

**GRANT AGREEMENT
BETWEEN THE CITY OF SAN CLEMENTE AND
BOYS AND GIRLS CLUB OF SOUTH COAST AREA**

This Grant Agreement (“Agreement”) is entered into this 20th day of July, 2022, (“Effective Date”), by and between the City of San Clemente, a California municipal corporation (“City”), and **BOYS AND GIRLS CLUB OF THE SOUTH COAST AREA, 1305 CALLE VALLE, SAN CLEMENTE, CALIFORNIA, A 501 (C) 3 ORGANIZATION** (“Beneficiary”). Each party is at times individually referred to as a “Party” and collectively as the “Parties” herein.

RECITALS

- A. On March 10, 2021, the United States Congress passed, and on March 11, 2021, President Joseph Biden signed into law, the American Rescue Plan Act (“ARPA”).
- B. ARPA established the Coronavirus State Fiscal Recovery Fund (“CSFRF”) and Coronavirus Local Fiscal Recovery Fund (“CLFRF”), together known as the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program, which provides a combined \$350 billion in assistance to eligible state, local, territorial, and Tribal governments to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery.
- C. The City received federal funding in the form of the SLFRF under ARPA in response to the coronavirus (“COVID-19”) pandemic. These funds may be used to carry out a wide range of community development activities, including those that benefit local communities.
- D. The Interim Final Rule on SLFRF issued by the Department of the Treasury effective May 17, 2021, and the Final Rule issued by the Department of the Treasury effective April 1, 2022, (together the Interim Final Rule and the Final Rule are hereinafter referred to as the “Rule”) provide the rules and guidelines for how the ARPA funds may specifically be spent. Further, the Rule allows for the City to transfer SLFRF funds to a beneficiary who experienced public health impact or a negative economic impact due to the COVID-19 public health emergency.
- E. Under ARPA, the City may provide grants to Beneficiaries to mitigate the impacts of the COVID-19 pandemic. Treasury has defined Beneficiaries to include individuals, households, 501(c)(3) or 501(c)(19) non-profit organizations, small businesses and impacted industries that experienced public health or negative economic impacts as a result of the COVID-19 pandemic.
- F. On February 14, 2022 the City put out an invitation for non-profit organizations who provide public services to City residents and who suffered a negative economic impact due to the COVID-19 pandemic to apply for ARPA funds to support in the recovery.
- G. The Beneficiary submitted an application to the City, in which the Beneficiary certified its 501(c)(3) or 501(c)(19) status, certified its provision of social services to City residents, and described the negative economic impacts the non-profit faced due to the COVID-19 pandemic. The Beneficiary affirms the application submitted is true and correct to the best of the Beneficiary’s knowledge.

- H. The City desires to provide and the Beneficiary desires to receive grant funds from the City to aid in its negative economic impacts from the COVID-19 pandemic and to support the Beneficiary's mission to provide public services to City residents.
- I. The Beneficiary shall spend, obligate, and expend the Grant Funds in a manner consistent with and eligible under ARPA, the Rule, and the U.S. Treasury Reporting and Compliance Guidance, including, [insert specific use of the Grant Funds here (for what buildings, locations, etc)].
- J. The City acknowledges that the Beneficiary has experienced a negative economic impact due to the COVID-19 public health emergency.

NOW, THEREFORE, the Parties agree as follows:

1. DISBURSEMENT OF GRANT FUNDS

- 1.1. The City awards to Beneficiary Grant Funds in the amount of **Ten Thousand Dollars and XX/100 (\$10,000.00)** .
- 1.2. Grant Funds shall be disbursed by City to Beneficiary after agreement has been fully executed and forms below have been received. Prior to disbursing the Grant Funds, the Beneficiary shall provide the following to the City so that the payment may be processed:
 - 1.2.1. Proof of insurance.
 - 1.2.2. Documentation of registration on SAM.gov and that Beneficiary is not suspended or barred from federally funded programs.
 - 1.2.3. Taxpayer Identification Number and Certification, Form W-9 (Rev. 2020, as issued by the Internal Revenue Service).
 - 1.2.4. Electronic Fund Transfer form.

