

## REIMBURSEMENT AND INDEMNIFICATION AGREEMENT

This Reimbursement and Indemnification Agreement (“Agreement”) is entered into between the COUNTY OF SAN BENITO (“County”), and

\_\_\_\_\_ (“Applicant”), and  
\_\_\_\_\_ (“Property Owner” or “Owner”).

For purposes of this Agreement, “Project” shall refer to the Applicant’s project to \_\_\_\_\_ (PLN: \_\_\_\_\_).

### I. Recitals:

WHEREAS, the County has adopted a fee schedule establishing planning and environmental review fees for processing development applications as set forth in San Benito County Code §§ 5.01.060 – 5.01.065, including the tables incorporated therein, as may be amended from time to time (“Fee Schedule”);

WHEREAS, the County’s fee schedule, and other applicable law, is intended to result in full cost recovery of all costs incurred by the County for the administrative processing and review of Applicant’s Project in connection with Applicant’s Project up to and including any administrative proceedings or public hearings necessary for Project approval and filing of CEQA notices, as applicable, and condition compliance and/or mitigation monitoring and reporting program;

WHEREAS, legal actions to challenge approvals of Applicant’s Project or the approval process may result in County’s exposure to liability for litigation costs, including, but not limited to, the preparation of an administrative record, attorney fees, expert witness fees, and other defense costs and expenses; and

WHEREAS, Applicant and Property Owner acknowledge and agree that these costs are to be borne by the Applicant and Property Owner, jointly and severally.

NOW, THEREFORE, County and Applicant agree as follows:

### II. Agreement:

**A. Recitals.** The above recitals are incorporated herein and are made a part of this Agreement.

#### **B. Application Fee Deposit and Reimbursement of All Costs.**

1. All costs incurred by the County in processing the Project application, including staff time, consultant fees and overhead, including but not limited to fees for mailing, posting, publication and filing of all notices required by law, shall constitute a personal obligation to be paid by Applicant and Property Owner, and any unpaid obligations under this Agreement may be subject to a lien on the subject property.
2. **a. Deposit.** County staff shall provide the Applicant with the minimum initial deposit amount based on the Fee Schedule deposit amounts listed for each of the elements of the Project entitlements and environmental review requirements of Applicant’s Project. The County will begin processing the Project Application for completeness only upon payment of the full amount of the initial deposit.

**b. Supplemental Deposit.** The deposit amount may be increased to account for the level and nature of environmental review determined to be necessary for the Project, to be finalized at the time the Project Application is deemed complete. If, due to limited staff resources and existing workloads of staff, the County intends to retain contract planners, environmental consultants or other experts, or outside counsel to assist in processing the project application, the County will consult with the applicant regarding the estimated cost and scope of work of the non-County staff prior to engaging non-County personnel, however the County shall retain sole discretion in the selection of the contract planner, consultant, expert, or outside counsel, and direction and control of the services to be performed by such contractors.

3. **Quarterly Statements and Invoices.** As work on the application review proceeds, actual costs incurred will be charged against the deposit account. County will deduct these costs from the deposit account in appropriate amounts when warranted and provide the Applicant with a statement of the account balance on at least a quarterly basis.
  4. **Replenishment of Deposit** If at any point in the application review process it is determined that the amount of the deposit will not be adequate to cover all costs associated with application processing, the County may demand, by written notice replenishment of the deposit in an amount estimated by County staff to be necessary to complete processing of the application through any hearings necessary before the Planning Commission and Board of Supervisors, if applicable. If Applicant fails to deposit the additional sums requested within the period specified in the notice, County staff shall not schedule the application for hearing until sufficient funds are replenished.
  5. **Failure to Pay.** Failure of the Applicant to timely make deposits or pay invoices to reimburse the County for project application processing costs shall be considered a material violation of this Agreement. Should Applicant fail to timely make deposits or reimbursements, or invoices remain unpaid for more than thirty (30) days after demand, the County shall cease all work on processing the Project for approval. Should Applicant fail to timely make deposits or reimbursements, or invoices remain unpaid for more than thirty (30) days after demand, County shall provide notice pursuant to Paragraph S, below, of potential withdrawal of the Application, and if Applicant fails to make necessary deposit(s), reimbursements and/or invoices remain unpaid for more than sixty (60) days, the Project Application shall be considered withdrawn.
  6. **Refund of Deposit Balance.** Any funds remaining in the deposit account will be refunded after the expiration of the applicable statute of limitations following approval of the Project. If, alternatively, the Applicant elects to cancel or withdraw their application the County will refund any remaining funds on deposit after paying all costs previously incurred.
- C. No Assurance of Approval.** Applicant and Property Owner understand and agree that County retains complete discretion to approve, condition approval on certain requirements, or deny the Project Application, notwithstanding payment of all fees and costs pursuant to this Agreement. County staff may recommend denial of the project for any reason, that staff may change its recommendation at any time, and that staff's recommendation of approval or conditional approval does not guarantee approval, whether by the Planning Commission, Board of Supervisors, or any other body.
- D. Public Records Act Compliance.** Applicant and Property Owner understand and agree that all materials submitted in connection with Applicant's project are public records subject to inspection and copying by members of the public, with limited exceptions, pursuant to the Public Records Act ("Act") (California Government Code § 7920.000, *et seq.*). By filing an application, Applicant agrees that the public may inspect and copy these materials and the information within, with limited exceptions, and that some or all of the materials may be posted on the County's website. For example, application materials may be subject to copyright protection or sections 5500.1 and 5536.4 of the California Business and Professions Code. By

