

INDEMNITY AND REIMBURSEMENT AGREEMENT

This Indemnity and Reimbursement Agreement ("Agreement") is made this _____ day of _____, 20____, by and between the City of Visalia, a California _____ municipal _____ corporation ("City"), _____ and

("Applicant"). The City and the Applicant are sometimes referred to herein individually as "Party" and collectively as "Parties."

RECITALS

This Agreement is made with respect to the following facts:

A. On or about [**insert date**], the Applicant filed an application with the City for the purpose of [**insert statement describing purpose for application**] ("Application" or "Project") located at [**insert address**], within the City of Visalia, County of Tulare, California ("Property").

B. The Parties have agreed to work cooperatively to prepare all necessary documentation for the Project in compliance with the California Environmental Quality Act ("CEQA") and the City's Local CEQA Guidelines.

C. At the request of the City, the Applicant is agreeing to enter into an Agreement with the City to indemnify, defend and hold the City harmless from any legal challenges concerning or arising from the City's potential Project approval(s).

D. The Applicant recognizes that legal challenges can pose a significant financial burden on City resources and, to ensure that the necessary resources exist to diligently and efficiently defend the Project, the Applicant agrees to enter into this Agreement and to pay costs and expenses related to the City's defense as set forth below.

E. The City and the Applicant recognize the legal and financial benefit that is created by working together, rather than independently, in defending legal challenges to the Project as discussed above and agree to collaborate in defense of any legal action challenging any potential Project approval(s).

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises and agreements, the City and the Applicant agree as follows:

1. Incorporation of Recitals. The Parties agree that the Recitals constitute the factual basis upon which the City and the Applicant have

entered into this Agreement. The City and the Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. Definitions. The following terms in this Agreement shall have the meaning set forth below:

“Project Approvals” shall mean any discretionary approvals granted by the City, or any agency thereof, and shall include adoption of a Negative Declaration or Mitigated Negative Declaration, or certification of an EIR, pursuant to the requirements of CEQA.

“Project Claims” shall mean any actual claims, demands, causes of action, damages, costs, expenses, judgments and liabilities arising from the Project Approvals. Notwithstanding the foregoing, claims, demands, causes of action, damages, costs, expenses, judgments and liabilities arising from the willful misconduct of the City are not included in the definition of Project Claims. In addition, claims, demands, causes of action, damages, costs, expenses, judgments and liabilities related to, but not arising from, this Agreement or Project Approvals (hereinafter referred to as “City Claims”) are not included in the definition of Project Claims. City Claims may include, but are not limited to, the failure of the City to comply with criminal laws or civil laws with respect to the conduct of public meetings or hearings, or the failure of the City to adopt an adequate General Plan or element of its General Plan.

3. Indemnification. To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, and its elected and appointed officials, officers, employees, consultants, agents and attorneys (collectively referred to as “City Parties”) from and against any Project Claims, provided the City has permitted the Applicant to meaningfully participate in the environmental review process for the sole purpose of helping to ensure legally-adequate Project approvals and CEQA documentation. Applicant’s participation in the process shall in no way interfere with the City’s exercise of its independent judgment in the environmental review process.

4. Duty to Defend. The Applicant shall defend the City Parties in any action arising from a Project Claim. The Applicant shall have the right to select its own legal counsel. The City may suggest legal counsel to the Applicant, but the Applicant is not obligated to select any City recommended counsel.

The City may elect to retain separate legal counsel to defend any City Party against any Project Claim. If the City makes such an election, the Applicant shall reimburse the City for reasonable costs of any such separate legal counsel.

The Applicant shall have the right to defend, or not defend, any Project Claims that seek to invalidate, or would otherwise affect, the Project Approvals, regardless of whether or not the claims arise from the Project Approvals, provided, however, that any election by the Applicant not to defend any Project Claim (a "Decision") shall be deemed a termination of this Agreement. The Applicant shall provide the City with written notification of its Decision as provided in Section 8 of this Agreement. If the Applicant makes the Decision as set forth in this paragraph, the City shall have the right to repeal or revoke any or all of the Project Approvals. The Applicant's decision not to defend any Project Claim shall not preclude the City from defending any Project Claim, or from retaining, at its own expense, legal counsel to defend against a Project Claim. Any decision by the City to defend a Project Claim shall not result in, or generate an obligation by the Applicant to indemnify the City for its costs and expenses incurred in any such defense. The Applicant shall not be responsible for any costs and/or expenses incurred by the City after the City receives written notification of the Decision.

In the event that the Applicant makes a Decision not to defend a Project Claim, any documents prepared or compiled by City staff or consultants under contract with the City relating to the Project shall be and remain the property of the City. Notwithstanding the foregoing, the City and Applicant agree that the Application and any associated documents, including but not limited to site plans, maps, and elevations, submitted by the Applicant to the City at any time during the course of the Project shall be and remain the property of the Applicant. Applicant grants to the City a limited, non-exclusive license and right to use such documents solely in connection with the Project.