2. TERM

The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect through December 31, 2026, unless the City terminates this Agreement or any portion thereof at an earlier date as provided herein. Notwithstanding the foregoing, certain obligations shall survive the termination of this agreement, as provided herein.

3. BENEFICIARY CERTIFICATION

Beneficiary certifies that they experienced negative economic impacts as a result of the COVID-19 pandemic, and that the grant funds received pursuant to this Agreement will be used exclusively to mitigate those impacts and for the purposes described herein.

4. RESTRICTIONS ON USE OF FUNDS

- 4.1. The Grant Funds are subject to the following expenditure conditions:
 - 4.1.1. The Beneficiary agrees to abide by all terms and conditions set forth in ARPA, the Rule, additional accompanying guidance, and this Agreement.

- 4.1.2. The Grant Funds shall be expended solely for the purposes, and not for any other purposes, as provided in the above recitals, and all eligible expenses must have been incurred during the period of March 3, 2021 and December 31, 2024.
- 4.1.3. All Grant Funds must be obligated by December 31, 2024.
- 4.1.4. All Grant Funds must be expended by December 31, 2026.
- 4.1.5. The grant and use of Grant Funds will go directly to support the Beneficiary who suffered negative impacts caused by COVID-19.
- 4.1.6. The Grant Funds shall not be used for any activity that would violate local, state, or federal law. The Beneficiary shall not violate regulations affecting its non-profit or tax-exempt status under either Section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

5. DOCUMENTATION AND AUDIT REQUIREMENTS

The Beneficiary shall maintain true, proper, and complete documentation that evidences the Beneficiary's expenditures for approved uses of Grant Funds ("Records") through December 31, 2030. The Beneficiary shall make available to the City such Records within ten (10) calendar days of the City's request. The Beneficiary understands that the federal government is authorized to audit the City's use of ARPA funds. The Beneficiary shall use its best efforts to cooperate, promptly, in any audit by any agency or entity, including an audit by the City. This subsection, 4.1, shall survive the termination or expiration of this Agreement.

6. INDEMNIFICATION

To the fullest extent permitted by law, the Beneficiary shall indemnify, defend, and hold harmless the City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death, or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to misrepresentations or omissions by the Beneficiary, the grant of Grant Funds by the City, the acceptance or expenditure of Grant Funds, the Agreement (including the negligent and/or willful acts, errors and/or omissions of the Beneficiary, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, and anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). This indemnification provision shall survive the expiration or termination of this Agreement.

7. BENEFICIARY INDEPENDENCE

In the performance of this Agreement, the Beneficiary, its agents, and employees shall act in an independent capacity and are shall not be considered officers, agents, or employees of the City. The manner and means of performing under this Agreement are under the control of the Beneficiary, except to the extent they are limited by state, local, or federal

law, ARPA, the Rule, additional accompanying guidance, and this Agreement. Nothing in this Agreement shall be deemed to constitute approval for the Beneficiary, or any of the Beneficiary's employees or agents, to be the agents or employees of City. The Beneficiary shall have the responsibility for and control over the means of performance under this Agreement, provided that Beneficiary is in compliance with the terms of this Agreement.

8. PROHIBITION AGAINST TRANSFERS

The Beneficiary shall not assign, sublease, hypothecate, or transfer this Agreement or any of the services to be performed under this Agreement, directly or indirectly, by operation of law or otherwise, without prior written consent of the City. Any attempt to do so without written consent of the City shall be null and void. The Beneficiary shall be required to reimburse the City within thirty (30) calendar days for any unauthorized assignment, sublease, hypothecation, or transfer of funds. This prohibition against transfers shall survive the expiration or termination of this Agreement.

9. NOTICES

9.1. All notices, demands, requests, or approvals to be given under this Agreement shall be given in writing and shall be conclusively deemed served when delivered, personally or on the third business day after the deposit thereof in the United States mail, postage prepaid, first class mail, addressed as hereinafter provided. Courtesy copies of notices may be sent via electronic mail, provided that the original notice is deposited in the U.S. mail or personally delivered as specified in this section.

