

**CITY OF SONOMA PLANNING DEPARTMENT/AND PUBLIC
WORKS DEPARTMENT COST BASED FEE RECOVERY SYSTEM**

REVISED 06/17/20

PROJECT NUMBER:

Agreement for Payment of Full Cost Recovery Fees for Application Processing and Inspection Services

(Not required for flat fee applications; contact Planning Department if you have any questions.)

_____ (“Owner”) and _____
[developer’s name if different from Owner] (collectively, “Applicant”) agree(s) to pay to the City of Sonoma all reimbursable costs, both direct and indirect, including State-mandated costs, associated with review and processing of all applications for land use entitlements and/or encroachment or grading permit and inspection(s) (collectively, “application”) with respect to the property located at _____
 (“subject property”) [*Location, Address or Assessor ‘s Parcel Number(s)*] and the project referred to as

_____ (“project”) even if the application is withdrawn or not approved. Reimbursable costs include but are not limited to all items within the scope of the City’s adopted Cost-Based Fee Recovery System. (adopted by City Resolution No. 86-2018, as same and/or its attachments may be amended from time to time), as well as the cost of retaining professional and technical consultant services and any services necessary to perform functions related to review and processing of the application and inspection of the work.

Owner and Applicant understand that one or more deposits will be required to be paid by Owner and/or Applicant to cover the costs noted above at such time(s) and of such amounts as requested by the Planning and Community Development Director, the Public Works Director, or designee. Upon the execution of this Agreement, the Applicant shall deposit with the City an initial amount of \$_____ against which the City’s reimbursable costs shall be charged on a monthly basis. The

City shall deliver monthly statements to the Applicant showing the reimbursable costs incurred by the City during the previous month. Said statements shall show how much of the deposit is being used to pay for the invoiced monthly costs, how much of the deposit remains and how much the Applicant must pay to the City, if anything. With the monthly invoice, the City shall supply to the Applicant the necessary documentation supporting the amounts charged against the Applicant’s deposit and/or for which the City is demanding payment. Failure of the Applicant to object to an invoice, its contents and/or its supporting documentation, in writing, within 30 days of Applicant’s receipt of said invoice shall be deemed a conclusive waiver of any such objection. In the event an objection to an invoice is timely made, and the City incurs additional costs in reviewing, researching and responding to said objection, said additional costs shall be charged against the deposit or, if there is insufficient deposit to pay said additional costs, they shall be paid by the Applicant to the City within 30 days of the City’s notice to the Applicant to pay said additional costs; provided, however, that such additional costs shall not be charged against the deposit or paid by Applicant if the objection reveals that the objected-to item in the invoice was incorrect or inaccurate in any way.

In the event the deposit falls or, within 30 days is anticipated to fall, below 50% of the original amount of the deposit, the Applicant shall, within 15 days after notice from the City, replenish the deposit to its original amount. Applicant shall pay to the City any other amounts demanded to be paid by the City pursuant to this Agreement within 15 days after receiving notice from the City to pay said amount(s). Any amounts not paid by Applicant shall accrue interest at the rate of 1% per month or 12% per annum until fully paid.

In the event any approval is appealed, additional amounts shall be required to be paid to the City by the Applicant, and payment thereof shall be a condition precedent to the processing of any such appeal.

City agrees to review and process the application in accordance with this Agreement and all applicable laws, regulations, ordinances, standards and policies. This agreement applies to all subsequent applications related to the project.

Owner and Applicant understand and agree that nonpayment or untimely payment of any amount owed hereunder may, at the sole and exclusive discretion of the Community Development Director or Public Works Director, result in temporary or permanent cessation of processing of the application or inspection of the work and, after notice, may result in (i) the denial of the application,

(ii) an order requiring cessation of all work, and/or (iii) the withholding of permits, plan checks, entitlements, approvals and/or certificates. In the event of the Applicant's breach of this Agreement, Applicant waives any rights under the California Permit Streamlining Act should the City cease processing any application. Prior to completion of processing of any phase of the project and/or the issuance of occupancy permits, any and all outstanding amounts due pursuant to this agreement shall be paid.

In any legal action arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including costs and attorneys' fees.

As part of this application, the Applicant agrees to defend, indemnify, release and hold harmless the City, its agents, offices, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnitees"), the purpose of which is to attack, set aside, void or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by or awarded to any person or entity, including the Applicant, third parties and/or the indemnitees, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnitees.

Nothing in this agreement shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that the Applicant is required to defend the indemnitees in connection with any said claim, action or proceeding, the City shall retain the right to (i) approve the counsel to so defend the indemnitees, (ii) approve all significant decisions concerning the matter in which the defense is conducted, and (iii) approve any and all settlements, which approvals shall not be unreasonably withheld by the City.

The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the Applicant in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own defend any claim, action or proceeding where the Applicant has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City.

The Applicant also agrees to so indemnify the indemnitees for all costs incurred in additional investigation or study, or for supplementing, redrafting, revising or amending any document (e.g., the EIR, Specific Plan Amendment, Specific Plan, General Plan Amendment, Rezone, etc.) if such is made necessary by the claim, action or proceeding and if the Applicant desires approvals from the City which are conditioned on the approval of said documents.

The undersigned Owner hereby represents that he/she is the sole owner(s) of the subject property. The other Applicant warrants that s/he is a duly authorized agent of the Owner with full authority to execute this Agreement. All Applicants agree to be jointly and severally liable for payment of all fees and costs referenced above. Applicant agrees to notify City in writing prior to any change in ownership and to submit a written assumption of the obligations under this Agreement

signed by the new owner or his/her authorized agent.

Owner agrees that delinquent amounts shall constitute a lien on the subject property and expressly consents to recordation of a notice of lien and/or copy of this Agreement against the subject property with respect to any amounts which are delinquent.

Name of Property Owner: _____

Signature of Property Owner: _____ Date: _____

Telephone _____

Address: _____

_____ Date: _____

Signature of Other Applicant

Address: _____

_____ Date: _____

Signature of Staff Member Verifying Agreement Complete

ATTACH ACKNOWLEDGMENTS

If this Agreement is signed on behalf of a corporation, limited liability company or limited partnership, then the majority shareholder, managing member or general partner, respectively, must sign the personal guarantee below.

PERSONAL GUARANTEE

The undersigned warrants that s/he is the _____ [majority shareholder, managing member, general partner] of _____ ("Owner"). For good and valuable consideration, the undersigned absolutely and unconditionally guarantees the timely performance of, promises to perform the obligations of and guarantees to make the payments required to be made by _____ [state the name of the entity] (collectively, "indebtedness") as set forth hereinabove. This guarantee shall take effect upon the date first written above and continue in full force until all indebtedness shall have been fully paid and satisfied. The undersigned waives any right to require the City to (a) make any presentment, protest, demand or notice of any kind, including notice of change of any terms of the indebtedness, default by the Owner, any action or nonaction taken by the Owner, or the creation of new or additional indebtedness; (b) proceed against any person, including the Owner, before proceeding against the undersigned; (c) proceed against any collateral for the indebtedness; (d) apply any payments or proceeds received against the indebtedness in any order; and/or (g) pursue any remedy or course of action in the City's power whatsoever. The undersigned agrees to any modification or change in the terms of the indebtedness, whatsoever.

Name: _____
Title: _____

ATTACH ACKNOWLEDGMENT