

RESOLUTION NO. 2017-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING SECOND REIMBURSEMENT AGREEMENT BETWEEN CITY OF MARINA
AND THE FEDERAL BUREAU OF INVESTIGATION FOR THE FEDERAL BUREAU OF
INVESTIGATION TO REIMBURSE THE CITY OF MARINA FOR THE PLANNING,
ENGINEERING AND LEGAL SERVICES AND FOR CONSTRUCTION AND FURNISHING
BUILDING 504 AT THE MARINA MUNICIPAL AIRPORT FOR THE PROPOSED USE OF
SAID BUILDING BY THE FEDERAL BUREAU OF INVESTIGATION, AUTHORIZE THE
FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY
ENTRIES AND AUTHORIZE THE MANAGER TO EXECUTE THE AGREEMENT ON
BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY

WHEREAS, On August 16, 2016 City Council approved an agreement (Resolution 2016-129) with the Federal Bureau of Investigation (FBI) for use of Building 504 at the Marina Municipal Airport, wherein the FBI agreed to reimburse the City for reviewing, processing and preparing Building 504 for the FBI's use in an amount not to exceed Ninety Thousand Dollars (\$90,000.00), including but not limited to City staff time, consultant and legal fees and payments made to construction contractors and material and equipment suppliers engaged by the City, and;

WHEREAS, FBI wishes to enter into a second agreement wherein the FBI agrees to reimburse City an additional amount not to exceed One Hundred Ten Thousand Dollars (\$110,000.00) for continued improvements to Building 504 for reviewing, processing and preparing Building 504 for the FBI's use and the \$90,000 from the first agreement has been expended and reimbursed, and;

WHEREAS, FBI will utilize Building 504 for use as offices for the FBI's North Central Coast Gang Task Force. The Task Force is tasked with combating violent crime linked to street gangs in the greater Monterey County area, and;

WHEREAS, City of Marina currently owns Building 504 and the FBI wishes to continue remodeling Building 504 for their use in accordance with security and structural requirements for buildings used by federal law enforcement agencies, and;

WHEREAS, remodeling Building 504 is crucial for the FBI's use as headquarters for the North Central Coast Gang Task Force and the Task Force's mission of combating violent crime linked to street gangs is of great importance to the safety of residents of the Monterey County area and directly benefits the residents, visitor and businesses of the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve second reimbursement agreement ("**EXHIBIT A**") between City of Marina and the Federal Bureau of Investigation for the Federal Bureau of Investigation to reimburse the City of Marina up to and not to exceed One Hundred Ten Thousand Dollars (\$110,000.00) for the planning, engineering and legal services and for construction and furnishing Building 504 at the Marina Municipal Airport for the use of said building by the Federal Bureau of Investigations, and;
2. Authorize the expenditure of funds from the FY 2016-2017 Airport Capital Project Fund for improvements to Building 504 as stipulated in the reimbursement agreement with the Federal Bureau of Investigation, and;

3. Authorizes Finance Director to make necessary accounting and budgetary entries, and;
4. Authorize City Manager to execute the reimbursement agreement on behalf of City subject to final review by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 18th day of January 2017 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Brown, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT A

SECOND REIMBURSEMENT AGREEMENT FOR THE PROVISION OF PLANNING, ENGINEERING AND LEGAL SERVICES AND FOR CONSTRUCTION AND EQUIPPING FOR THE PROPOSED USE OF BUILDING 504 AT THE MARINA MUNICIPAL AIRPORT

THIS SECOND REIMBURSEMENT AGREEMENT is made and entered into on _____, 2017, by and between the FEDERAL BUREAU OF INVESTIGATION, a federal agency operating under the United States Department of Justice, hereinafter referred to as "FBI" and the CITY OF MARINA, a California charter city, hereinafter referred to as "City," as follows:

Recitals

A. The City owns a concrete cinder block building of approximately 2,508 square feet located at 3220 Imjin Road, Marina, CA, designated Building 504 at the Marina Municipal Airport.

B In accordance with the terms of the Deed under which the Airport real property and improvements were conveyed to the City by the U.S. Army, Building 504 cannot be used for other than airport purposes without the written consent of the Federal Aviation Administration ("FAA"). The FBI's Monterey Bay Resident Agency has a primary and secondary Airport Liaison Agent to respond and liaison with City Airport personnel in the event a crime has occurred on a flight or there is a suspicion of a federal crime being committed on Airport property. The FBI's San Francisco division has aircraft capabilities which are sometimes used within the area of the Monterey Bay Resident Agency area of responsibility and may have a need to land and/or refuel at the Airport.