9.2. All notices, demands, requests or approvals shall be addressed to the City at:

Attn: Cecilia Gallardo-Daly
Community Development Director
City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, CA 92673
Email: Gallardo-DalyC@san-clemente.org

9.3. All notices, demands, requests or approvals shall be addressed to the Beneficiary at:

Attn: Elizabeth Beas
Boys and Girls Club of South Coast Area
1304 Calle Valle
San Clemente, Ca 92672
Email: elizabeth@bg sca.org

10. VIOLATIONS AND TERMINATION

10.1. Effect of Violations. If the City discovers that the Beneficiary has breached any part of this Agreement or made a material misrepresentation, or otherwise falsified its application or any document provided to City to support the Beneficiary's application or a reimbursement, or the Beneficiary has misused the Grant Funds or used them for an ineligible expenditure, the Beneficiary shall return the entirety

of the Grant Funds to the City within ten (10) calendar days of the City's written notice. The City's decision shall be final. Additionally, the City shall have all other remedies besides the remedy provided herein to enforce this Agreement and its Program.

- 10.2. Specific Performance. Beneficiary agrees that, by accepting any Grant Funds, the City has the legal right, and that all necessary conditions have been satisfied, to specifically enforce the Beneficiary's obligations pursuant to this Agreement.
- 10.3. Termination. Notwithstanding anything to the contrary herein, the City shall have the right to terminate the Agreement immediately, with or without cause, at any time, by providing written notice to the Beneficiary. Upon termination, the City shall have no further obligation to provide any Grant Funds to the Beneficiary. The City has the sole and absolute discretion to terminate the Grant Funds or any portion thereof at any time.

11. STANDARD PROVISIONS

- 11.1. Recitals. The City and the Beneficiary acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.
- 11.2. Compliance With all Laws. The Beneficiary shall, at its own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, including federal, state, county, or municipal, whether now in force or hereinafter enacted, and shall comply with all state, county, and City guidance regarding the COVID-19 pandemic.
- 11.3. Waiver. A waiver by either Party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.
- 11.4. Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.
- 11.5. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.
- 11.6. Amendments. This Agreement may be modified or amended only by a written document executed by both the Beneficiary and the City and approved as to form by the City Attorney.
- 11.7. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

- 11.8. Controlling Law And Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.
- 11.9. Equal Opportunity Employment. The Beneficiary represents that it is an equal opportunity employer and it shall not discriminate against any contractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age, or any other impermissible basis under law.
- 11.10. Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall be entitled to its attorney's fees.
- 11.11. Taxes. The City and the Beneficiary expressly agree that the Beneficiary shall be responsible for all taxes that are associated in any way with the receipt or use of the Grant Funds.
- 11.12. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 8/18/22

By: 
Scott Smith, City Attorney

**CITY OF SAN CLEMENTE,
A California Municipal Corporation**

Date: 8/12/22

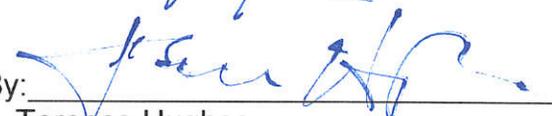
By: 
Erik Sund, City Manager

ATTEST:
Date: 9/9/22

By:  Legislative Administrator
Joanne Baade
City Clerk

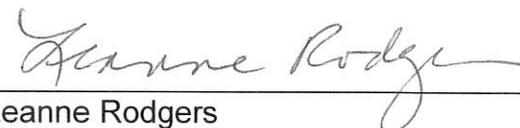
**Beneficiary: Boys and Girls Club of
South Coast Area, a (California
Corporation or LLC or sole proprietorship)**

Date: 7/28/22

By: 
Terence Hughes

Chief Executive Officer
Officer Title

Date: 7/28/22

By: 
Leanne Rodgers

President of the Board
Officer Title

GRANTEE DUNS: 830209354

GRANTEE TAXPAYER ID NO:
95-6111998

[END OF SIGNATURES]

Enclosure(s): add if any