submitting such materials to the County, Applicant represents that Applicant has the authority to grant, and hereby grants, the County permission to make the materials available to the public for inspection and copying, whether in hardcopy or electronic format, unless the Applicant clearly identifies the material as exempt under the Act and submits sufficient information to establish that the material is subject to an exemption under the Act or other applicable federal, state, or local law.

**E. Indemnification.** Applicant and Property Owner agree(s), to the fullest extent permitted by law, to indemnify, defend (with counsel reasonably approved by County), and hold harmless San Benito County, its officers, agents, and employees, as follows:

1. From and against any and all claims, demands, actions, proceedings, lawsuits, losses, damages, judgments and/or liabilities (hereinafter "Claims") arising out of, related to, or in connection with the Application or to attack, set aside, void, or annul, in whole or in part, an approval of the Application and/or issuance of a permit or entitlement by the County, including but not limited to the award by the Court of attorney fees and costs to the prevailing party.
2. From any and all liability for injuries, damages, costs and expenses of any nature whatsoever that result or relate to the investigation, arrest or prosecution of business owners, operators, employees, clients or customers of the Applicant or Property Owner for a violation of state or federal laws, rules or regulations.
3. From any and all causes arising out of, related to, or in connection with the Application, including, but not limited to, the acts, errors, or omissions of the Applicant or Property Owner and his, her, its, and their officers, employees, agents and contractors.
4. For any and all costs and expenses (including but not limited to attorneys' fees) incurred by County on account of any Claim except where such indemnification is prohibited by law.
5. The indemnification obligation of Applicant and Property Owner applies to County's action or inaction and the action or inaction of that County's officers and employees; however, this does not apply to the County's sole negligence or willful misconduct.
6. The indemnification obligations of Applicant and Property Owner with respect to matters arising under the California Subdivision Map Act, Government Code §§ 66410, *et seq.*, are subject to the limitations set forth in § 66474.9 (b) – (d) of that Act, incorporated herein as if set forth in full, which shall supersede any provision of this Agreement that is inconsistent with such limitations.

**F. Notice and Management of the Defense of Claims.** The County shall promptly notify the Applicant and Property Owner of any such Claim that is, or may be, subject to this Agreement. County as respondent/defendant and Applicant/Property Owner shall cooperate fully in the defense and shall each defend the action in good faith, either jointly or separately, depending upon the nature of the Claim, whether, or not, conflicts of interest impact a joint defense, and the mutual agreement of the County and the Applicant

If the County is the sole respondent/defendant to a Claim, County shall have unlimited discretion to direct and participate in the defense of any such Claim, including, but not limited to, use of County Counsel to defend the Claim, to employ outside counsel to defend the County. In the event a Claim is made against both County and the Applicant/Property Owner, County may retain common counsel reasonably satisfactory to Applicant/Property Owner to jointly represent the County and Applicant/Property Owner. If County reasonably determines that proposed joint defense counsel would face a conflict of interest, or if the Applicant fails to promptly assume the defense of the Claim, or to promptly employ counsel reasonably satisfactory to County, then County may employ separate counsel in their sole discretion to represent or defend County and the Applicant shall pay the reasonable attorneys' fees and costs of such counsel.

In the event of a disagreement between County and the Applicant/Property Owner over litigation issues, County and Applicant/Property Owner shall meet and confer to resolve any such issues, including without limitation litigation decisions, the way the defense is conducted, whether or not to proceed to trial, or settle the Claim short or litigation (including any proposed settlement amount(s)). Applicant/Property Owner shall not be required to pay any monetary settlement or perform terms of settlement under a Claim solely arising from a Subdivision Map Act approval unless the settlement is approved by the Applicant/Property Owner.

Independent participation by counsel for the County shall not relieve the Applicant of any obligation imposed by this Agreement.

**G. Litigation Cost Deposit.** In the event a Claim is filed against the County, upon request of the County, Applicant shall deposit an additional \$50,000.00 (the "Litigation Deposit") with the County within thirty (30) days of said request in order to cover the costs and expenses involved in defense of the County. If at any point during the litigation process actual costs and/or expenses incurred reach 80% of the Litigation Deposit, the Applicant shall deposit additional funds sufficient to bring the balance up to the amount of \$50,000.00.

