation and completion of the City Improvements and all labor and materials furnished in connection therewith are hereinafter referred to collectively as the "**City Infrastructure Work.**"

4. Maintenance of Work Site and Improvements. Club shall maintain the City Infrastructure Work site and all the City Improvements in a state of good repair until they are completed by Club and approved and accepted by City.

5. Right of Entry. City hereby grants Club and its authorized contractors and subcontractors the right to enter the City Site for the purpose of completing the City Infrastructure Work, subject to the terms and provisions of this Agreement.

6. Examination of Work. The City and its authorized agents shall, at all times during the performance of the Work, have free access to the Work and shall be allowed to examine the Work and all materials used and to be used in the Work.

7. Compliance with Laws. Club shall comply with all federal, state and local laws, ordinances and regulations, including without limitation the prevailing wage rules and regulations set forth in the California Labor Code, in the performance of this Agreement. Club shall obtain all necessary permits and licenses for the Work and give all necessary notices.

8. Completion of the Work. Within one week of receipt of Club's notification that the City Infrastructure Work is complete, City Engineer shall inspect the City Infrastructure Work. If the City Infrastructure Work is, in the reasonable opinion of the City Engineer, not

complete or not satisfactory, the City Engineer shall list the deficiencies that must be corrected to find the City Infrastructure Work and repair complete and satisfactory. Upon satisfactory completion of the City Infrastructure Work and repair, the City Engineer shall send Club a written notice of satisfactory completion. After sending Club a written notice of satisfactory completion, the City Engineer shall accept the City Improvements and title to, and ownership of, all City Improvements constructed by Club under this Agreement shall vest in City.

9. Warranty. Club shall warrant and guarantee, or require its contractor to warrant and guarantee, the City Infrastructure Work and all materials used in the City Infrastructure Work for a period of one year after the date of City's acceptance. The costs of such warranty shall be reimbursed by City.

10. Club Not Agent of City. Neither Club nor Club's contractors, subcontractors, agents, officers, or employees are agents, partners, joint venturers or employees of City and the Club's relationship to the City, if any, arising here from is strictly that of an independent contractor. Club's contractors and subcontractors are exclusively and solely under the control and dominion of Club. Further, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

11. Indemnification. Each Party agrees to indemnify, defend and hold the other Party and its elective and appointed boards, commissions, officers, agents, employees and consultants, harmless from and against any and all claims, liabilities, losses, damages, injuries, penalties, fines, judgments, awards, decrees, attorneys' fees and related costs or expenses of any kind or nature (each a "**Claim**" and collectively, "**Claims**") arising out of its negligent acts or omissions or the negligent acts of omissions of its contractors, subcontractors, agents, or employees, in performing any of its obligations set forth in this Agreement.

12. Insurance. Prior to the date on which the Work commences (including without limitation clearing, grubbing, excavation, grading, and stockpiling of materials and equipment), Club shall procure or cause to be procured the following insurance coverage against Claims, including Claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work and the results of that Work by Club, its contractors, agents, representatives, employees or subcontractors, with insurers with an A.M. Best's rating of no less than A:VII unless otherwise accepted by the City in writing:

12.1 Commercial General Liability (CGL). CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury, insuring Club and its contractors and subcontractors, with limits no less than **\$2,000,000** per occurrence.

12.2 Automobile Liability Insurance. Liability insurance covering any auto, or if Club has no owned autos, hired and non-owned autos, with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

12.3 Workers' Compensation Insurance. Workers' compensation insurance as required by law. In addition, Club shall cause its contractors and their subcontractors, agents and representatives to maintain workers' compensation insurance as required by the State of

California, with statutory limits, and employer's liability insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

12.4 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

12.4.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Club including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Club's insurance.

12.4.2 Primary Coverage. For any Claims related to this Agreement, the Club's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Club's insurance and shall not contribute with it.

12.4.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

12.4.4 Waiver of Subrogation. Club hereby grants to City a waiver of any right to subrogation which any insurer of said Club may acquire against the City by virtue of the payment of any loss under such insurance. Club agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

12.5 Certificate of Insurance and Endorsements. Club shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by the City before the Work commences. However, failure to obtain the required documents prior to the commencement of the Work shall not waive the Club's obligation to provide them.