The Parties shall agree to cooperate in the defense of any Project Claim or City Claim. The duty to cooperate includes, without limitation, the obligation to prepare and file, no later than five working days after deciding to carry out or approve the Project, a legally adequate notice of determination or notice of exemption, which will commence the applicable statute of limitations. The duty to cooperate also includes, without limitation, the obligation of the City to not accept any mediation request made pursuant to California Public Resources Code section 21167.10 without the prior written consent of the Applicant. Failure of the City to comply with these requirements, or failure to otherwise cooperate fully, shall constitute a

material breach of this agreement thereby terminating any obligation of the Applicant under this Agreement to indemnify, defend or hold the City harmless.

The City shall notify the Applicant of any Project Claim or City Claim within five (5) business days of receipt of any cause of action or notice of potential cause of action. Such notice shall be provided as set forth in Section 8 of this Agreement. Failure of the City to notify promptly the Applicant of a Project Claim or City Claim shall terminate any obligation under this Agreement for the Applicant to indemnify, defend or hold the City harmless.

5. Cooperation and Cost Control. The Parties agree that they, and any legal counsel hired by them, including legal counsel hired independently by the City to assist in the defense of any Project Claim or City Claim, will cooperate with each other in the preparation and defense of any claims or proceedings. This includes, but is not limited to, cooperation in the preparation of the administrative record and consultation with one another in good faith in the preparation of court filings, to ensure that unnecessary and duplicative costs are not incurred in the defense of the claim, action or proceeding.

6. Satisfaction of Judgment. The Parties agree to use best efforts to satisfy in a timely manner any final, non-appealable judgment issued by a judicial or administrative body, or any obligation arising out of any judgment, award or settlement that involves any Project Claims or City Claims for which the Applicant has indemnified the City Parties. This includes, but is not limited to, the payment and satisfaction of any monetary judgment, award, or settlement levied against the City Parties, and the processing of any entitlements such as revisions to CEQA documents.

For the purposes of this Section 6, timely manner shall mean within ninety (90) days for the payment of any monetary judgment, award or settlement, and one (1) year for the processing of any Project Approvals. The Applicant in its reasonable discretion may grant the City additional time to process Project Approvals to account for delays that are outside the City's control, including delays caused by regulatory and/or non-City controlled agencies. Failure to process entitlements in a timely manner shall eliminate the Applicant's obligation under this Agreement to pay for any defense costs or expenses incurred by the City after such timeframe has expired. The City shall continue to have an obligation to defend any Project Claim or City Claim which the Applicant has indemnified the City against, but all costs and expenses thereafter shall be the sole responsibility of the City.

7. Settlement of Claims. The City shall not enter into any settlement or resolution of any Project Claims without first obtaining written approval of such settlement or resolution by the Applicant, which shall not be unreasonably withheld. The City shall notify the Applicant of the terms of any proposed settlement within five (5) business days of receiving any proposal pursuant to Section 8 of this Agreement. The Applicant shall have ten (10) business days to comment on the terms of the settlement. If requested by the Applicant, the City shall agree to meet and confer with the Applicant in good faith regarding the terms of the proposed settlement.

8. Notices. All notices required or necessary under this Agreement shall be given in writing to the following designated contact at the address below, or such other address as a Party may designate by written notice:

If to the City:

City of Visalia
a California Municipal Corporation

Attention: _____

Email: _____

If to the Applicant:

Attention: _____

Email: _____

All notices shall be delivered to the designated contact by email, personal delivery, facsimile, a recognized overnight carrier, or by US mail, return receipt requested.

9. Covenant of Further Assurances. The City and the Applicant shall take all other actions and execute all other documents that are reasonably necessary to effectuate this Agreement.

10. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicant and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. All modifications to this Agreement must be in writing and first approved by the City and the Applicant.

11. No Assignment. Neither Party may assign and/or transfer any interest in this Agreement without the prior written consent of the other Party hereto.

12. Binding Upon Successors. To the extent not prohibited by this Agreement, the Agreement and each of its terms shall be binding upon the City, the Applicant and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

13. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and the Applicant both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

14. Waiver. No waiver of any default hereunder shall constitute a waiver of any other breach or default, whether of the same or of any other covenant or condition. No waiver given by either Party shall give the other Party a contractual right by custom, estoppel or otherwise which is in conflict with any written provision of this Agreement.

15. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

16. Captions. The captions of the various articles and paragraphs of this Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the date first written above.

**CITY OF VISALIA, a California
municipal corporation**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____

Name: _____