C. The City's Police Department previously used Building 504 for storage of Department records and files in accordance with an Interdepartmental Agreement entered into on May 19, 2011.

D The FBI and the City intend to subsequently enter into a memorandum of agreement for the FBI's use of Building 504 to house the FBI's North Central Coast Gang Task Force ("NCCGTF") which is tasked with combating violent crime linked to street gangs in the greater Monterey County area.

E. It is anticipated that, provided authority is granted in accordance with federal law, a City police officer will act in a part time capacity on the NCCGTF.

F. Prior to entering into an agreement for the FBI's use of Building 504, in order to compensate the City for expenses incurred and to be incurred in processing the proposed use and in remodeling and equipping Building 504 to place the building in a suitable condition for the

FBI's proposed use the City is willing to continue to expend funds on the condition that these expenditures will be reimbursed by the FBI.

G. The parties recognize that the processing, review, construction, remodeling and procurement activities of the City must continue to be conducted in an efficient and timely manner.

H. On August 30, 2016, the City and the FBI entered into the "Reimbursement Agreement for the Provision of Planning, Engineering and Legal Services and for the Construction and Equipping for the Proposed Use of Building 504 at the Marina Municipal Airport," hereinafter referred to as the "First Reimbursement Agreement," approved by the City Council by Resolution 2016-___ on August 16, 2016, for reimbursement of expenses for services or acquisitions performed and paid by the FBI through September 30, 2016.

I. The FBI agrees herein to continue to compensate and reimburse the City for expenses incurred and to be incurred in the processing and facilitating of the above described use in accordance with this Agreement.

J. The purpose of this Second Reimbursement Agreement is to set forth the terms and conditions upon which the City will continue to process the proposed use and be reimbursed for remodeling, reconstructing and equipping Building 504 to make Building 504 suitable for the FBI's proposed use under subsequent memorandum of agreement between the parties which agreement will require the payment of not less than current fair market value for occupancy.

Terms and Conditions

In consideration of the mutual promises contained herein, City and the FBI agree to the following terms and conditions:

1. Scope of Services & Activities. City shall continue to perform the tasks necessary to review, process, and prepare Building 504 for the proposed use including: (i) planning and engineering services, (ii) review and approval of the FBI's plans, (iii) preparation of memoranda, staff reports and resolutions, (iv) to prepare material for review of the FBI's use by the FAA, and (v) to remodel, reconstruct, including reroofing if deemed necessary, and equip Building 504 to place it in suitable condition for the proposed use. In performing these services City shall utilize such staff, consultant, and legal services and the services of independent construction contractors and material and equipment suppliers as it deems necessary and appropriate. The performance of services, engagement of contractors, and acquisition of supplies and equipment will be in accordance with the City's usual and customary procurement practices and regulations including competitive bidding and payment of prevailing wages as required by law. It is acknowledged that the services of any outside party engaged by the City in connection with the scope of services are being rendered for the City; therefore, any work product is the property of the City. Upon installation all improvements, fixtures and equipment shall be City property. Because the services are being rendered in part for the benefit of FBI, the FBI shall be entitled to access to and retention of any copies of all work product, other than that identified as protected by attorney client-privilege, during and subsequent to the term of this Agreement.

2. City Retains Discretion. Nothing set forth in this Second Reimbursement Agreement shall be construed as a limitation on the City's discretion to deny or condition any approval required for the FBI's use of Building 504, provided such denial or condition is made in good faith. Upon request the City and the FBI the City and the FBI shall meet and confer in good faith for the purpose of resolving any dispute over the terms of this Second Reimbursement

Agreement. The City shall have no liability under this Second Reimbursement Agreement for: (i) money damages, except as expressly stated herein; or (ii) for any decision not approve the FBI's use of Building 504. No member of the City Council and no officer, employee or agent of the City shall to any extent be personally liable hereunder.