**H. Reimbursement of Litigation Costs.** To the extent County uses any of its resources to respond to a Claim, County shall provide notice to the Applicant pursuant to Paragraph S, below, of the anticipated expenditures, along with a monetary estimate of the costs to be incurred. Thereafter, the Applicant shall reimburse the County for said expenditures with thirty (30) days of the County's demand. Such resources include, but are not limited to, staff time, administrative review, court costs, preparation and certification of the administrative record, County Counsel time, or any other direct or indirect costs associated with responding to the Claim. The County may, at any time, require Applicant to advance funds pursuant to the estimate of costs to be incurred described above, and/or reimburse County for costs that the County has incurred or reasonably anticipates will be incurred during the course of any action, either or both of which shall be paid by Applicant within thirty (30) days of County's demand.

**I. Applicant/Property Owner Breach of Duty to Defend and Indemnify.** In the event of a default of Applicant/Property Owner's obligations to defend and indemnify County as set forth herein, the County may, in its sole discretion, upon reasonable notice to Applicant/Property Owner pursuant to Paragraph S, below, deem Applicant/Property Owner's default as an abandonment of the Project. County may rescind any approvals previously granted and may settle any related litigation without the participation and/or approval of Applicant/Property Owner. Applicant/Property Owner shall remain responsible for any costs, attorney's fees (county, and/or plaintiffs' if awarded by the Court, or as a result of settlement), and/or other expenses incurred by County related to any litigation or settlement.

**J. Survival of Obligations.** The obligations of the Applicant under this Agreement shall survive and apply regardless of whether any County approval is invalidated, set aside, expires, or is abandoned for any reason.

This Agreement and the obligations of the Applicant set forth herein shall remain in full force and effect throughout all stages of litigation, regardless of whether the Applicant has brought any Claim against County.

The Applicant is solely responsible for compliance with all local, state, and federal laws, and for obtaining any necessary authorizations, approvals, and/or permits from other local, state, and federal agencies. Any failure of the Applicant to comply with applicable laws or to obtain necessary authorizations, approvals, and/or permits shall not invalidate this Agreement or excuse the obligations of the Applicant under this Agreement.

**K. Successors and Assigns.** These obligations shall be binding upon every successor, assign, and transferee of any interest in the Project that is the subject of the Application. The Applicant and Owner shall cause all successors, assigns, and transferees to be so obligated; provided that the Applicant shall be and remain personally obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate, or otherwise transfer any of the

obligations of this Agreement, and notwithstanding a change in ownership or any transfer or conveyance of any interest in the Project that is the subject of the Application.

**L. Stipulation, Release, or Settlement.** The Applicant or Owner shall not execute, pay, or perform pursuant to any stipulation, release, settlement agreement, or other disposition of the matter on such Claim unless the County and the Applicant have approved the stipulation, release, or settlement agreement in writing, such approval not to be unreasonably withheld.

In no case shall the Applicant assume, admit, or assert any fault, wrongdoing, or liability on the part of the County as a condition of or as part of any stipulation, release, settlement, or otherwise. The Applicant shall not assert any defense, Claim, or complaint against County on any Claim as a condition of or as part of any stipulation, release, settlement or otherwise.

**M. No Waiver.** Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the requirements herein will not be deemed as a waiver of any rights on the part of County.

**N. Severability.** If a court of competent jurisdiction holds any clause or portion of this Agreement to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses, or portions of them.

**O. Authority.** Each person signing this Agreement represents and warrants that he or she has the power, is duly authorized, and has the capacity to enter into this Agreement.

**P. California Law.** This Agreement is governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed and held in the County of San Benito.

**Q. Complete Agreement.** This Agreement shall constitute the complete understanding of the parties with respect to the matters set forth herein. Neither party is relying on any other representation, oral or written.

**R. Counterparts.** This Agreement may be signed in counterparts and by physical, digital or electronic means and shall be signed by all Applicants and Owners.

**S. Notices:** All notices called for in this Agreement shall be given in writing by personal delivery, electronic mail (with copy of such notice sent not later than the next day by mail) or by overnight mail. Overnight mail or couriered notices shall be deemed received the next business day following deposit into the U.S. mail or delivery to the private courier. First class mail, postage prepaid, shall be deemed received three days after postmark. Mailed or couriered notices shall be addressed as set forth below, but either party may change its contact information by giving written notice thereof to the other in accordance with the provisions of this Paragraph S.

To **COUNTY:**  
Abraham Prado  
Director, Resource Management  
County of San Benito  
2301 Technology Parkway  
Hollister, CA 95023-2513  
Email: [aprado@cosb.us](mailto:aprado@cosb.us)

With a copy to:  
Sean Cameron  
Assistant County Counsel  
County of San Benito  
481 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023  
Email: [Sean@prenticelongpc.com](mailto:Sean@prenticelongpc.com)

To **APPLICANT/PROPERTY OWNER:**  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereunto understand and agree to the terms herein, and have executed this Agreement on the date written below.

**Applicant:**

\_\_\_\_\_  
(Signature)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Business/Property Owner:  
(if different from applicant):**

\_\_\_\_\_  
(Signature)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**County:**

\_\_\_\_\_  
(Signature)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_