CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT BETWEEN THE BOYS AND GIRLS CLUB THE CITY OF FRESNO REGARDING REHABILITATION OF A PUBLIC FACILITY

THIS AGREEMENT, is made and entered into, effective the 1ST day of January, 2007 by and between the CITY OF FRESNO, California, a municipal corporation, hereinafter referred to as the "City", and the BOYS AND GIRLS CLUB, a non-profit organization.

RECITALS

WHEREAS, the U.S. Department of Housing and Urban Development, hereinafter referred to as "HUD", provides funding under its Community Development Block Grant Program, hereinafter "CDBG", as authorized under Title I of the Housing and Community Development Act of 1974, as implemented under Title 24 of the Code of Federal Regulations, hereinafter collectively referred to as the "Act", incorporated herein by its reference; and

WHEREAS, City is a recipient of CDBG funding for fiscal year 2006-2007 for use in funding eligible activities furthering established national objectives to benefit its low and moderate income residents as defined in the Act; and

WHEREAS, City has allocated fiscal year 2006-2007 CDBG funds in the sum of Two Hundred Thousand Dollars ($200,000), which funds are available for the purposes and uses specified in the Resolution and this Agreement ; and

WHEREAS, the City desires to use a portion of CDBG funds to rehabilitate the building located at 930 Tulare Ave, for which CDBG eligible services are provided to at-risk youth; and

WHEREAS, the Boys and Girls Club owns the land and improvements (hereinafter collectively referred to as the "Boys and Girls Club Facility") that are eligible under and in furtherance of the Act and which benefit area residents who are low and moderate income under the Act; and

WHEREAS, pursuant to City Resolution No. 2006-258, the City Manager is authorized to execute on behalf of the City CDBG agreements that are within available allocated CDBG funding and in a standard form approved by the City Attorney.

WHEREAS, City desires to assist Boys and Girls Club through the grant of a portion of CDBG Funds and a grant of the General Funds, upon the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, and subject to the terms and conditions and provisions hereof, the parties agree as follows:

1. Scope of Work. Boys and Girls Club shall use the CDBG Funds provided by this Agreement solely for purposes of rehabilitating the public facility to be owned in fee by Boys and Girls Club and made available to low and moderate income residents in their use of services at the facility, (hereinafter referred to as the "Project"). CDBG Funds will be used for actual Project costs as well as eligible costs associated with preparing any Project specifications required to bid the Project as well as costs associated with bid advertising, permits, construction management, purchase of construction materials and labor compliance.

2. CDBG Eligible Activity and National Objective. The City has determined that the rehabilitation project is CDBG eligible. The City has further determined that the Boys and Girls Club Rehabilitation Project furthers one or more CDBG national objectives.

3. Term. This Agreement and the CDBG grant provided hereunder shall be for the period commencing on the effective date **January 1, 2007**, and ending **June 30, 2007**, unless sooner terminated as provided for in section 9 below, subject to provisions hereof which expressly survive termination or expiration.

4. Timeframe for Completing Boys and Girls Club Rehabilitation Project and Submitting Rehabilitation Project Invoices. The Boys and Girls Club Rehabilitation Project shall be conducted and completed according to a written schedule acceptable to the City and added as an addendum hereto. All invoices shall be submitted for payment by August 31, 2007. Extensions may be granted by the City in its discretion upon Boys and Girls Club's showing of circumstances beyond its reasonable control.

5. Reporting Requirements. Boys and Girls Club shall provide City with the following written performance reports on or before the dates indicated:

a. A Boys and Girls Club Rehabilitation Project report documenting satisfaction performance of all Services hereunder, submitted within 45 days of the end of the term hereof and at any time hereunder upon written request of the City. There is no prescribed format for the report, but it should provide data on recipients of the Boys and Girls Club Rehabilitation Project hereunder including the number of person served, the racial composition, the percentage that are of low and moderate income, and the number of female headed households. Boys and Girls Club acknowledges and agrees that the CDBG regulations require that at least 51 percent (51%) of the Boys and Girls Club recipients be of low income as defined by HUD when utilizing CDBG funds.

6. Grant Disbursement. Grant funds shall be disbursed to reimburse Boys and Girls Club in accordance with the Proposed Budget attached hereto as Exhibit "A" and incorporated herein, provided that the specific line item amounts in said Budget may be varied, added and/or stricken, and further provided that in any event total Grant funds disbursed in pursuit of said Budget shall not to exceed in the aggregate the lesser of Two Hundred Thousand Dollars ($200,000) or City's available and allocated CDBG Funding during the term hereof. Grant funds shall be disbursed upon invoice in a lump sum for Boys and Girls Club's satisfactory performance of the Boys and Girls Club Rehabilitation Project hereunder, upon verification

satisfactory to City that expenses incurred in performing the Boys and Girls Club Rehabilitation Project are eligible under the Act, according to the following schedule:

a. Except to the extent expressly provided for herein, all costs/expenses incurred by Boys and Girls Club hereunder shall be the sole responsibility and liability of Boys and Girls Club.

b. All funds are paid contingent upon Boys and Girls Club's continuous compliance with all applicable, uniform administrative requirements, program regulations, and recapture and reversion requirements set out in the Act. Any unearned or recaptured CDBG funding shall be returned to the City within thirty (30) days of the earlier of termination of this Agreement or notice by City. Any interest earned or received by the Boys and Girls Club thereon shall be remitted to the City.

7. Use of funds. The Boys and Girls Club shall use the funds provided by the City solely in pursuit of the Boys and Girls Club Rehabilitation Project.

8. Availability of CDBG Entitlement Funds. Boys and Girls Club acknowledges and agrees that the CDBG funding hereunder is subject to the control of HUD and may be encumbered, withdrawn, or otherwise made unavailable to the City (whether earned or promised to, or by, the Boys and Girls Club). The Boys and Girls Club shall not be paid such funds unless and until they are made available for payment to the City by HUD. No other funds owned or controlled by the City shall be obligated under this Agreement unless specifically approved and permitted by the Fresno City Council. Nothing herein constitutes a pledging or obligating of City funds, its General Fund, or any real and personal property taxes, sales taxes or any other tax revenues.

9. Termination of Agreement

a. This Agreement shall terminate upon the earlier of:

i. Boys and Girls Club's Default. The parties agree that each of the following shall constitute a default by Boys and Girls Club for purposes of this Agreement where such breach remains uncured for thirty (30) calendar days following City's notice to Boys and Girls Club describing such breach, or if such breach is not reasonably susceptible of cure, immediately upon notice of breach by City to Boys and Girls Club:

(1) The Boys and Girls Club's use of CDBG funds for other uses than described in the Scope of Work.

(2) The Boys and Girls Club's failure to obtain and maintain the insurance coverage required under this Agreement.

(3) Except as otherwise provided in this Agreement, the failure of the Boys and Girls Club to punctually and properly perform any other covenant or agreement contained in this Agreement including without limitation the following:

A. Any representation, warranty, or certificate given or furnished by or on behalf of Boys and Girls Club shall prove to be materially false as of the date of which the representation, warranty, or certification was given, or that Boys and Girls Club concealed or failed to disclose a material fact to City, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to Boys and Girls Club's inadvertence, Boys and Girls Club shall have a thirty (30) day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect.

B. Boys and Girls Club shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within fourteen (14) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within fourteen (14) days.

C. Boys and Girls Club's failure, inability or admission in writing of its inability to pay its debts as they become due or Boys and Girls Club's assignment for the benefit of creditors.

D. A receiver, trustee, or liquidator shall be appointed for Boys and Girls Club or any substantial part of Boys and Girls Club's assets or properties, and not be removed within ten (10) days.

E. Boys and Girls Club's breach of any other material condition, covenant, warranty, promise or representation contained in this Agreement not otherwise identified within this section.

ii. Written notice by either party to the other without cause.

iii. Complete performance by each party hereto.

iv. Expiration.

b. Upon the happening of a default by Boys and Girls Club and a failure to cure said default within the time specified in the notice of default, City's obligation to disburse CDBG funding shall terminate, and City may also at its option and without notice institute any action, suit, or other proceeding in law, in equity or otherwise, which it shall deem necessary or proper for the protection of its interests and may without limitation proceed with any or all of the following remedies in any order or combination City may choose in its sole discretion:

i. Terminate this Agreement immediately upon written notice to Boys and Girls Club, in which event any unearned and improperly CDBG funds disbursed to Boys and Girls Club by City shall be returned to City;

ii. Bring an action in equitable relief (1) seeking specific performance by Boys and Girls Club of the terms and conditions of this Agreement, and/or (2) enjoining, abating or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

iii. Pursue any other remedy allowed at law or in equity or under this Agreement.

c. Upon any termination, the City's obligations hereunder shall terminate and all unexpended or improperly expended CDBG funds subject to this Agreement shall revert to and/or be recaptured for the City's CDBG Program, provided that if the Boys and Girls Club is not in default at the time of termination the Boys and Girls Club shall be reimbursed for eligible Boys and Girls Club Rehabilitation Project activities satisfactorily performed prior to the effective date of the notice of termination.

d. Notwithstanding the foregoing and without waiver or limitation, in accordance with the Act including 24 CFR 85.43, suspension or termination of this Agreement may occur if the Boys and Girls Club materially fails to comply with any term of the CDBG grant, and the grant may be terminated for convenience in accordance with 24 CFR 85.44.

e. Those provisions of this Agreement intended by its terms therein to survive the termination of this Agreement shall so survive.