3. FBI to Reimburse City. The FBI hereby agrees to reimburse City for reviewing processing and preparing Building 504 for the FBI's use pursuant to this Second Reimbursement Agreement in an amount not to exceed One Hundred Ten Thousand Dollars (\$110,000.00), including but not limited to City staff time, consultant and legal fees and payments made to construction contractors and material and equipment suppliers engaged by the City ("Reimbursement"). The Reimbursement furnished under this Second Reimbursement Agreement by the FBI is in addition to the sum of Ninety Thousand Dollars (\$90,000.00) furnished or to be furnished by the FBI under the terms of the First Reimbursement Agreement and shall be nonrefundable to the FBI upon submission to and approval by the FBI of the City's properly presented invoices for services performed or materials or equipment acquired on or after October 1, 2016. The City will submit its written requests for Reimbursement to the FBI together with an itemized written invoice of the expenditures to be reimbursed. Payment of the City's undisputed invoice is due within thirty (30) days of receipt of the invoice

4. Term. This Second Reimbursement Agreement shall commence retroactively on October 1, 2016, and shall be for an indefinite term subject to termination by either party upon fifteen (15) days' prior written notice to the other party or as described elsewhere in this Agreement.

5. Good Faith & Without Obligation. The FBI and the City agree that they will negotiate diligently and in good faith to draft and enter into such agreements or instruments as may be necessary and appropriate to document the transaction to be agreed upon by the Parties, including, without limitation, a memorandum of agreement or other instrument providing for the FBI's use of Building 504. This Second reimbursement Agreement is solely an agreement to continue to provide reimbursement to the City for certain activities in connection with placing Building 504 in suitable condition for the FBI's proposed use and is not a final agreement for use of Building 504. The Parties acknowledge that neither the First Reimbursement Agreement nor this Second Reimbursement Agreement establish the essential terms of any lease. The essential terms for the FBI's use of Building 504, shall be set forth, if at all, in a subsequent agreement approved and executed by the authorized representatives of each party. Each Party assumes the risk that, notwithstanding the First Reimbursement Agreement or this Second Reimbursement Agreement and good faith negotiations, the parties may not enter into an agreement for the FBI's use of Building 504 due to the parties' failure to agree upon essential terms for the transaction. This Second Reimbursement Agreement is entered into without prejudice to the rights of either party.

6. Modification. This Second Reimbursement Agreement is not subject to amendment or modification except by a writing signed by the parties hereto.

7. Notice. Unless otherwise mutually agreed upon in writing by the parties, all notifications, notices, demands, requests and other communications herein provided for or made pursuant hereto shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested, and the giving of such communication shall be deemed complete on the third (3rd) Business Day after the same is deposited in a United States Post Office with postage charges prepaid, or (ii) reputable overnight delivery service, and the giving of such communication shall be deemed complete on the immediately succeeding Business Day after the same is deposited with such delivery service.

If to the FBI, addressed to Lucas A. Beebe and/or the Supervisory Senior Resident Agent, Monterey Bay RA, 2200 Garden Road, Suite 102, Monterey CA, or at such other address in the continental United States as the FBI may furnish to the City in writing:

If to the City, addressed to its address set forth below, or at such other address in the continental United States as the City may furnish to the FBI in writing:

City of Marina, Attn: City Manager, 211 Hillcrest Avenue, Marina, CA 93933

8. Attorney's Fees. In the event of any controversy, claim or dispute relating to this Second Reimbursement Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

9. Counterparts. This Second Reimbursement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.

10. Severability. If any part of this Second Reimbursement Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

11. Assignment. This Second Reimbursement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Second Reimbursement Agreement may not be assigned by either of the parties thereto.

12. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Second Reimbursement Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Second Reimbursement Agreement thereafter.

13. Governing Law/Venue. This Second Reimbursement Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Second Reimbursement Agreement shall be brought only in the federal United States District Court in San Jose, CA, or as close thereto as possible, or in the Monterey County Superior Court in Monterey, CA. Venue for this Agreement, and performance thereunder, shall be the City of Marina.

14. Entire Agreement/Signatory Authority. The First Reimbursement Agreement together with this Second Reimbursement Agreement contain the entire agreement of the parties with respect to the matters covered by those reimbursement agreements, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in the First Reimbursement Agreement and this Second Reimbursement Agreement shall be binding or valid. Each signatory to this Second Reimbursement Agreement hereby warrants and represents that he or she is the duly authorized agent of the party and has been authorized to sign this Second Reimbursement Agreement on behalf of that party.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the FBI and the City of Marina by its duly authorized representative, have executed this Second Reimbursement Agreement on the date(s) set forth below.