12.6 Subcontractors. Club shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

12.7 Higher Limits. If the Club maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Club. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

13. Payments. Club agrees that it will pay, when due, all those furnishing labor or materials in connection with the Work and keep the City Site free from any and all mechanics' or other liens.

14. Reimbursement of Costs for City Infrastructure Work. Once a month starting one month after the Effective Date, Club shall submit to the City Engineer such information as is reasonably needed to enable the City to verify Club's expenditure of costs incurred with respect to the City Infrastructure Work, including without limitation, copies of contracts for work, invoices for work performed and proof of payment, all with adequate descriptions of the work to allow appropriate allocation of costs (the "**City Costs**"). In the event that any of the costs for the City Infrastructure Work include consultant invoices or other work that is only partially reimbursable by City, City and Club shall reasonably cooperate in order to fairly allocate between the costs that are reimbursable and non-eligible costs. If the City requires any additional information from Club in order to determine City Costs for the City Infrastructure Work, the City shall so notify Club in writing during the review process. City's approval shall not be unreasonably withheld, conditioned, or delayed. City Costs shall include the following costs that are actually and reasonably incurred by Club or an approved affiliate of Club to design, engineer, manage and construct the City Infrastructure Work: (1) design and engineering services fees; (2) permit fees charged by City, any utility district or company with jurisdiction; (3) the premium or costs incurred by Club to obtain and maintain in effect the insurance policies; (4) the payments made by Club to the contractor(s) to construct and install the City Infrastructure Work (including any approved change orders); and (5) any additional category or categories of costs that are actually and reasonably incurred by Club relating to the City Infrastructure Work that may be mutually and reasonably approved by Club and City. Said reimbursement shall be in City Costs associated with the City Infrastructure Work as described in this Agreement.

15. Default; Remedies. Subject to extensions of time by mutual consent in writing of the Parties, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a default. In the event of any alleged default of any term, condition, or obligation of this Agreement, the Party alleging such default shall give the defaulting Party notice in writing specifying the nature of the alleged default and the manner in which such default may be satisfactorily cured ("**Notice of Breach**"). The defaulting Party shall cure the default within 30 days following receipt of the Notice of Breach, provided, however, if the nature of the alleged default is non-monetary and such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a default shall exist under this Agreement and the non-defaulting Party may institute legal or equitable proceedings for actual damages; to cure, correct, or remedy any default; or to enforce any covenant or promise herein, enjoin any threatened or attempted violation, or enforce by specific performance, declaratory relief or writ of mandate the obligations and rights of the Parties. In no event shall either Party, or any of their officers, agents, representatives, officials, employees or insurers, be liable to the other Party for consequential, punitive or special damages, for any breach or violation of this Agreement.

16. Notices. Formal written notices, demands, correspondence and communications between City and Club shall be sufficiently given if: (a) personally delivered; (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Club indicated below, provided that a receipt for delivery is provided; or (c) dispatched by first class

mail, postage prepaid, to the offices of City and Club indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this Section.

City: City of Calistoga
1232 Washington Street
Calistoga, CA 94515
Attention: City Manager

Club: Boys and Girls Club of St. Helena and
Calistoga
1420 Tainter Street
St. Helena, CA 94574
Attn: Jay Templeton, Executive Director

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

17. Transfers; Assignments. Each Party may assign this Agreement with the prior written approval of the other Party, which approval shall not be unreasonably withheld, conditioned or delayed.

18. Binding Upon Heirs, Successors and Assigns. Subject to the assignment provisions set forth above, the terms, covenants and conditions of this Agreement shall be binding upon all heirs, successors and assigns of the Parties.

19. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

20. Severability. If any provision of this Agreement is held, to any extent, invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and shall remain in full force and effect.

21. Entire Agreement; Amendment. The terms and conditions of this Agreement constitute the entire agreement between City and Club with respect to the matters addressed in this Agreement. This Agreement may not be altered, amended or modified without the written consent of both parties.

22. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law

provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Napa, State of California.

23. Authority. Each Party executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

24. Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

25. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

26. Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not working days.

27. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CITY:

CITY OF CALISTOGA, a municipal corporation

By: _____
Michael Kirn, Acting City Manager

CLUB:

THE BOYS & GIRLS CLUBS OF ST. HELENA AND CALISTOGA, a California nonprofit corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon, City Attorney

ATTEST:

By: _____
Kathy Flamson, City Clerk

Exhibit A
Depiction of Site

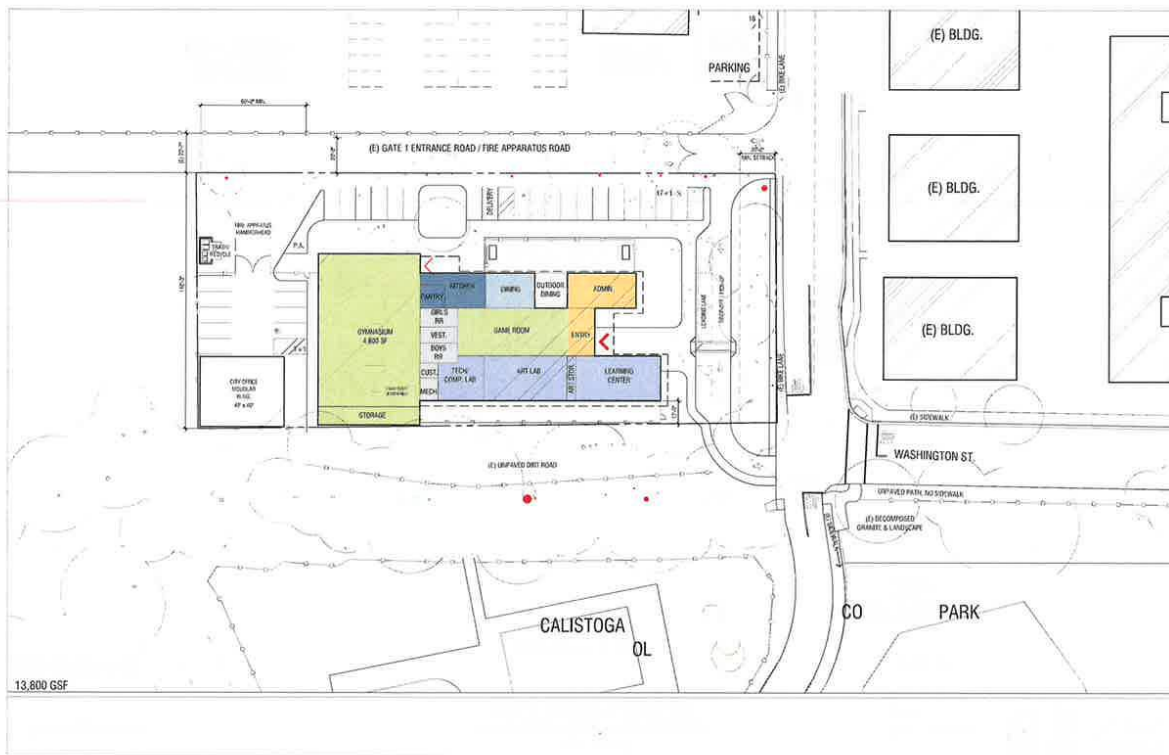


Exhibit B

City Improvements

Design and installation of underground utilities to serve the proposed Recreation Building. This includes:

1. Provide 6" fire main stubbed to proposed building site. Terminate in valve box with gate valve.
2. Provide 1" poly-domestic water supply stubbed to proposed building site. Terminate in valve box with gate valve.
3. 4" electrical service conduit from the Boys and Girls Club main electrical panel capped with pull rope. Service to be 100 AMPS. Conduit to be terminated at the building site in a Christy box.
4. Provide two (2) 2" IT electrical conduits from Oak Street to proposed building site with pull rope with ends capped. Terminate both ends at 18" x 18" pull box.
5. Provide 1" fletcher coated gas piping to proposed building site. Ends capped and terminated in meter boxes.
6. Pave proposed building site for use as temporary parking area.