10. On-Site Monitoring. Authorized representatives of HUD or the City shall have the right to monitor the Boys and Girls Club's performance under this Agreement. Such monitoring may include inspection activities, review of records, and attendance at meetings.

11. Records. The Boys and Girls Club shall maintain all necessary books and records with respect to disbursement of money, to property, and to personnel in accordance with usual and customary business accounting practices. The Boys and Girls Club shall document all expenditures under this Agreement with properly executed payroll, time records, invoices, contracts, vouchers, or other official documentation evidencing the nature and propriety of the charges. All such materials shall be retained by the Boys and Girls Club for a period of not less than five (5) years from termination of this Agreement.

a. The Boys and Girls Club shall, at such time and in such forms as the City or HUD may require, furnish statements, records, data, copies, and information pertaining to matters covered by this Agreement. The City has the right, upon request, to inspect and copy all Boys and Girls Club documents and records pertaining to this Agreement.

12. Compliance with Governmental Regulations. The Boys and Girls Club shall, at its sole cost and expense, comply with applicable municipal, county, state, and federal law,

regulations, rules and requirements now in force, or which may hereafter be in force, pertaining to any and all Boys and Girls Club Rehabilitation Project activities under this Agreement. The Boys and Girls Club shall comply with all applicable provisions of 24 CFR 570 et seq. including Subpart K thereof except that the Boys and Girls Club does not assume the CITY'S non-delegable environmental responsibilities described in 24 CFR 58 and/or 24 CFR 570-604, and does not assume the City's responsibility for initiating the review process under Executive Order 12372.

a. Both City and Boys and Girls Club agree to jointly and severally comply with the requirements of the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments"; OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations"; 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; and 24 CFR Part 570.502 "Applicability of Uniform Administrative Requirements". Each party shall be responsible for determining the applicability of the foregoing.

b. The Boys and Girls Club agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulation 24 CFR Part 8.

c. The Boys and Girls Club agrees to inform the City in writing of any program income generated by the expenditure of CDBG funds. Any program income generated as a result of the Boys and Girls Club Rehabilitation Project must be paid to the City for deposit into the City's CDBG Program Fund. For purposes of this Agreement, program income shall be as defined in the Act. The requirements of this section 12 shall survive termination of the Agreement.

13. Contract Award. The Boys and Girls Club will be responsible for all aspects Boys and Girls Club Rehabilitation Project contract award and management including any required advertising for bids and shall award the contract to the lowest responsive and responsible bidder. The Boys and Girls Club shall verify with the Labor Relations and Equal Opportunity Division of the U.S. Department of Housing & Urban Development (HUD) Area Office that any low bidder has not been debarred or suspended from participating in federal Boys and Girls Club Rehabilitation Project.

a. Any such award shall be subject to all the terms and conditions herein.

14. Labor Standards. All laborers and mechanics (except laborers and mechanics employed by a state or local government acting as the principal contractor on the program) employed in the development of a program assisted by CDBG program grant funds shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determine by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a to 276a-5, and contracts involving their employment shall be subject to the provisions as applicable of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327-333. Without limiting the foregoing Boys and Girls Club shall comply with regulations issued under such Acts, other federal laws and regulations and all state and local law pertaining to labor

standards, prevailing wage, contract bidding and advertising. The City's annual resolution setting out per diem wage rates is available from the City's Construction Management Division."

15. Reversion of Assets. Any real property improved with CDBG Funds in excess of $25,000 must meet the requirements specified in 24 CFR 570.503 (b)(7), which include a requirement that the property either be used to meet one of the national objectives in 24 CFR 570.208 for a minimum of five (5) years beyond the expiration or termination of the Agreement or be disposed of in a manner that will result in the City being reimbursed in the amount of the current market value of the property less any portion attributable to any non-CDBG Funds involved in the improvements to the real property. Such use or reimbursement requirement shall apply to this program for period of five (5) years after the expiration or termination of the Agreement."

16. Discrimination Prohibited. The Boys and Girls Club agrees to comply with the City's Fair Employment Practices and shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, religion, sex, national origin, ancestry, or physical or mental handicapped. More specifically, the Boys and Girls Club agrees as follows:

a. No person in the United States shall, on the grounds of race, color, religion, national origin, sex or sexual preference, ancestry, or physical or mental handicap be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

b. The Boys and Girls Club will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, national origin, ancestry, or physical or mental handicap. The Boys and Girls Club shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, or physical or mental handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Boys and Girls Club agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

c. The Boys and Girls Club will, in all solicitation or advertisements for employees placed by or on behalf of the Boys and Girls Club; state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual preference, national origin, ancestry or physical or mental handicap.

d. The Boys and Girls Club will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the such labor union or workers' representatives of the Boys and Girls Club's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

17. Conflict of Interest. Prior to City's execution of this Agreement, Boys and Girls Club shall complete a City of Fresno Conflict of Interest Disclosure Statement. Said Statement is attached hereto as Exhibit "B" and incorporated herein by reference. During the term of this Agreement, Boys and Girls Club shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Boys and Girls Club on Exhibit "B".

a. No member, officer, or employee of the Boys and Girls Club or its designees or agents who exercise any function or responsibility with respect to the programs during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for Services to be performed in connection with this Agreement. The Boys and Girls Club shall incorporate, or cause to be incorporated, in all contracts and subcontracts a provision prohibiting such interest pursuant to the purposes of this section 17.

b. Boys and Girls Club shall not employ or retain the services of any person while such person either is employed by City or is a member of any City commission, board, committee, or similar City body. This requirement may be waived by the City's Chief Administrative Officer if no actual or potential conflict is involved.

c. Boys and Girls Club shall comply with all applicable laws, rules, regulations and requirements governing avoidance of impermissible conflicts, including without limitation the requirements of the California Political Reform Act (Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.).

d. Boys and Girls Club represents and warrants that as of the effective date hereof, it represents no client or customer whose interests are adverse to the City's.

e. This section 17 shall survive expiration or termination of this Agreement.

18. Indemnification. The Boys and Girls Club shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but no limited to personal injury, death at any time and property damage) incurred by the City, the Boys and Girls Club or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement. The Boys and Girls Club's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of the City or any of its officers, officials, employees, agents or volunteers.

a. If the Boys and Girls Club should subcontract all or any portion of the work to be performed under this Agreement, the Boys and Girls Club shall require each subcontractor to

indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

b. This section shall survive termination or expiration of this Agreement.

19. Insurance. Throughout the life of this Agreement, the Boys and Girls Club shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(s) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by the City's Risk Manager. The following policies of insurance are required:

a. COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than $1,000,000 per occurrence and $2,000,000 general aggregate for bodily injury and property damage, $1,000,000 per occurrence for personal and advertising injury and $2,000,000 aggregate for products and completed operations.

b. COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than $1,000,000 per accident for bodily and property damage.

c. PROFESSIONAL LIABILITY insurance (Errors and Omissions) with limits of liability of not less than $1,000,000 per claim and $2,000,000 policy aggregate is required if Boys and Girls Club subcontracts with a design professional.

d. POLLUTION LIABILITY insurance with limits of liability of not less than $1,000,000 each occurrence and $2,000,000 policy aggregate, including Errors & Omissions if professional services are included is required if Boys and Girls Club contracts with an environmental consultant and/or contractor.

e. WORKERS' COMPENSATION insurance as required under the California Labor Code.

f. EMPLOYERS' LIABILITY insurance with minimum limits of $1,000,000 each accident, $1,000,000 disease each employee and $1,000,000 disease policy limit.

g. BUILDERS RISK (COURSE OF CONSTRUCTION) insurance in an amount equal to 100 percent (100%) of the completed value of the project, with no coinsurance penalty provision; and/or

h. COMMERCIAL PROPERTY insurance which shall be at least as broad as the most version of Insurance Services Office (ISO) Commercial Property Coverage Form CP 00 10 with the Special Cause of Loss Form. The limits of liability shall be in maintained in an amount equal to the full replacement cost (without deduction for depreciation) of all improvements, with no coinsurance penalty provision. This insurance shall include coverage for Builder's Risk (Course of Construction) in an amount equal to 100 percent (100%) of the completed value of the project, with no coinsurance penalty provision.

i. The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. **In the event any policies are due to expire during the term of this Agreement, the Boys and Girls Club shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) days prior to the expiration date of the expiring policy(s).** Upon issuance by the insurer, broker or agent of a notice of cancellation, change or reduction in coverage, the Boys and Girls Club shall file with the City a certified copy of the new or renewal policy and certifications for such policy.