CITY OF MARINA

FEDERAL BUREAU OF INVESTIGATION

By _____
Layne Long,
City Manager
Date: _____ 2017

By: _____
Name: _____
Its: _____
Date: _____ 2017

Attest:

By: _____
Anita Sharp, Deputy City Clerk

Pursuant to Resolution: 2017-02

Approved as to form:

By: _____
City Attorney

January 3, 2017

Item No. **8g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 18, 2017

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-,
APPROVING SECOND REIMBURSEMENT AGREEMENT BETWEEN
CITY OF MARINA AND THE FEDERAL BUREAU OF INVESTIGATION
FOR THE FEDERAL BUREAU OF INVESTIGATION TO REIMBURSE
THE CITY OF MARINA FOR THE PLANNING, ENGINEERING AND
LEGAL SERVICES AND FOR CONSTRUCTION AND FURNISHING
BUILDING 504 AT THE MARINA MUNICIPAL AIRPORT FOR THE
PROPOSED USE OF SAID BUILDING BY THE FEDERAL BUREAU OF
INVESTIGATION, AUTHORIZE FINANCE DIRECTOR TO MAKE
NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND
AUTHORIZE CITY MANAGER TO EXECUTE THE AGREEMENT ON
BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY
THE CITY ATTORNEY**

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 201, approving second reimbursement agreement between City of Marina and the Federal Bureau of Investigation for the Federal Bureau of Investigation to reimburse the City of Marina for the planning, engineering and legal services and for construction and furnishing Building 504 at the Marina Municipal Airport for the proposed use of said building by the Federal Bureau of Investigations, and;
2. Authorize Finance Director to make necessary accounting and budgetary entries, and;
3. Authorize City Manager to execute reimbursement agreement on behalf of City subject to final review by the City Attorney.

BACKGROUND:

On August 16, 2016 City Council approved an agreement (Resolution 2016-129) with the Federal Bureau of Investigation (FBI) for use of Building 504 at the Marina Municipal Airport. The agreement stipulated that the FBI would reimburse the City for remodeling the building in accordance with security and structural requirements for buildings used by federal law enforcement agencies.

In the first agreement the FBI agreed to reimburse the City for reviewing, processing and preparing Building 504 for the FBI's use pursuant to the Agreement in an amount not to exceed Ninety Thousand Dollars (\$90,000.00), including but not limited to City staff time, consultant and legal fees and payments made to construction contractors and material and equipment suppliers engaged by the City. To date the aforementioned \$90,000 has been expended by the City for Building 504 improvements and the city has received reimbursement from the FBI.

Within the "Second Agreement" the FBI agrees to reimburse City an additional amount not to exceed One Hundred Ten Thousand Dollars (\$110,000.00) for reviewing processing and preparing Building 504 for the FBI's use. This amount is in addition to the Ninety Thousand Dollars (\$90,000.00) in agreement one. Reimbursement funds stipulated in the second agreement will be used as fund were in the first agreement, i.e. the FBI agrees to reimburse the City for reviewing, processing and preparing Building 504 for the FBI's use pursuant to the Agreement including but not limited to City staff time, consultant and legal fees and payments made to construction contractors and material and equipment suppliers engaged by the City

The FBI will utilize Building 504 for use as offices for the FBI's North Central Coast Gang Task Force. The Task Force is tasked with combating violent crime linked to street gangs in the greater Monterey County area. Remodeling Building 504 is crucial for the FBI's use as a local field office for the North Central Coast Gang Task Force (NCCGTF). The Task Force's mission of combating violent crime linked to street gangs is of great importance to the safety of residents of the Monterey County area and directly benefits the residents, visitor and businesses of the City.

The City currently owns Building 504 and will retain ownership. The Police Department had previously used the building for storage of records and equipment in accordance with an Interdepartmental Agreement entered into on May 19, 2011.

ANALYSIS:

Staff and the City Attorney worked with the FBI in drafting the proposed agreement ("EXHIBIT A"). As part of the agreement it is anticipated that a City police officer will be cross designated in order to liaison with the NCCGTF.

The second agreement is almost identical to the first agreement with some modifications. The selected Sections of the Terms and Conditions of the second agreement below contain the majority if the changes and highlight the basic workings of the agreement:

1. Scope of Services & Activities. City shall continue to perform the tasks necessary to review, process, and prepare Building 504 for the proposed use including: (i) planning and engineering services, (ii) review and approval of the FBI's plans, (iii) preparation of memoranda, staff reports and resolutions, (iv) to prepare material for review of the FBI's use by the FAA, and (v) to remodel, reconstruct, including reroofing if deemed necessary, and equip Building 504 to place it in suitable condition for the proposed use. In performing these services City shall utilize such staff, consultant, and legal services and the services of independent construction contractors and material and equipment suppliers as it deems necessary and appropriate. The performance of services, engagement of contractors, and acquisition of supplies and equipment will be in accordance with the City's usual and customary procurement practices and regulations including competitive bidding and payment of prevailing wages as required by law. It is acknowledged that the services of any outside party engaged by the City in connection with the scope of services are being rendered for the City; therefore, any work product is the property of the City. Upon installation all improvements, fixtures and equipment shall be City property. Because the services are being rendered in part for the benefit of FBI, the FBI shall be entitled to access to and retention of any copies of all work product, other than that identified as protected by attorney client-privilege, during and subsequent to the term of this Agreement.

