**INDEMNITY AND REIMBURSEMENT AGREEMENT**

This Indemnity and Reimbursement Agreement (“Agreement”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between the **City of San Rafael** (“City”), a California municipal corporation, and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“Applicant”), [include legal entity type, e.g., “a public agency”]. The City and the Applicant are referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS**

This Agreement is made with respect to the following facts:

A. The Applicant has submitted or intends to submit an application to the City for the review, approval, and/or processing of a project (the “Project”) under the jurisdiction of one or more City departments, including but not limited to Public Works, Fire, Police, or other divisions of the City.

B. The Project may require the City to engage staff, consultants, attorneys, and other resources to perform activities such as application review, plan evaluation, compliance analysis, site inspection, permitting, and other related tasks.

C. The City will incur various direct and indirect costs in connection with the review and processing of the Project.

D. In order to facilitate the processing of the Project, the Developer desires to reimburse the City for all of its costs in connection with the Project Approvals, including but not limited to: legal fees, staff time, and consultant costs incurred in connection with the Project Approvals; costs unbilled and/or unreimbursed by Developer in connection with Project Approvals covered by this Reimbursement Agreement; and any litigation costs incurred as a result of the processing of the Proposed Project and any Project Approvals.

E. The parties to this agreement wish to establish the terms and conditions of such reimbursement obligation.

**AGREEMENT**

NOW, THEREFORE, 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 establish the Applicant’s obligation to reimburse the City for all costs, including but not limited to staff time, consultant fees, legal fees, administrative expenses, and related costs incurred by the City in connection with the review, approval, and/or processing of the Project. This Agreement applies to Projects under the jurisdiction of any City department or division, including but not limited to Public Works, Community and Economic Development, Fire, Police, and others.

**2. Deposit Requirements**

a. **Initial Deposit**: At the time of submitting the Project application, the Applicant shall deposit with the City the amount of $\_\_\_\_\_\_\_\_\_\_\_ (“Initial Deposit”), to be held in a City-managed account to cover Eligible Costs.

b. **Replenishment of Deposit**: If the unexpended balance of the deposit falls below $\_\_\_\_\_\_\_\_\_\_, the City shall notify the Applicant in writing and require additional funds within ten (10) business days.

c. **Accounting and Reconciliation**: The City shall maintain detailed records of charges against the deposit and provide the Applicant with a final accounting upon completion of the Project or termination of this Agreement. Any unused balance will be refunded to the Applicant without interest.

d. **Failure to Replenish**: Failure to replenish the deposit as required may result in cessation of Project processing as outlined in Section 7, and forfeiture of remaining funds up to the amount of incurred costs plus the 10% administrative fees.

**3. Applicant Reimbursement Obligations**

The Applicant agrees to reimburse the City for all reasonable costs incurred in connection with the Project (collectively, “Eligible Costs”), regardless of whether the Project is ultimately approved. Eligible Costs include but are not limited to:

a. **City Staff Time**: Fully burdened hourly rates for City staff involved in processing the Project application, conducting inspections, attending meetings, and related activities.

b. **Consultant Fees**: Fees and expenses of external consultants engaged by the City to provide specialized expertise, technical reviews, or other services related to the Project.

c. **Legal Fees and Costs**: Costs associated with legal review, drafting agreements, and defending any legal challenges to the Project or its approvals.

d. **Permit and Implementation Costs**: Costs incurred in issuing permits, conducting compliance checks, or implementing Project-related requirements.

e. **Appeals**

f. **State-mandated costs**

g. **Administrative Fees**: An administrative surcharge of 10% applied to external consultant and legal services to cover the City’s contract administration and oversight costs.