j. The General Liability, Automobile Liability and Pollution Liability insurance policies shall be written on an occurrence form and shall name the City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy (ies) of insurance shall be endorsed so the Boys and Girls Club'S insurance shall be the primary and no contribution shall be required of the City. The Builder's Risk (Course of Construction) and/or Commercial Property insurance policies shall name the City as a loss payee. In the event claims made forms are used for any Professional Liability and/or Pollution Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a 5 year discovery period, or (ii) the coverage shall be maintained for a minimum of 5 years following the termination of this Agreement and the requirements of this section relating to such coverage shall survive termination or expiration of this Agreement. **The Boys and Girls Club shall furnish the City with the certificate(s) and applicable endorsements for ALL required insurance prior to the City's execution of the Agreement.** The Boys and Girls Club shall furnish the City with copies of the actual policies upon the request of the City's Risk Manager at any time during the life of the Agreement or any extension.

k. If at any time during the life of the Agreement or any extension, the Boys and Girls Club fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Boys and Girls Club shall be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement.

l. If the Boys and Girls Club should subcontract all or any portion of the work to be performed under this Agreement, the Boys and Girls Club shall require each subcontract to provide insurance protection in favor of the City, its officers, officials, employees, agents and

volunteers in accordance with the terms of each of the preceding paragraphs except that the subcontractors' certificates and endorsements shall be on file with the Boys and Girls Club and City prior to the commencement of any work by the subcontractor.

20. Boys and Girls Club Certification.

a. The Boys and Girls Club certifies to the best of its knowledge and belief that no federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, or a member of Congress, or an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification or any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to a person for influencing an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Boys and Girls Club shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The Boys and Girls Club shall require that the language of the above certification be included in the documents for all subrecipient tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement.

21. Independent Contractor. In the furnishing of the services provided for herein, the Boys and Girls Club is acting as an independent contractor. Neither the Boys and Girls Club, nor any of its officers, associates, agents or employees shall be deemed an employee or agent of the City for any purpose. Nothing in this Agreement shall create a limited or general partnership or joint venture. Boys and Girls Club shall have no authority to bind the City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Boys and Girls Club shall bear its own costs/expenses in pursuit hereof.

22. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

23. Binding. Subject to section 24 below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

24. Assignment. This Agreement is personal to the Boys and Girls Club and there shall be no assignment by the Boys and Girls Club of its rights or obligations under this Agreement without the prior written approval of the City. Any attempted assignment by the Boys and Girls Club, its successors or assigns, shall be null and void unless approved in writing by the City.

25. Waiver. The waiver by either party of a breach by the other of any provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

a. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

26. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno, California.

27. Heading. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

28. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

29. Interpretation. The parties acknowledge that this agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of, or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

31. Time of Essence. Time is of the essence for the performance of this Agreement.

32. Extent of Agreement. Each party acknowledges that they have read and fully understands the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties wit respect to the subject matter hereof and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement maybe modified only by written instrument duly authorized and executed by both the City and the Boys and Girls Club.

33. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit hereto, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within the exhibit. Furthermore, in the event of any conflict between the body of this Agreement and any document or instrument referenced therein, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within said document or instrument."

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO

Andrew T. Souza
City Manager

ATTEST:
REBECCA E. KLISCH
CITY Clerk

By: Sherrie L. Badertscher
Deputy 11/5/07

APPROVED AS TO FORM:
JAMES C. SANCHEZ
CITY Attorney

By: R 7-31-07
Deputy Robert Coyle

BOYS AND GIRLS CLUB

Kenneth Quenzer
President

MAILING ADDRESSES

CITY:
City of Fresno
Attn: Crystal Smith
2600 Fresno Street Room 2155
Fresno, CA 93721

BOYS AND GIRLS CLUB:
Kenneth Quenzer, President
540 N. Augusta Ave
Fresno, CA 93703

Exhibit "A"

BOYS AND GIRLS CLUB SCOPE OF WORK AND BUDGET

Item	Description of Work	Scheduled Value
01100	Basketball backstops	$ 13,000.00
01200	Flooring	57,000.00
01300	Window Treatments	3,500.00
01400	Asphalt Reconstruction	17,000.00
01500	Electrical	10,900.00
01600	Asbestos Abatement	75,000.00
01700	Air Conditioning	18,000.00
01800	Landscaping	5,600.00
	Total:	$ 200,000.00

Exhibit "B"

DISCLOSURE OF CONFLICT OF INTEREST

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?		✓
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?		✓
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?		✓
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City, or in a business which is in litigation with the City?		✓
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City employee who has any significant role in the subject matter of this service?		✓
6	Are you employed by any other jurisdictions or agencies?		✓

* If the answer to any question is yes, please explain in full.

Kenneth Quenzer, President