2. City Retains Discretion. Nothing set forth in this Second Reimbursement Agreement shall be construed as a limitation on the City's discretion to deny or condition any approval required for the FBI's use of Building 504, provided such denial or condition is made in good faith. Upon request the City and the FBI the City and the FBI shall meet and confer in good faith for the purpose of resolving any dispute over the terms of this Second Reimbursement Agreement. The City shall have no liability under this Second Reimbursement Agreement for: (i) money damages, except as expressly stated herein; or (ii) for any decision not approve the FBI's use of Building 504. No member of the City Council and no officer, employee or agent of the City shall to any extent be personally liable hereunder.

3. FBI to Reimburse City. The FBI hereby agrees to reimburse City for reviewing processing and preparing Building 504 for the FBI's use pursuant to this Second Reimbursement Agreement in an amount not to exceed One Hundred Ten Thousand Dollars (\$110,000.00), including but not limited to City staff time, consultant and legal fees and payments made to construction contractors and material and equipment suppliers engaged by the City ("Reimbursement"). The Reimbursement furnished under this Second Reimbursement Agreement by the FBI is in addition to the sum of Ninety Thousand Dollars (\$90,000.00) furnished or to be furnished by the FBI under the terms of the First Reimbursement Agreement and shall be nonrefundable to the FBI upon submission to and approval by the FBI of the City's properly presented invoices for services performed or materials or equipment acquired on or after October 1, 2016. The City will submit its written requests for Reimbursement to the FBI together with an itemized written invoice of the expenditures to be reimbursed. Payment of the City's undisputed invoice is due within thirty (30) days of receipt of the invoice

4. Term. This Second Reimbursement Agreement shall commence retroactively on October 1, 2016, and shall be for an indefinite term subject to termination by either party upon fifteen (15) days' prior written notice to the other party or as described elsewhere in this Agreement.

5. Good Faith & Without Obligation. The FBI and the City agree that they will negotiate diligently and in good faith to draft and enter into such agreements or instruments as may be necessary and appropriate to document the transaction to be agreed upon by the Parties, including, without limitation, a memorandum of agreement or other instrument providing for the FBI's use of Building 504. This Second reimbursement Agreement is solely an agreement to continue to provide reimbursement to the City for certain activities in connection with placing Building 504 in suitable condition for the FBI's proposed use and is not a final agreement for use of Building 504. The Parties acknowledge that neither the First Reimbursement Agreement nor this Second Reimbursement Agreement establish the essential terms of any lease. The essential terms for the FBI's use of Building 504, shall be set forth, if at all, in a subsequent agreement approved and executed by the authorized representatives of each party. Each Party assumes the risk that, notwithstanding the First Reimbursement Agreement or this Second Reimbursement Agreement and good faith negotiations, the parties may not enter into an agreement for the FBI's use of Building 504 due to the parties' failure to agree upon essential terms for the transaction. This Second Reimbursement Agreement is entered into without prejudice to the rights of either party.

Administration of the agreement will fall to the Community Development Department who will handle all invoicing, bids, contracts, staff reports and other duties associated with the agreement.

This agreement does not include the fair market rent to be paid by the FBI. That charge will be included in a separate agreement.

FISCAL IMPACT:

Should Council approve this request funding has been provided in the FY 2016-2017 Airport Capital Project Fund within a newly created account titled Building 504 Improvements. Funding for the project was accomplished via a transfer of funds from the Airport Enterprise Fund in the amount of \$250,000.

A revenue account has been created within the FY 2016-2017 Airport Fund to accept reimbursements from the FBI related to the Building 504 improvement project.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Richard J. Janicki, Jr.
Management Analyst
Police Department
City of Marina

REVIEWED/CONCUR:

Roberto Filice
Acting Chief of Police
City of Marina

Layne Long
City Manager
City of Marina