

**REIMBURSEMENT AND INDEMNIFICATION AGREEMENT
(Moraga Canyon Sports Fields Project)**

THIS REIMBURSEMENT AND INDEMNIFICATION AGREEMENT (the "Agreement") is made and entered into as of August 12, 2011, by and between the City of Piedmont ("City"), a municipal corporation, and Piedmont Recreational Facilities Organization, a 501(c)3 ("PRFO").

RECITALS

- A. The City of Piedmont ("City") is considering the development of recreational fields at Blair Park and improvements to Coaches Field (the "Proposed Project") on publicly-owned property along Moraga Avenue in Piedmont, California, as proposed by the Piedmont Recreational Facilities Organization ("PRFO").
- B. On December 6, 2010, the City Council certified an Environmental Impact Report ("EIR") for the Proposed Project.
- C. Notwithstanding certification of the EIR and other progress in advance of presenting the Proposed Project to the City Council for final consideration and action, it appears that substantial additional work will be required prior to City Council action, including review of an Addendum to the EIR and possible preparation and review of additional documents required under the California Environmental Quality Act ("CEQA").
- D. Although City is willing to continue to bear the staff costs of further work on the Proposed Project, it will require the financial assistance of PRFO in paying for additional work by third parties and consultants.
- E. PRFO and City desire to enter into this Agreement to provide for PRFO to reimburse City for such third party and consultant costs in order to facilitate the processing of the Proposed Project.

AGREEMENT

In consideration of the foregoing recitals and for other good and valuable consideration, the parties hereby agree as follows:

1. Purpose of Agreement. The purpose of this Agreement is to set forth the terms by which PRFO shall pay for legal and consultant costs directly or indirectly incurred by City in connection with review and processing of the Proposed Project, including legal defense costs. Such costs may include: processing costs other than staff time costs, consultant costs (including, but not limited to CEQA, wetlands specialists, biologists, landscape architects and other consultants required to review plans and/or designs, mitigation monitoring compliance, permitting as may be required but not limited to outside agencies and districts), legal fees associated with processing all Proposed Project applications and implementing any Proposed Project approvals (including costs of the City

Attorney billed to the City for the Proposed Project as determined by the City Council) and all legal fees and costs incurred in connection with the legal defense of any Proposed Project approvals (collectively, "Eligible Costs").

2. Payment of Eligible Costs. PRFO shall pay for all Eligible Costs as provided in Section 3 below.

3. Deposit.

(a) As a condition to City signing this Agreement, PRFO shall deposit with City the sum of One Hundred Eighteen Thousand Dollars (\$118,000) in cash or other immediately available funds ("Deposit"). City shall use the Deposit to pay for Eligible Costs when such costs become due. City shall notify PRFO in writing to replenish all or a portion of the Deposit, and PRFO shall provide such replenishment to City within fourteen (14) days of same written notice. This cycle of withdrawal, notice and replenishment of the Deposit may be repeated from time to time as necessary to cover the Eligible Costs.

(b) Additionally, PRFO shall deposit with the City no later than August 30, 2011, the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000) as a guarantee for the Indemnification provisions found in Paragraph 5 in cash or other immediately available funds ("Indemnification Guarantee").

(c) PRFO agrees that if PRFO fails to replenish the Deposit as provided in subsection (a) above, City shall have no obligation to continue processing the Proposed Project or to incur any additional Eligible Costs until the Deposit is restored to its full amount. PRFO further covenants and agrees that, if, as a result of PRFO's failure to replenish the Deposit as provided in subsection (a) above, City ceases processing the Proposed Project applications, PRFO shall not at any time, directly or indirectly initiate any litigation against City or its employees, agents, or volunteers for the failure to process or delay in processing such applications until such time as PRFO shall have restored the Deposit to its full amount.

(d) If this Agreement is terminated as provided in Section 6 below, City shall return to PRFO within 90 days following the effective date of termination that portion of the Deposit, if any, including interest, that has not been expended or committed by City as provided herein.

4. No Commitment as to Future Approvals. Nothing in this Agreement shall be construed as a commitment by City to grant or issue any Proposed Project approvals or any other preliminary or final approvals in connection with the Proposed Project. PRFO acknowledges and agrees that nothing in this Agreement limits City's discretion, in any manner, with respect to any aspect of the Proposed Project. PRFO agrees that it shall remain obligated to pay all Eligible Costs, regardless of whether any aspect of the Proposed Project is approved. Notwithstanding the foregoing, City shall in good faith expeditiously and with all diligence process the Proposed Project applications.

5. Indemnity. PRFO shall defend (with counsel approved by City, which approval not to be unreasonably withheld), indemnify, and hold harmless City, its officials,

employees, volunteers and agents from and against any and all loss, liability, expenses, claims, costs (including reasonable attorneys fees), suits and damages of every kind, nature, and description, directly or indirectly arising from any third party legal challenge to approval of the Proposed Project or the implementation of this Agreement. PRFO's indemnity obligations under this Section 5 shall survive the expiration or termination of this Agreement. PRFO's obligations under this Section 5 are to be guaranteed by payment and replenishment of the Deposit established pursuant to Section 3 above.

6. Termination and Withdrawal.

(a) PRFO may terminate this Agreement by providing seven (7) days' written notice to City signed by PRFO.

(b) In the event PRFO withdraws from this Agreement as provided under subsection (a) above, PRFO shall remain liable for payment of all Eligible Costs incurred prior to the effective date of the withdrawal.

(c) If PRFO is in default of any of its obligations under this Agreement and fails to cure such default within 14 days following written notice from City, then the City may terminate this Agreement by notice to PRFO and, thereafter, City shall have no further obligation to process applications for the Proposed Project.

(d) PRFO shall be responsible for the payment of Eligible Costs incurred by City up to and including the date of termination regardless of which party terminates the Agreement.

7. Cessation of Processing. PRFO acknowledges and agrees that City may cease processing the Proposed Project, if this Agreement is terminated by either party following notice and expiration of any applicable cure periods as provided herein, including PRFO's non-payment of Eligible Costs. PRFO further covenants and agrees that, if, as a result of termination of this Agreement, City ceases processing the Proposed Project applications, PRFO shall not directly or indirectly initiate any litigation against City or its employees, agents, or volunteers for the failure to process or delay in processing such applications following such Agreement termination.

8. Arbitration. Any dispute between or among the City and Limited Engagement Outside Counsel or any of their attorneys and agents, including but not limited to claims of malpractice, errors or omissions, or any other claim of any kind regardless of the facts or the legal theories, shall be finally settled by mandatory binding arbitration in San Francisco, California, conducted in accordance with California Code of Civil Procedure §§ 1282 *et seq.*, including, but not limited to, section 1283.05, with each party to bear its own costs and attorneys' fees and disbursements. Such arbitration shall be conducted before a single arbitrator, except in matters involving a dispute greater than five hundred thousand dollars, which shall be conducted before a three arbitrator panel with each side selecting one arbitrator and the two arbitrators selected by the parties choosing the third arbitrator. Judgment on a binding arbitration award may be entered in any court of competent jurisdiction. Arbitration has the potential to provide a more timely, more

economic and more confidential resolution of any dispute between us. There will likely be less discovery and a determination by an agreed upon arbitrator or arbitrators rather than a judge or jury. The parties mutually acknowledge that, by this Agreement to arbitrate, each of them irrevocably waives their rights to court or jury trial. The parties agree that this Agreement will be governed by the laws of California without regard to its conflict rules. Subject in all cases to the arbitration provisions herein provided, the parties agree that with regard to the courts' exclusive jurisdiction and exclusive venue for any dispute between them shall lie solely with the Alameda County Superior Court and the corresponding federal court. Subject to the arbitration provisions, the City consents to service of process pursuant to the applicable California state statutes and federal rules.

9. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Agreement shall be in writing and signed by both parties.

10. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

11. Severability. If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

12. CEQA Processing. PRFO acknowledges and agrees that the City is the lead agency under CEQA, that the EIR and any other CEQA documents must reflect City's independent judgment and that City retains full discretion with respect to all findings to be made in connection therewith.

13. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

14. Jurisdiction. This Agreement shall be administered and interpreted under the laws of the State of California, without regard to its choice of law rules. Jurisdiction and venue of litigation arising from this Agreement shall be in the County of Alameda, State of California.

15. Notices. Notices required by this Agreement shall be personally delivered, mailed, postage prepaid, or mailed via nationally recognized overnight courier as follows:

To PRFO:

Jessica Berg
110 Alameda Ave.
Piedmont, CA 94611
Attn: _____

with a copy to:

Eric Hansen
110 Alameda Ave.
Piedmont, CA

Attn: _____

To City: City of Piedmont
120 Vista Avenue
Piedmont, CA 94611
Attn: Geoffrey Grote

with a copy to: Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612
Attn: Thomas R. Curry, Esq.

Notices given by personal delivery shall be effective immediately. Notices given by overnight courier shall be effective upon the date of delivery. Notices given by mail shall be deemed to have been delivered five days after having been deposited in the United States mail. Any party may change its address for notice by written notice to the other party in the manner provided in this Section 15.

16. Interpretation. The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement is the product of negotiations among the parties, and it shall not be construed as if it had been prepared by one of the parties, but rather as if all of the parties have prepared the same. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

17. Authority. Each person executing this Agreement covenants and warrants that (i) the party on whose behalf he or she is signing is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (ii) the party has and is duly qualified to do business in California, (iii) the party has full corporate, partnership, trust, association or other power and authority to enter into this Agreement and to perform all of its obligations hereunder, and (iv) each person (and all of the persons if more than one signs) signing this Agreement is duly and validly authorized to do so.

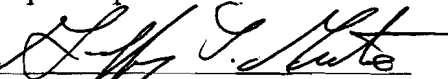
18. Counterparts. This Agreement may be executed in counterparts.

[Signatures on following page]

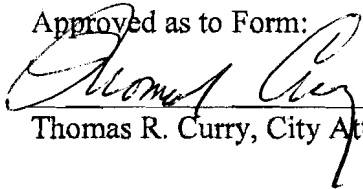
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY:

CITY OF PIEDMONT, a
municipal corporation

By: 
Geoffrey Grote, City Manager

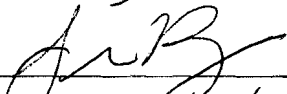
Approved as to Form:


Thomas R. Curry, City Attorney

PRFO:

PIEDMONT RECREATIONAL
FACILITIES ORGANIZATION,

a 501(c)3

By: 
Its: President