**4. Payment of Costs**

In the event a deposit does not fully cover all related costs or is not established prior to work starting, as set forth in Section 2. Deposit Requirements, reimbursement of all applicable costs shall be required as follows:

a. **Invoicing**: The City shall provide itemized invoices to the Applicant detailing the Eligible Costs incurred during each billing period.

b. **Payment Due Date**: The Applicant shall pay the City for each invoice in full within thirty (30) calendar days of receipt.

c. **Late Payments**: Applicant acknowledges that the late payment of any Costs will cause City to incur additional costs, including administration and collection costs and processing and accounting of expenses (“Delinquency Costs”). If City has not received payment of all Costs within forty-five (45) calendar days of being provided the itemized invoices, the Invoice payment is considered overdue, and Applicant shall immediately be charged a late charge of five percent (5%) of the delinquent amount. City and Applicant recognize that the expenses that City shall suffer as a result of Applicant’s failure to make timely payments is difficult to ascertain and agree that said five percent (5%) late charge represents a reasonable estimate of the Delinquency Costs that would be incurred by City. City’s acceptance of any such late charge does not equate with a waiver of Applicant’s default with respect to the overdue amount or prevent City from exercising any rights and remedies available under this Agreement.

**5. Indemnity**

Applicant shall, to the greatest extent authorized by law, defend (with counsel of City’s choosing), indemnify, and hold harmless the 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 the Project, including any third party legal challenge to the processing or approval of the Project, the implementation of the Project, or the implementation of this Agreement. Applicant may defend against any such third party legal challenge as a Real Party in Interest using counsel of Applicant’s choice, and Applicant and City agree to cooperate in the joint defense of any legal challenge to the processing or approval of the Project or the implementation of this Agreement. Applicant’s indemnity obligations under this Section 5 shall survive the expiration or termination of this Agreement.

**6. No Commitment as to Future Approvals**

Nothing in this Agreement shall be construed as a commitment to grant or issue any preliminary or formal approvals in connection with the Project. Applicant agrees that it shall remain obligated to pay all Costs, regardless of whether any aspect of the Project is approved.

**7. Cessation of Processing**

The City may suspend or cease processing the Project if:

a. The Applicant fails to pay an invoice within thirty (30) calendar days; or

b. The Applicant fails to replenish the deposit as required under Section 2. The Applicant acknowledges that the City shall not be liable for delays resulting from cessation of processing due to non-payment.

**8. Termination**

This Agreement may be terminated by either Party upon thirty (30) days’ written notice. Upon termination, the Applicant shall remain responsible for reimbursing all Eligible Costs incurred up to the termination date.

**9.Integration Clause**

This Agreement constitutes the full, final, complete and entire agreement between the parties with respect to the subject matter of this Agreement, and there are no other terms, obligations, covenants, representations, statements, or conditions except as set forth in this Agreement. No change or amendment to this Agreement will be effective unless in writing and signed by the parties to this Agreement. This Agreement supersedes all prior agreements between the parties with respect to the subject matter of this Agreement.

**10. CEQA Processing**

Applicant acknowledges and agrees that the City is the lead agency under CEQA, that the environmental review document(s), including but not limited to, an Initial Study, Environmental Impact Report (including project or program level review, supplemental EIR, subsequent EIR, or addendum), mitigated negative declaration, negative declaration, and/or notice of exemption, must reflect City’s independent judgment and that City retains full discretion with respect to all findings to be made in connection therewith.

**11. Successors and Assigns**

Neither Party may assign and/or transfer any interest in this Agreement without the prior written consent of the other Party hereto. This Agreement shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

**9. General Provisions**

a. **Entire Agreement**: This Agreement constitutes the entire understanding between the Parties regarding reimbursement for the Project and supersedes all prior agreements or communications.

b. **Severability**: If any provision of this Agreement is found to be invalid, the remaining provisions shall remain in full force and effect.

c. **Governing Law**: This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any suit or action initiated by any party shall be brought in the County of Marin, California.

d. **Notices**: All notices required under this Agreement shall be delivered to the following addresses:

**City of San Rafael**  
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: [111 Morphew St. or 1400 Fifth Ave.], San Rafael, CA 94901\_\_\_\_\_\_\_\_\_\_\_

**Applicant**  
Name:

Title:

Address:

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day, month and year first above written.

|  |  |
| --- | --- |
| **City OF SAN RAFAEL:**      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Name:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title:    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    APPROVED AS TO FORM:  **Office of the City Attorney**      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Name:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title:    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Contractor:**      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By:       \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title:    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_      [If Contractor is a corporation, add signature of second corporate officer]    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By:       \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title:    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |