

## AMENDMENT TO CONTRACT

# 1

The County of San Benito ("COUNTY") and Miller Starr Regalia ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

### 1. Existing Contract.

#### a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated March 4, 2014.

#### b. Prior Amendments. (Check one.)

☐ The initial contract previously has not been amended.

☒ The initial contract previously has been amended. The date(s) of prior amendments are as follows: September 22, 2015

#### c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit A and made a part of this amended contract.

### 2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

#### a. Term of the Contract. (Check one.)

☒ The term of the original contract is not modified.

☐ The term of the original contract (Exhibit A) is extended from the current expiration date of \_\_\_\_\_, to a new expiration date of \_\_\_\_\_.

**b. Scope of Services. (Check one.)**

- ☐ The services specified in the original contract (Exhibit A) are not modified.
- ☒ The services specified in the original contract (Exhibit A) are modified as specified below: (Check one.)
- ☒ The services specified in the original contract are modified only as specified below:

**Modified or New Scope of Services:**

*(Insert modified or new services.)*

**Paragraph 1 CONTRACTOR SERVICES of the original contract (Exhibit A) is hereby amended to add the following to the end of Paragraph 1:**

- (1) Following the County's certification of the Final EIR and approval of the initial project entitlements, advise and assist COUNTY COUNSEL and staff with respect to implementation of the project's conditions of approval and provisions in the Development Agreement, in reviewing and/or preparing draft staff reports, resolutions, fiscal impact analyses, findings in connection with applicable public hearing processes, etc.. Such implementation measures may include, but are not limited to the following:
- (1) Geological Hazards Abatement District (CFD) formation;
  - (2) Community Facilities District (CFD) formation;
  - (3) Water Supply Verification (WSV) and Water Supply Assessment (WSA) issues; and
  - (4) other condition compliance and implementation issues.

**All other provisions of Paragraph 1 not expressly modified above, shall remain the same.**

- ☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

**Scope of Services:**

*(Insert new services to replace original services in their entirety.)*

c. **Payment Terms.** (Check one.)

- ☐ The payment terms in the original contract (Exhibit A) are not modified.  
☒ The payment terms in the original contract (Exhibit A) are modified as specified below: (Check one.)  
☒ The payment terms are modified only as specified below:

**Modified or New Payment Terms:**

*(Insert modified or new payment terms.)*

**Paragraph 3 CONTRACTOR COMPENSATION of the original contract (Exhibit A) is hereby amended to add additional compensation in the amount of Thirty-Five Thousand dollars (\$35,000.00) to the budget. Accordingly, Paragraph 3 is hereby amended to read as follows:**

**3. CONTRACTOR COMPENSATION**

Total compensation for the services and reimbursable expenses pursuant to this AGREEMENT shall not exceed Three Hundred, Twenty Thousand dollars (\$320,000.00). CONTRACTOR shall notify COUNTY when 75% of the maximum compensation limit has been billed.

**All other payment terms not expressly modified above, shall remain the same.**

- ☐ The payment terms are deleted in their entirety and replaced with the following payment terms:

**Payment Terms:**

*(Complete payment terms to replace original payment terms in their entirety.)*

d. **Other Terms.** (Check one.)

- ☐ There are no other terms of the original contract (Exhibit A) that are modified.  
☒ Other terms of the original contract (Exhibit A) are modified only as specified below:

**Other Modified or New Terms:**

*(Insert other modified or new terms.)*

**Paragraph 5 TERM OF AGREEMENT of the original contract (Exhibit A) is hereby amended to read as follows:**

**5. TERM OF AGREEMENT**

This AGREEMENT shall commence on March 4, 2014, and continue in full force and effect until the earlier of the date (a) the work is completed, (b) \$320,000.00 of the services and reimbursable expenses have been incurred, or (c) the AGREEMENT is extended or terminated as provided in this AGREEMENT.

**All other terms of the original contract (Exhibit A) not expressly modified above, shall remain the same.**

3. **Other Terms.**

All other terms and conditions of the original contract (Exhibit A) which are not changed by this amendment shall remain the same.

**CONTRACTOR**

Nadia L. Costa  
Name/Title: Nadia L. Costa 843

6/17/16  
Date

**COUNTY**

San Benito County Board of Supervisors

Robert Rivas, Chair

          
Date

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel's Office

Shirley L. Murphy  
Shirley L. Murphy, Deputy County Counsel

June 17, 2016  
Date

**EXHIBIT A  
TO AMENDMENT # 2**

**ORIGINAL  
CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

## AMENDMENT TO CONTRACT

# 1

The County of San Benito ("COUNTY") and Miller Starr Regalia ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

### 1. Existing Contract.

#### a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated March 4, 2014.

#### b. Prior Amendments. (Check one.)

☒ The initial contract previously has not been amended.

☐ The initial contract previously has been amended. The date(s) of prior amendments are as follows: \_\_\_\_\_

#### c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit A and made a part of this amended contract.

### 2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

#### a. Term of the Contract. (Check one.)

☒ The term of the original contract is not modified.

☐ The term of the original contract (Exhibit A) is extended from the current expiration date of \_\_\_\_\_, to a new expiration date of \_\_\_\_\_.

#### b. Scope of Services. (Check one.)

☐ The services specified in the original contract (Exhibit A) are not modified.

☒ The services specified in the original contract (Exhibit A) are modified as specified below: (Check one.)

☒ The services specified in the original contract are modified only as specified below:

#### Modified or New Scope of Services:

*(Insert modified or new services.)*

Paragraph 1 CONTRACTOR SERVICES of the original contract (Exhibit A) is hereby amended to replace Sean Marciniak with Matt Henderson, as one of the key persons designated to provide services under this contract.

Paragraph 1 is further amended to add the following to the end of Paragraph 1:

During the course of SEIR preparation, CONTRACTOR encountered a number of circumstances that have required substantial additional work beyond the originally approved scope of work and fee, including but not limited to extended review and comment regarding the SEIR (both draft and final) and technical reports; analysis and advice regarding CEQA considerations; additional analysis of the policies in the recently adopted 2035 General Plan Update; and extended negotiations regarding the Development Agreement, all of which require additional time estimated between 105 and 225 hours, in order to complete the services described in paragraph 1(b), 1(e), 1(f), 1(g), 1(h), 1(i), 1(j) and 1(m).

All other provisions of Paragraph 1 not expressly modified above, shall remain the same.

- ☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

**Scope of Services:**

*(Insert new services to replace original services in their entirety.)*

c. **Payment Terms. (Check one.)**

- ☐ The payment terms in the original contract (Exhibit A) are not modified.  
☒ The payment terms in the original contract (Exhibit A) are modified as specified below: (Check one.)  
☒ The payment terms are modified only as specified below:

**Modified or New Payment Terms:**

*(Insert modified or new payment terms.)*

Paragraph 3 CONTRACTOR COMPENSATION of the original contract (Exhibit A) is hereby amended to add additional compensation in the amount of Eighty-Four Thousand, Three Hundred, Seventy-Five dollars (\$84,370.00) to the budget. Accordingly, Paragraph 3 is hereby amended to read as follows:

**3. CONTRACTOR COMPENSATION**

Total compensation for the services and reimbursable expenses pursuant to this AGREEMENT shall not exceed Two Hundred, Eighty-Five Thousand dollars (\$285,000.00). CONTRACTOR shall notify COUNTY when 75% of the maximum compensation limit has been billed.

All other payment terms not expressly modified above, shall remain the same.

- ☐ The payment terms are deleted in their entirety and replaced with the following payment terms:

**Payment Terms:**

*(Complete payment terms to replace original payment terms in their entirety.)*

d. **Other Terms.** (Check one.)

- ☐ There are no other terms of the original contract (Exhibit A) that are modified.  
☒ Other terms of the original contract (Exhibit A) are modified only as specified below:

**Other Modified or New Terms:**

*(Insert other modified or new terms.)*

**Paragraph 5 TERM OF AGREEMENT** of the original contract (Exhibit A) is hereby amended to read as follows:

**5. TERM OF AGREEMENT**

This AGREEMENT shall commence on March 4, 2014, and continue in full force and effect until the earlier of the date (a) the work is completed, (b) \$285,000.00 of the services and reimburseable expenses have been incurred, or (c) the AGREEMENT is extended or terminated as provided in this AGREEMENT.

**Paragraph 29 NON-EXCLUSIVE AGREEMENT** of the original contract (Exhibit A) inadvertently referred to the Santana Ranch project. Accordingly, Paragraph 29 is hereby amended to read as follows:

**29. NON-EXCLUSIVE AGREEMENT**

This AGREEMENT is non-exclusive and COUNTY retains the right to contract with any other attorney or law firm to provide any legal services desired by COUNTY concerning the San Juan Oaks project.

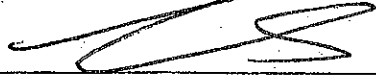
**All other terms of the original contract (Exhibit A) not expressly modified above, shall remain the same.**

**3. Other Terms.**

All other terms and conditions of the original contract (Exhibit A) which are not changed by this amendment shall remain the same.



**CONTRACTOR**



Name/Title: Nadia L. Costa

Sept. 16, 2015

Date

**COUNTY**

San Benito County Board of Supervisors



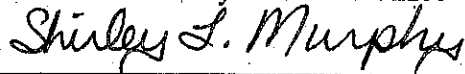
Margie Barrios, Chair

9/22/15

Date

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel's Office



Shirley L. Murphy, Deputy County Counsel

Sept. 16, 2015

Date

**EXHIBIT A**  
**TO AMENDMENT # 1**

**ORIGINAL**  
**CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

LEGAL SERVICES AGREEMENT BETWEEN COUNTY OF SAN BENITO  
AND MILLER STARR REGALIA

SAN JUAN OAKS

THIS LEGAL SERVICES AGREEMENT ("AGREEMENT") is by and between the County of San Benito ("COUNTY") and Miller Starr Regalia ("CONTRACTOR").

1. CONTRACTOR SERVICES

COUNTY hereby retains CONTRACTOR as an independent contractor through the services of the following key persons: Nadia Costa and Sean Marciniak, and such other partners, associates and staff members employed by CONTRACTOR as CONTRACTOR deems necessary and COUNTY'S County Counsel ("COUNTY COUNSEL"), or his or her designee, approves by email or other written document. CONTRACTOR shall not replace any of the key persons named above without the prior express approval of the COUNTY COUNSEL or his or her designee.

The services to be performed by CONTRACTOR in this AGREEMENT shall consist of legal services, including, but not limited to, advice, assistance and representation, with respect to the management and processing of the application submitted by the developers for the land use project known as San Juan Oaks Specific Plan Project ("San Juan Oaks" or "Project") and shall include legal services concerning all aspects of the land use application, as assigned by COUNTY COUNSEL. Services to be provided shall include litigation and litigation support should that become necessary, although a separate scope of work with an estimated budget shall be prepared before proceeding with any litigation.

During the term of this Agreement, CONTRACTOR shall perform legal services in the following more specific areas concerning the San Juan Oaks Project and shall use diligent and good faith efforts to complete said legal services consistent with the indicated time frames, as appropriate and as directed by COUNTY COUNSEL:

- (a) Review and comment, as directed by COUNTY COUNSEL, on the San Juan Oaks Specific Plan, particularly as it may relate to implementation issues and ensuring consistency with the project description in the Project's environmental impact report ("EIR"). (Estimated time: 10-15 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (b) Advise COUNTY COUNSEL and staff regarding various legal issues related to CEQA considerations, as needed, throughout the Project's CEQA process. (Estimated time: 20-40 hrs., to be completed throughout the Project's environmental review process as directed by COUNTY COUNSEL)
- (c) Review and provide comments on the Administrative Draft EIR for purposes of legal sufficiency. Said scope assumes that CONTRACTOR will provide one (1) set of detailed written comments on the Administrative Draft EIR. (Estimated time: 40-80 hrs., to be completed within two (2) weeks of direction from COUNTY COUNSEL to proceed)

- (d) Review and provide comments (if needed) on the Screencheck Draft EIR for the limited purpose of confirming that all legal comments have been adequately addressed. (Estimated time: 10-40 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (e) Advise COUNTY COUNSEL and staff regarding various environmental issues raised in comments to the Draft EIR and assist the Project's environmental consultant and County in preparing Responses to Comments to the Draft EIR and preparing the Final EIR. Said scope assumes that Rincon will prepare the first draft of all Responses to Comments (except those that may raise specific legal issues, in which case CONTRACTOR and COUNTY COUNSEL will prepare the first draft of any such responses) and administrative Final EIR, and that CONTRACTOR will provide one (1) set of detailed written comments on the administrative Final EIR and Responses to Comments. (Estimated time: 40-80 hrs., to be completed within two (2) weeks of direction from COUNTY COUNSEL to proceed)
- (f) Review and provide comments (if needed) on the Screencheck Final EIR for the limited purpose of confirming that all legal comments have been adequately addressed. (Estimated time: 10-25 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (g) Review and provide comments on staff reports, Project conditions of approval, draft resolutions and ordinances, as well as draft findings in connection with the public hearing process for the Project. (Estimated time: 10-20 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (h) Advise COUNTY COUNSEL and staff, and meet with the Project applicant, as appropriate, to finalize the EIR, development agreement, and other documents associated with the County decisionmakers' consideration of the Project. (Estimated time: 10-40 hrs., to be completed throughout the Project's entitlement process as directed by COUNTY COUNSEL)
- (i) Advise COUNTY COUNSEL and staff, and meet with the Project applicant team, as appropriate, to address potential utility service, other technical issues, and the formation of any potential financing districts or mechanisms, and any legal issues related thereto. (Estimated time: 15-45 hrs., to be completed throughout the Project's entitlement process as directed by COUNTY COUNSEL)
- (j) Work with COUNTY COUNSEL, staff and the Project applicant to negotiate and prepare the draft Development Agreement. (Estimated time: 40-80 hrs., to be completed throughout the Project's entitlement process as directed by COUNTY COUNSEL)
- (k) Advise COUNTY COUNSEL and staff with respect to the consistency of the Project with the General Plan (as needed), including recommendations to the

County of means by which any policy issues raised by this analysis could be addressed and resolved. (Estimated time: 10-30 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)

- (l) Advise COUNTY COUNSEL and staff with respect to the consistency of the Project with the County Code (as needed), including recommendations to the County of means by which any policy issues raised by this analysis could be addressed and resolved. (Estimated time: 10-15 hrs., to be completed within one (1) week of direction from COUNTY COUNSEL to proceed)
- (m) Prepare for and participate in the public hearing process for the Project, as requested by COUNTY COUNSEL and staff. (Estimated time: 10-25 hrs.)

Notwithstanding the specificity of the foregoing, CONTRACTOR may be requested to perform legal services in other areas, and to coordinate the legal services provided to COUNTY, in connection with the San Juan Oaks Project. CONTRACTOR has not been engaged to act as counsel for; or to assume any duties to, any other parties who may be affiliated with or related to COUNTY, such as financing districts.

## 2. CONTRACTOR PERFORMANCE

CONTRACTOR shall provide only those services that are necessary to carry out the work specified herein for COUNTY in an efficient and effective manner. CONTRACTOR shall provide only those services assigned by County Counsel and all matters shall be handled in collaboration with that office. CONTRACTOR acknowledges that COUNTY is relying on a Reimbursement Agreement with Developer (attached as Exhibit 1 and incorporated herein by reference) and deposit by the Developer to pay CONTRACTOR'S fees. CONTRACTOR agrees to comply with any applicable or relevant terms of the Reimbursement Agreement between COUNTY and Developer. Estimates of work and expected monthly costs shall be provided as required by COUNTY.

All invoices for work performed are subject to review and approval by COUNTY COUNSEL. CONTRACTOR shall avoid unnecessary duplicative efforts on the part of CONTRACTOR and CONTRACTOR'S partners, associates and staff members. CONTRACTOR shall keep COUNTY informed of progress and developments and respond promptly to COUNTY inquiries and communications.

Costs involved in training or learning of CONTRACTOR personnel shall not be charged to COUNTY. In order to avoid duplication of effort and to minimize legal fees, CONTRACTOR shall limit the number of attorneys or staff attending meetings or proceedings to those necessary as agreed to by COUNTY. To avoid duplication of effort and keep the cost of legal and other research to a minimum, significant research projects should be discussed with COUNTY COUNSEL prior to commencement of such work. It is inappropriate for COUNTY to pay legal fees for research on basic issues of law, especially where outside counsel has been hired for a specific area of expertise.

### 3. CONTRACTOR COMPENSATION

Total compensation for the services and reimbursable expenses pursuant to this AGREEMENT shall not exceed Two Hundred Thousand, Six Hundred, Twenty-Five dollars (\$200,625). CONTRACTOR shall notify COUNTY when 75% of the maximum compensation limit has been billed.

#### A. FEE COMPENSATION:

COUNTY agrees to pay and CONTRACTOR agrees to accept as full compensation for performance of tasks under this AGREEMENT the following sum per hour per person:

A "blended rate" for all attorneys, including the key persons: \$375/hour.

Upon the prior approval, by email or other writing, of the COUNTY COUNSEL or his or her designee, CONTRACTOR may provide additional partners, associates, paralegals or staff employed by its firm to provide services under this AGREEMENT.

#### B. EXPENSES:

CONTRACTOR shall be reimbursed for actual, reasonable and necessary out-of-pocket expenses as follows: telephone charges, matter specific computer research charges, filing fees, printing and photographic reproduction expenses, court reporter's fees and all other directly related expenses, excluding facsimile charges and postage charges. COUNTY'S reimbursement for said expenses shall be the cost of the expenses to the CONTRACTOR.

CONTRACTOR shall not be reimbursed for secretarial, clerical, word processing or typist services (including overtime hours worked), travel expenses or attorneys' time while traveling, or normal office operating expenses, with the exception of those charges and expenses stated above. In addition, CONTRACTOR shall not be reimbursed for such services performed or expenses incurred regardless of whether such tasks are performed or expenses incurred by CONTRACTOR'S partners, associate attorneys or anyone else.

### 4. PAYMENT PROVISIONS

Subject to Section 3 of this AGREEMENT, payment of compensation for the services provided and reimbursement for related, actual, reasonable and necessary out-of-pocket expenses incurred which are described here shall be made by COUNTY every 30 days after submission of an itemized invoice by CONTRACTOR. All such invoices shall have sufficient detail as may be required by COUNTY'S Auditor.

### 5. TERM OF AGREEMENT

This AGREEMENT shall commence on March 4, 2014, and continue in full force and effect until the earlier of the date (a) the work is completed, (b) \$200,625 of services and reimbursable expenses have been incurred, or (c) the AGREEMENT is extended or terminated as provided in this AGREEMENT.

## **6. TERMINATION**

COUNTY may terminate this AGREEMENT with or without cause at any time. CONTRACTOR may withdraw and terminate this AGREEMENT with COUNTY'S consent or for good cause, if permitted under the Rules of Professional Conduct of the State Bar of California. CONTRACTOR, in order to terminate this AGREEMENT, shall give at least 30 days' advanced written notice to COUNTY. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of termination.

## **7. CONTRACTOR DUTIES UPON TERMINATION**

Upon termination of the AGREEMENT, all finished or unfinished documents, data, studies, maps, photographs, reports and other materials (hereinafter collectively referred to as "materials") prepared by CONTRACTOR under this AGREEMENT shall become property of COUNTY and shall be delivered to COUNTY promptly. Upon receipt of such materials CONTRACTOR shall be paid for services performed and reimbursable expenses incurred to the date of termination.

## **8. NON-EXCLUSIVE REMEDIES**

COUNTY'S right to terminate this AGREEMENT is not its exclusive remedy but is in addition to all other remedies provided to COUNTY by law, in equity, or under the provisions of this AGREEMENT.

## **9. NO SPECIAL DAMAGES**

In no event shall COUNTY be liable to CONTRACTOR for any direct, special or consequential damages or lost profits arising out of or relating to this AGREEMENT or the performance or breach thereof. CONTRACTOR promises, covenants and warrants that the performance of its services and representation to COUNTY under this AGREEMENT shall not result in a conflict of interest as that term is used in the Rules of Professional Conduct of the State Bar of California. In the event of a conflict of interest or a potential conflict, CONTRACTOR shall disclose such conflict to COUNTY COUNSEL and shall request COUNTY'S Board of Supervisors waive such conflict on a case-by-case basis.

## **10. INDEPENDENT CONTRACTOR**

CONTRACTOR and its officers and employees, in the performance of this AGREEMENT, are independent contractors in relation to COUNTY and not officers and employees of COUNTY. Nothing in this AGREEMENT shall create the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits including, but not limited to, federal and state income taxes, social security taxes or ERISA retirement benefits, which taxes arise out the performance of this AGREEMENT. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. No person performing the work or services described herein shall be considered an officer, agent, servant or employee of COUNTY, nor shall any such person be entitled to any benefits available or granted to employees of COUNTY.

**11. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES**

The services to be performed by CONTRACTOR are personal in character, except as specifically authorized herein. No rights under this AGREEMENT may be assigned and no duties under this AGREEMENT may be delegated by CONTRACTOR without the prior written consent of COUNTY and any attempted assignment or delegation without such consent shall be void.

**12. NONDISCRIMINATION**

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this AGREEMENT on any legally impermissible basis including the basis of race, color, national origin, ancestry, age, sex or disability of such person.

**13. GOVERNING LAW; VENUE**

This AGREEMENT shall be construed and enforced in accordance with the laws of the State of California. Proper venue for legal action regarding this AGREEMENT shall be in COUNTY of San Benito.

**14. ENTIRE AGREEMENT**

This AGREEMENT is the entire AGREEMENT of the parties. There are no understandings or agreements pertaining to this AGREEMENT except as are expressly stated in writing in this AGREEMENT or in any document attached hereto or incorporated herein by reference.

**15. INDEMNIFICATION**

CONTRACTOR shall indemnify, defend and hold harmless County of San Benito, its officers, agents and employees from and against any claim, liability, loss, injury or damage whatsoever arising as a result of and during the performance of this AGREEMENT by CONTRACTOR and/or its agents, officers or employees, including, but not limited to, claims for property damage, personal injury, death and any legal expenses (such as attorney's fees, court costs, investigation costs and expert fees) excepting only the extent of loss, injury or damage caused by the negligence or willful misconduct of personnel employed by COUNTY. It is the intent of the parties of the AGREEMENT to provide the broadest possible coverage for COUNTY. The term "performance" includes action or inaction of a party of its officers and employees.

**16. GENERAL INSURANCE REQUIREMENTS**

Without limiting CONTRACTOR'S duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements as follows:

- (a) Comprehensive General Liability Insurance: One million dollars each; two million dollars aggregate.



- (b) Professional Liability Insurance: Ten million dollars each; ten million dollars aggregate;
- (c) Comprehensive Motor Vehicle Liability Insurance: One million dollars.

Those insurance policies mandated by the provisions stated above shall satisfy the following requirements: (a) each policy shall be issued by a company authorized by law to transact business in the state of California, (b) CONTRACTOR shall ensure that COUNTY shall be given notice in writing at least 30 days in advance of any change, cancellation or non-renewal of each policy, unless such change, cancellation or non-renewal thereof provides for a new policy which satisfies the provisions mandated above; (c) the comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming COUNTY of San Benito and its officers, agents and employees as additional insured, and (d) the required coverage shall be maintained in effect throughout the term of this AGREEMENT.

#### 17. INSURANCE COVERAGE REQUIREMENTS

If required by the insurance coverage addressed in the preceding section, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this AGREEMENT:

- (a) Comprehensive General Liability Insurance: CONTRACTOR shall maintain comprehensive general liability insurance covering all of CONTRACTOR'S operations with the combined single limit of not less than the amount set out in the preceding section.
- (b) Professional Liability Insurance: CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in the preceding section.
- (c) Comprehensive Motor Vehicle Liability Insurance: CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this AGREEMENT with a combined single limit of not less than the amount set out in the preceding section.
- (d) Workers Compensation Insurance: CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code §3700, either through workers' compensation issued by an insurance company or through a plan of self insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the Certificate of Insurance otherwise required by this AGREEMENT shall be replaced with a Consent to Self-Insure issued by the State Director of Industrial Relations.

#### 18. CERTIFICATE OF INSURANCE

Within thirty (30) days of the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file

Certificates of Insurance with COUNTY showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended Certificate promptly after any changes made in any insurance policy which would alter the Certificate then on file. In lieu of providing proof of insurance CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR'S self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this AGREEMENT within 30 days of such change.

#### **19. SEVERABILITY**

Should any provision herein be found or deemed to be invalid, this AGREEMENT shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect until the provisions of this AGREEMENT are declared to be severable.

#### **20. SUCCESSORS AND ASSIGNS**

Subject to the provisions of this AGREEMENT restricting CONTRACTOR'S right to assign or subcontract, the terms, covenants and conditions in the AGREEMENT shall bind and inure to the benefit of COUNTY and CONTRACTOR and, except as otherwise provided herein, their personal representatives, successors and assigns.

#### **21. NO RELIANCE ON REPRESENTATIONS**

Each party hereby represents and warrants that it is not relying and has not relied upon any representation or statement of the other party with respect to the facts involved or rights or duties of either party under this AGREEMENT. Each party understands and agrees the facts relevant or believed to be relevant to this AGREEMENT may hereunder turn out to be other than, or different from, the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree this AGREEMENT shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

#### **22. COUNTERPARTS**

This AGREEMENT may be executed in any number of counterparts each of which so executed shall be deemed an original. The counterpart shall together constitute one AGREEMENT.

#### **23. AUTHORITY AND CAPACITY**

CONTRACTOR and CONTRACTOR'S signatory each warrant and represent that each has full authority and capacity to enter into this AGREEMENT.

**24. WAIVER**

Waiver by either party of a breach of any covenant of this AGREEMENT shall not be construed to be a continuing waiver of any subsequent breach. COUNTY'S receipt of consideration with knowledge of CONTRACTOR'S violation of a covenant does not waive its right to enforce any covenant of this AGREEMENT. The parties shall not waive any provisions of this AGREEMENT unless the waiver is in writing and is signed by all parties.

**25. NOTICES**

All notices required by this AGREEMENT shall be in writing and shall be deemed to be duly given only if delivered personally or deposited in the United States mail, postage pre-paid, return receipt required, addressed to the other party at the address or addresses set forth below or at such other address the party may designate in writing in accordance with this section.

COUNTY: Shirley L. Murphy, Deputy County Counsel  
San Benito County Counsel's Office  
481 Fourth Street, Second Floor  
Hollister, CA 95023  
(831) 636-4040

CONTRACTOR Nadia L. Costa  
Miller Starr Regalia  
1331 North California Blvd., Fifth Floor  
Walnut Creek, CA 94596  
(925) 941-3235

**26. COMPLIANCE WITH APPLICABLE LAWS**

CONTRACTOR shall comply with all applicable federal, state and local laws now or hereafter in force and any applicable regulations in performing the work and providing the services specified in this AGREEMENT. This obligation includes, without limitation, the acquisition and maintenance of any licenses or any other entitlements necessary to perform the duties imposed expressly or impliedly under this AGREEMENT.

**27. NEGOTIATED AGREEMENT**

This AGREEMENT has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this AGREEMENT within the meaning of California Civil Code §1654.

**28. RESPONSIBILITY OF CONTRACT ADMINISTRATORS**

All matters concerning this AGREEMENT which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified in writing by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.


29. NON-EXCLUSIVE AGREEMENT

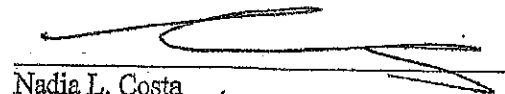
This AGREEMENT is non-exclusive and COUNTY retains the right to contract with any other attorney or law firm to provide any legal services desired by COUNTY concerning the Santana Ranch project.

The parties have caused this AGREEMENT to be executed by their duly authorized representatives.

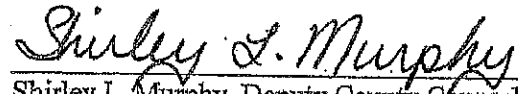
COUNTY OF SAN BENITO  
Board of Supervisors

MILLER STARR REGALIA

  
Jerry Muenzer, Chair  
Date: 3/4/14

  
Nadia L. Costa  
Date: 2/25/14

APPROVED AS TO LEGAL FORM:  
San Benito County Counsel's Office

  
Shirley L. Murphy, Deputy County Counsel  
Date: Feb. 25, 2014

## EXHIBIT 1

### REIMBURSEMENT AGREEMENT

This agreement ("Agreement") is made, and entered into this 20<sup>th</sup> day of December 2011 ("Effective Date") by and between the County of San Benito ("COUNTY") and San Juan Oaks, LLC and Ken Gimelli and Jill Gimelli, husband & wife ("collectively referred to as DEVELOPER").

WHEREAS, DEVELOPER intends to apply for a variety of approvals, including, but not limited to, a general plan amendment, specific plan, zone change petition, and amendment to vesting tentative subdivision map related to use of its property consisting of approximately 1,993 acres located off of Union Road in unincorporated San Benito County consisting of Assessor's Parcel Numbers 18-19-23, 18-19-33, 18-19-34, 18-20-56, 18-27-57, 18-20-58, 21-14-46, 21-14-53, 21-14-54, 21-19-06, 21-19-17, 21-19-30, 21-19-31, 21-19-32, 23-01-74 (the "Property"); and 153 acres located on San Justo Road in unincorporated San Benito County consisting of Assessor's Parcel Numbers 12-06-01 and 12-06-02 (the "Transfer of Development Credit Parcels") as shown on the attached Exhibit "A." DEVELOPER obtained a Vesting Tentative Map in 2004 for the development of the Property, said development to include a residential subdivision, a private golf course, a public golf course, a resort, and commercial use buildings. Thereafter, DEVELOPER revised its plans for the Property staying within the footprint of the existing Vesting Tentative Map to increase the number of residential units from 186 to 815, to eliminate the proposed private and public golf course, and to provide for 133 acres of common open space. For purposes of this Agreement, reviewing and processing DEVELOPER'S applications, including, but not limited to, all activities related to the entitlement processing, development, and construction of the above-referenced project and related uses shall be referred to as the "Project."

WHEREAS, DEVELOPER and COUNTY expect that the Project will require COUNTY to expend resources in working with DEVELOPER after DEVELOPER'S submission of applications for approval of the Project, including, but not limited to, processing of DEVELOPER'S applications, permits, maps and other entitlements related to the Project.

WHEREAS, COUNTY and DEVELOPER have agreed that DEVELOPER shall be responsible for reimbursing COUNTY for all costs and expenses incurred by COUNTY with respect to the Project, including costs of staff time, consultants', and attorneys' fees in accordance with the terms of this Agreement.

WHEREAS, COUNTY and DEVELOPER anticipate that the County Board of Supervisor's approval of the Project will include a condition, among other things, that DEVELOPER indemnify COUNTY and reimburse COUNTY for costs associated with said approval. NOW, THEREFORE, in consideration of the foregoing promises and in order to carry on the intent and purpose of applicable codes, ordinances, resolutions and regulations, DEVELOPER and COUNTY agree as follows:

## SECTION 1. THE SECURITY DEPOSIT

Posting of the Security Deposit. Upon execution of this Agreement, DEVELOPER shall deposit with COUNTY in a manner reasonably satisfactory to COUNTY the total amount of Seventy-Five Thousand Dollars (\$75,000) hereafter referred to as the "Security Deposit." The Security Deposit shall be held by the COUNTY as security for the full and faithful performance by the DEVELOPER of all the terms and conditions of this Agreement.

- (a) In the event that this Agreement is terminated in accordance with Section 6 below, the COUNTY and DEVELOPER shall meet in good faith to negotiate the form and amount of security, if any, that will be required to meet any post-termination indemnification obligations of the DEVELOPER. If no Agreement can be reached as to the amount of post-termination security required, the COUNTY and DEVELOPER shall use the alternative dispute resolution procedures set forth in SECTION 10 of this Agreement to resolve this issue.
- (b) Withdrawal of and Maintenance of Security Deposit. If DEVELOPER defaults on its obligations to provide and maintain any deposit required by this Agreement or to timely pay for any Project Costs as defined in SECTION 2 below, then COUNTY shall be entitled to draw upon the Security Deposit to recover any and all sums in default. The Security Deposit shall be required for as long as the DEVELOPER is bound by any financial obligation(s) under this Agreement. If County is required to draw upon the Security Deposit, DEVELOPER shall immediately replenish the Security Deposit and maintain with the COUNTY at all times a Security Deposit in the amount of the Seventy-Five Thousand Dollars (\$75,000) to secure payment to the COUNTY for Project Costs.
- (c) Schedule and Estimated Budget. Within sixty (60) days following execution of this Agreement, COUNTY will prepare and provide DEVELOPER with an estimate of staff and outside consultant expenses for processing of the PROJECT (the "Budget"). The Budget shall also include any and all other anticipated costs, including overhead charges. DEVELOPER will have fifteen (15) business days from receipt of the initial Budget to review and comment upon the Budget. The COUNTY will also provide a schedule and estimate of when such expenses are expected to be incurred. COUNTY will provide to DEVELOPER copies of any contracts with consultants. The schedule and estimated budget will be updated monthly and submitted along with the monthly summary reflecting reimbursable Project Costs forwarded to Developer pursuant to Section 3 of this Agreement. The COUNTY will set forth a timeline and will use reasonable efforts to maintain a Budget for its staff and consultants to satisfy milestones on such timeline. This timeline is in addition to the schedule and estimated budget referenced above, but can be submitted to DEVELOPER in the same document and updated from time to time. In preparing the Budget and in processing the Project, the COUNTY will at all times endeavor to keep costs down.

- (d) Investment. COUNTY shall maintain the Security Deposit in an interest-bearing dedicated account for the benefit of DEVELOPER. DEVELOPER acknowledges and agrees that it shall not receive any interest on the Security Deposit, in lieu of paying staff costs for account maintenance and interest tracking. COUNTY shall at all times maintain records as to the expenditure of the Security Deposit; provided, however, COUNTY may use the Security Deposit only as set forth herein. The Security Deposit may be invested by COUNTY in lawful investments, in accordance with COUNTY'S established investment policies.
- (e) Return of Deposit after County Approval. County shall return to DEVELOPER any funds remaining on deposit after one hundred and eighty (180) days have passed since COUNTY'S approval of the last discretionary permit or entitlement for full build-out of the Project, and the County has received from DEVELOPER payment of all Project Costs accrued, as required under Section 2 of the Agreement except to the extent that DEVELOPER has not satisfied its indemnification obligations per Section 7 of this Agreement.
- (f) Subsequent Replenishment of Security Deposit. In the event DEVELOPER seeks another discretionary permit(s) or entitlement(s) related to the Project after COUNTY returns any remaining funds on deposit pursuant to Section 1(e) of the Agreement, DEVELOPER shall replenish the Security Deposit in the total amount of Seventy-Five Thousand Dollars (\$75,000) or such other amount as COUNTY, in consultation with DEVELOPER, may determine to be reasonably necessary to secure payment of Project Costs as contemplated under the Agreement. DEVELOPER agrees to replenish the Security Deposit at the time DEVELOPER submits the application for such subsequent discretionary permit(s) or entitlement(s). DEVELOPER further agrees that any such application shall not be determined complete by COUNTY until the Security Deposit is replenished as required under this Section 1(f).

## SECTION 2. PROJECT COSTS TO BE REIMBURSED

DEVELOPER shall be responsible for payment of all reasonable direct and indirect costs incurred by COUNTY as a result of the Project ("Project Costs"), which are incurred by the COUNTY after the date of this Agreement. During the term of this Agreement, so long as DEVELOPER is fulfilling its obligations hereunder, COUNTY shall process DEVELOPER'S application(s) for the Project until such time as COUNTY approves or denies such application(s). Project Costs shall include, but are not limited to:

- (a) All actual COUNTY staff time, including, but not limited to, the Planning Department, Office of County Counsel, Public Works Department, Environmental Health, Administration, Clerk of the Board, GIS Department, County Fire, Integrated Waste, and the Clerk/Auditor/Recorder, expended on Project-related activities and/or litigation. Such staff time includes direct labor costs as well as departmental and indirect overhead costs. A schedule of all individuals anticipated to be working on the Project, and their hourly rates, is shown on the

attached Exhibit B. Also included in Exhibit B is an estimate of any overhead charges.

- (b) All actual costs, not specified in Section 2(a) above, expended on Project-related activities (e.g., costs of telephone, mileage, supplies, postage, etc.). Such costs shall not include general overhead, but shall be limited to cost incurred solely because of the Project. Any travel that will be in excess of twenty-five (25) miles must be approved in advance by DEVELOPER, which approval shall not be unreasonably withheld.
- (c) All actual costs of any outside consultants hired to assist COUNTY with Project-related activities and/or litigation, including, but not limited to, attorneys, planning and design consultants, engineers, hydrologists, traffic consultants, biologists, archeologists, CEQA consultants and other technical and professional consultants as deemed necessary by COUNTY in processing the Project. County shall use its best efforts to use COUNTY staff in lieu of outside consultants when COUNTY staff is available and can perform the same task for less cost than an outside consultant.

Should environmental review of the Project be necessary or should the County for any reason retain other outside consultants on this Project, before selecting any such consultants, the County shall meet and confer with DEVELOPER in order to obtain input regarding the consultants under consideration. In selecting a consultant, COUNTY shall consider the following factors, at a minimum: proposed price to complete work; extent of relevant experience; strength of references; strength of individual team members who would be tasked with key analyses; general reputation; and for any environmental consultant, its track record for preparing documents that have survived judicial challenge under the California Environmental Quality Act (CEQA). While COUNTY agrees to meet and confer with DEVELOPER prior to selecting any outside consultant and to consider the above factors, the COUNTY retains the sole discretion to select or hire any outside consultant.

### SECTION 3. PROCESS FOR REIMBURSEMENT OF PROJECT COSTS

- (a) COUNTY shall prepare and provide DEVELOPER (by regular mail, electronic mail or facsimile) monthly summaries reflecting all Project Costs set forth in Sections 2(a)-(c) above incurred during each month.
- (b) Following execution of this Agreement, DEVELOPER shall deposit with the COUNTY in a separate account (hereinafter the "Cost Deposit") the amount of Twenty-Five Thousand Dollars (\$25,000) to pay for all costs set forth in Sections 2 (a)-(c) and any other Project Cost(s). DEVELOPER agrees to replenish and maintain at all times a Cost Deposit balance of at least Twenty-Five Thousand Dollars (\$25,000). Failure by the DEVELOPER to maintain a Cost Deposit balance of \$25,000 shall be considered a default by the DEVELOPER of the terms and conditions of this Agreement. COUNTY and DEVELOPER agree to



meet in good faith and discuss adjustments to the amount of the Cost Deposit if the actual monthly expenditures for Project Costs routinely (defined as two or more consecutive months) exceed the amount of the Cost Deposit.

COUNTY shall maintain the Cost Deposit in an interest-bearing dedicated account for the benefit of DEVELOPER. DEVELOPER acknowledges and agrees that in lieu of paying staff costs for maintenance and tracking of interest, DEVELOPER elects to waive any interest on the Cost Deposit. COUNTY shall at all times maintain records as to the expenditure of the Cost Deposit; provided, however, COUNTY may use the Cost Deposit only as set forth herein. The Cost Deposit may be invested by COUNTY in lawful investments, in accordance with COUNTY'S established investment policies.

- (c) For those Project Costs set forth in Sections 2(a)-(c), COUNTY shall provide a written, monthly summary to DEVELOPER of all Project Costs charged by COUNTY against the Cost Deposit. The written summary shall be supported by appropriate documentation such as timesheets, invoices, and receipts; provided, however, that COUNTY shall have the right to redact from such documentation any information that the COUNTY reasonably determines is privileged, confidential, or not otherwise subject to release pursuant to the California Public Records Act (Gov't Code § 54950 *et seq.*). DEVELOPER shall approve or disapprove COUNTY'S reimbursement of all costs set forth in each such summary within ten (10) business days of receipt. If COUNTY does not receive a response from DEVELOPER within this ten business day timeframe, the requested reimbursement shall be deemed approved and COUNTY shall draw on the Cost Deposit to cover said Project Costs. In the event DEVELOPER notifies COUNTY in writing within this ten business day timeframe that it does not approve said reimbursement, COUNTY may still draw on the Cost Deposit to cover said Project Costs subject to resolution of this dispute in accordance with Section 10 below. For those Project Costs set forth in Section 2(c) above, COUNTY shall pay said costs directly to the outside consultants, list those payments on the monthly summary, and provide appropriate documentation indicating the name of each outside consultant and the services provided. In addition, COUNTY shall provide DEVELOPER on a monthly basis (by regular mail, electronic mail, or facsimile) a copy of any and all consultant invoices paid directly by COUNTY during the preceding month. COUNTY shall have the right to redact from such documentation any information that COUNTY reasonably determines is privileged, confidential, or not otherwise subject to release pursuant to the California Public Records Act (Gov't Code § 54950 *et seq.*).

#### SECTION 4. FEES, PERMITS AND COUNTY REGULATIONS

This Agreement replaces any "Use Permit", "Environmental", general plan amendment, specific plan, zone change petition, amendment to vesting tentative subdivision map and related application fees normally collected by the COUNTY on behalf of the County Counsel's Office, Environmental Health Department, County Fire, Public Works Department, and/or the Planning Department at the time an application for a proposed

project is made. Specifically, this Agreement replaces any "Use Permit" or "Environmental" fee contained in San Benito County Code of Ordinances Sections 5.01.049, 5.01.060, and 5.01.061. Any amount previously paid by DEVELOPER with the filing of its Use Permit application will be credited to the DEVELOPER against any future amount due and owing. Notwithstanding the foregoing, the DEVELOPER shall be responsible to pay any fee not expressly abrogated by this Agreement, including, but not limited to, any ministerial fee(s) on required Project permits such as building permits, grading permits, and the like, and any fees or expenses approved by the Planning Commission and/or Board of Supervisors that are made part of the Project's conditions of approval. Nothing in this Agreement shall be deemed to abrogate the responsibility of DEVELOPER to obtain any required permit(s) or comply with any laws associated with any applications, permits, studies, or construction activities related to the Project. This Agreement does not apply to any fees the DEVELOPER is required to pay to any entity other than the County of San Benito, any state or federal agency, or on any new application or project.

#### SECTION 5. TERM

Subject to Section 6, the term of this Agreement shall commence on the Effective Date and terminate upon the later of: one (1) year from the issuance of a certificate of completion for the last of the Project-related improvements; or (b) one (1) year from the last date that DEVELOPER is required to maintain Project-related improvements(s) set forth in any applicable improvement or development agreements related to the Project; or (c) one (1) year from the approval of the final phase of the Project. Nothing herein shall be deemed to abrogate DEVELOPER'S responsibility to pay for ongoing expenses, including litigation expenses, incurred by COUNTY as a result of Project-related activities, which activities occurred during the term of this Agreement. Nothing in this Agreement shall be construed to vest any rights to develop the Project or require COUNTY approval of the Project.

#### SECTION 6. TERMINATION

Developer may, at its option, terminate this Agreement at any time on thirty (30) days' prior written notice to COUNTY ("Termination Notice") if DEVELOPER determines not to proceed with the Project. In the event of termination, DEVELOPER shall be responsible for the payment of all Project Costs incurred up to and including the date of termination. County shall apply the sums maintained in the Security and Cost Deposit to any unreimbursed Project Costs through the termination date, and COUNTY shall then refund any remaining Security and Cost Deposit funds (including any interest earned thereon) to DEVELOPER within thirty (30) days of the date of termination.

## SECTION 7. INDEMNIFICATION

In addition to Project Costs, DEVELOPER shall defend, indemnify, and hold COUNTY free and harmless from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as "Legal Actions"), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys' fees, expert witness fees, and court costs) incurred by COUNTY arising (directly or indirectly) or resulting from the review, processing, consideration, or from the approval of DEVELOPER'S Project or action taken by COUNTY thereon. In the event DEVELOPER does not wish to defend any Legal Action either as party to said action or as Real Party-in-Interest, DEVELOPER will reimburse COUNTY for any damages, costs, or fees awarded pursuant to any default judgment or other judgment taken against the County as a result of its decision not to defend any Legal Action. The failure of the DEVELOPER to promptly reimburse the COUNTY for any damages, costs or fees, due and owing under this Section 7 shall entitle the COUNTY to draw upon any sums maintained by the DEVELOPER in the Security Deposit or Cost Deposit. DEVELOPER'S obligations pursuant to this SECTION 7 shall survive suspension or termination of this Agreement.

- (a) In the event the COUNTY'S processing of the Project results in any Legal Action being initiated, the COUNTY shall notify the DEVELOPER promptly of any such action. DEVELOPER will provide and take primary responsibility for the legal defense of itself and the COUNTY (hereinafter referred to as the "Joint Legal Defense") to the fullest extent possible. DEVELOPER shall defend COUNTY'S actions with competent legal counsel of DEVELOPER'S choice without charge to COUNTY, subject to COUNTY approval. Prior to selecting such legal counsel, DEVELOPER shall meet and confer with COUNTY in order to obtain COUNTY'S input on the question of whether such counsel is, indeed, competent with respect to the body of law at issue in the litigation. COUNTY shall not unreasonably withhold its assent to DEVELOPER'S choice of counsel where such counsel enjoys a good reputation with respect to work under such body of law and can point to notable successes in prior litigation involving that body of law. For purposes of this Agreement, a complaint including the recovery of attorney fees and costs will be considered a request for "monetary damages." The COUNTY and DEVELOPER shall cooperate in good faith in the defense of any Legal Action that names the COUNTY as a party and for which the DEVELOPER undertakes the primary responsibility for the Joint Legal Defense of in accordance with the terms of this Section 7. The COUNTY, through the County Counsel's Office, shall be kept apprised by the DEVELOPER and retained counsel of significant dates and hearings, shall receive copies of all pleadings filed in the matter by any party, and shall be allowed to participate in strategic decisions regarding the development of any applicable defense strategies and in preparing pleadings, prior to filing. DEVELOPER and COUNTY may enter into a "Joint Legal Defense Agreement" amending any terms hereto.
- (b) In the event of any Legal Action against COUNTY and/or DEVELOPER, COUNTY will protect from public disclosure to the fullest extent possible, any

communications between its attorneys and those representing DEVELOPER in said action. The parties intend that communications between County Counsel, retained counsel, and/or COUNTY staff, for purposes of the joint defense of a legal action, are entitled to the attorney-client privilege and/or work product privilege and are to be protected from disclosure through the exemption contained in Cal. Gov't. Code § 6254(b) and/or (k), Evidence Code section 954 and/or Code of Civil Procedure section 2018.030. Similarly, communications between County Counsel and Board of Supervisors will be held in Closed Session pursuant to Cal. Gov't. Code § 54956.9. Any Legal Action seeking to compel disclosure of privileged communications shall be defended by the DEVELOPER in accordance with the terms and conditions set forth in this Section 7.

- (c) Nothing contained in this Section 7, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, or appeal, or to decline settlement or to terminate or forego defense or appeal of a Legal Action at its own expense. In no event shall COUNTY be required to continue with a legal challenge, although COUNTY shall have the right to do so, in the event DEVELOPER fails to pay any amounts owing to COUNTY pursuant to this Agreement. In no event shall COUNTY have any obligation or liability to DEVELOPER in connection with COUNTY'S defense or prosecution of litigation related to the Project (including, but not limited to, the outcome thereof) or in the event COUNTY elects not to prosecute a case or defend litigation brought against it. The failure of the DEVELOPER to undertake the defense of any Legal Action within the scope of this Section 7 or the decision of the DEVELOPER to terminate, forego, or abandon the defense or appeal of a Legal Action may be treated by the COUNTY as an abandonment of the Project by the DEVELOPER and will relieve the COUNTY from any further duty, legal or otherwise, to continue to process the DEVELOPER'S Project.
- (d) If either COUNTY or DEVELOPER determines in good faith that common counsel presents a bona fide conflict of interest, then COUNTY may employ separate counsel to represent or defend the COUNTY, and DEVELOPER shall pay the reasonable attorneys' fees and costs of such counsel within thirty (30) days of receiving an itemized billing statement. Failure by the DEVELOPER to reimburse COUNTY for its separate counsel may be treated as an abandonment of the Project by the DEVELOPER.

## SECTION 8. NOTICES

All notices called for in this Agreement shall be given in writing by personal delivery, electronic mail or facsimile (with copy of such notice sent not later than the next day by mail or overnight private courier in accordance with the provision herein) or by overnight mail or overnight private courier. Facsimile notices shall be deemed received on the day sent if sent prior to 6:00 p.m. Pacific Time or if sent after 6:00 p.m. Pacific Time, then deemed received on the next day. 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 Section 8.

### To the COUNTY:

Gary Armstrong  
Planning Director  
County of San Benito  
3224 Southside Road  
Hollister, CA 95023  
e-mail: garmstrong@cosb.us  
fax no.: (831) 637-5354

### With a copy to:

Matthew W. Granger  
County Counsel  
County of San Benito  
481 Fourth Street  
Hollister, CA 95023  
e-mail: mgranger@cosb.us  
fax no.: (831) 636-4044

### To DEVELOPER:

Scott Fuller  
San Juan Oaks Golf Club  
3825 Union St.  
Hollister, CA 95023  
e-mail: scott@sanjuanoaks.com  
fax no.: (831) 636-6114

### With a copy to:

Bradley Matteoni  
Matteoni, O'Laughlin & Hechtman  
848 The Alameda  
San Jose, CA 95126  
e-mail: bradley@matteoni.com  
fax no.: (408) 293-4004

## SECTION 9. DEFAULT BY DEVELOPER

If DEVELOPER defaults in its obligations to provide and maintain the deposits required by this Agreement or to timely pay for any Project Costs as required under this Agreement, then COUNTY, at COUNTY'S option, may suspend any activities related to the Project upon thirty (30) days' written notice to DEVELOPER. During the pendency of any notice period, whether for monetary or non-monetary default(s), COUNTY, at COUNTY'S option, may suspend processing and/or consultant activities related to the Project until such default is cured by the DEVELOPER. COUNTY shall give DEVELOPER written notice of such default and any decision by the COUNTY to suspend processing and/or consulting activities related to the Project activities. Subject to Section 10 below, COUNTY may terminate this Agreement and institute legal proceedings, with no further notice to DEVELOPER, if such default is not remedied by DEVELOPER within thirty (30) days after such notice is given by COUNTY to

DEVELOPER. Upon such termination, COUNTY shall not be obligated to expend any additional funds on Project-related matters; however, COUNTY may, in its discretion (such discretion to be exercised in good faith), expend Deposit funds after termination of this Agreement as necessary to complete Project-related activities already commenced or for which monetary obligations have already been incurred. Maintenance of any deposit required by this Agreement shall be made a condition of any tentative or final map for the Project, or, if no map is required, of the first discretionary approval. Subject to Section 10, DEVELOPER consents and agrees not to object to, appeal, or protest any of the conditions and/or payments referenced in this Section 9.

In the event of DEVELOPER'S default, DEVELOPER waives any permit review timelines otherwise applicable under the Permit Streamlining Act, the Subdivision Map Act, or any other applicable laws with respect to each and every map, permit, or discretionary approval that may be delayed as a result of DEVELOPER'S failure to provide COUNTY with funds as required under this Agreement. In the event of DEVELOPER'S default, no such map, permit or other approval shall be deemed approved by operation of law in connection with the Project.

#### SECTION 10. DISPUTE RESOLUTION

If a dispute arises related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement ("Dispute"), COUNTY and DEVELOPER shall first attempt to resolve it through informal discussions. In the event a Dispute cannot be resolved in this manner within sixty days (60) days after the Dispute arises, then COUNTY and DEVELOPER shall engage in the following Alternative Dispute Resolution procedures:

Mediation: The COUNTY and DEVELOPER agree that any and all disputes, claims, or controversies between COUNTY and DEVELOPER and arising of or related to this Agreement shall be submitted to the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. ("JAMS") for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS for final binding arbitration pursuant to the arbitration clause set forth below. Either COUNTY or DEVELOPER may commence mediation by providing to JAMS and the other party a written request for mediation setting forth the subject of the dispute and the relief requested. The COUNTY and DEVELOPER will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals and in scheduling the mediation proceedings. If the parties cannot agree on the appointment of a mediator or the date of the mediation within thirty (30) days after the written request for mediation, then JAMS shall appoint the mediator at its discretion and/or set a mediation date. The COUNTY and DEVELOPER covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator and any JAMS employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation or other proceedings involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered

inadmissible or non-discoverable as a result of its use in mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for an action to obtain equitable relief, neither party may commence civil litigation. Either COUNTY or DEVELOPER may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following completion of the initial mediation session or sixty (60) days after the date of the written request for mediation, whichever occurs last. Mediation may continue after the commencement of arbitration, if COUNTY and DEVELOPER so desire. Unless otherwise agreed to by COUNTY and DEVELOPER, the mediator shall be disqualified from serving as the arbitrator in the case. The provisions of this clause may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered.

Arbitration: Any dispute, claim or controversy between COUNTY and DEVELOPER arising out of this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, not resolved by the mediation process set forth above, shall be determined by arbitration to be held in San Benito County before one arbitrator. Neither party may request an arbitration hearing in conformity with this arbitration clause until after the matter has been submitted to mediation in conformity with the mediation clause set forth above and the initial mediation session has been completed or sixty (60) days has passed since the date of the initial written request for mediation, whichever occurs last. The arbitration shall be administered by the San Jose, California office of JAMS pursuant to its Streamlined Arbitration Rules and Procedures, which rules shall govern the commencement of the arbitration and the selection of the arbitrator among other things. Judgment on the Arbitrator's Award may be entered in the San Benito County Superior Court or any court having jurisdiction. This clause shall not preclude COUNTY or DEVELOPER from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

The costs and fees of arbitration (including those fees and expenses set forth in JAMS' fee schedule in effect at the time of commencement of the arbitration) shall be borne equally by COUNTY and DEVELOPER, and each side shall be responsible for its own attorney's fees and expert witness' fees.

The dispute resolution process shall be undertaken in good faith. A mediator or arbitrator other than JAMS may be agreed to by COUNTY and DEVELOPER in writing. By agreeing to this dispute resolution process, neither COUNTY nor DEVELOPER hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. The arbitration award shall be final and binding upon COUNTY and DEVELOPER and each agrees that it will accept such decision and award as binding and conclusive and will abide thereby.

SECTION 11. NO WAIVER OF IMMUNITIES

Nothing in this Agreement shall be construed as a waiver by COUNTY of any of the immunities granted to it under Federal, State or local law, including the provisions of Sections 818.6, 830.6 and 831.3 of the California Government Code.

SECTION 12. COMPLETE AGREEMENT

Except as may otherwise be explicitly set forth herein, this Agreement constitutes the final, complete, and exclusive statement of the terms hereof between COUNTY and DEVELOPER related to the subject matter set forth herein. Neither party is relying on any representation or warranty outside those expressly set forth in this Agreement. Any and all amendments to this Agreement shall be in writing, shall be stated as an amendment to this Agreement and shall be executed by both parties.

SECTION 13. EXHIBITS

The Exhibits attached to this Agreement are part of this Agreement and are incorporated into this Agreement by reference.

SECTION 14. UNENFORCEABILITY; SEVERABILITY

If a court of competent jurisdiction holds any Agreement clause 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, shall not be affected unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision. To that end, this Agreement shall be construed as not containing such clause and the provisions of this Agreement are declared to be severable.

SECTION 15. SUCCESSORS AND ASSIGNS

This Agreement shall bind and benefit DEVELOPER and COUNTY and their successors-in-interest, whether voluntary or involuntary. DEVELOPER agrees to require any successor to assume all duties and obligations set forth herein. The DEVELOPER shall provide COUNTY with notice of any transfer of ownership interest in the Project or subject property.

SECTION 16. APPLICABLE LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted, and this Agreement shall be read and enforced as though it were included, and if through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party this Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject as of the Effective Date and any later changes which do not materially and substantially alter the positions of COUNTY and DEVELOPER.



SECTION 17. NO THIRD PARTY RIGHTS

This Agreement is not intended to be, and shall not be, construed to create any third party beneficiary rights in any person or entity who is not a party, unless expressly provided herein.

SECTION 18. NO JOINT VENTURE OR PARTNERSHIP

The parties specifically acknowledge that each party is an independent entity with respect to the terms contained in this Agreement. None of the terms of this Agreement shall be deemed to create a partnership between the parties in the businesses of DEVELOPER or the affairs of COUNTY, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

SECTION 19. CONSTRUCTION

Each party hereto declares and represents that in entering into this Agreement, it has relied and is relying solely upon its own judgment, belief, and knowledge of the nature, extent, effect, and consequence relating thereto. Each party further declares and represents that this Agreement is made without reliance upon any statement or representation not contained herein of any other party or any representative, agent, or attorney of the other party. The parties agree that they are aware they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties. Accordingly, no party shall be deemed to have been the drafter hereof, and the principle of law set forth in Civil Code § 1654 that contracts are construed against the drafter shall not apply.

SECTION 20. TIME IS OF THE ESSENCE

For the purpose of this Agreement and of each provision of this Agreement, time is of the essence.

SECTION 21. COOPERATION

DEVELOPER and COUNTY shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement. The parties shall act in good faith toward each other and shall act in a fair, diligent, and reasonable manner, and neither party shall take any action that will prohibit, impair, or impede the other party's exercise of enjoyment of its rights and obligations secured through this Agreement.

SECTION 22. JURISDICTION AND VENUE

This Agreement is executed and is to be performed in the County of San Benito, California, and any action or proceeding brought relative to this Agreement shall be

heard in this appropriate court in the County of San Benito. COUNTY and DEVELOPER each consent to the personal jurisdiction of the court in any such action or proceeding.

SECTION 23. REPRESENTATIONS OF AUTHORITY

Each party signing this Agreement represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that the signatory has been authorized to sign this Agreement and bind the party on whose behalf the signatory signs.

SECTION 24. NO PROMISE OR REPRESENTATION

DEVELOPER and COUNTY agree that nothing in this Agreement is to be construed as a representation, promise, or commitment on the part of COUNTY to give special treatment to, or exercise its discretion favorably for, the Project or DEVELOPER.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

COUNTY  
San Benito County Board of Supervisors

By: Margie Barrios  
Margie Barrios, Chair  
Date: 12/20/11

DEVELOPER  
San Juan Oaks, LLC

By: [Signature]  
Date: 12/12/11

Ken Gimelli and Jill Gimelli,  
Husband and Wife

[Signature] [Signature]  
Date: 12/12/11

ATTEST  
Denise Thome, Clerk of the Board

By: Denise Thome  
Date: 12/20/11

APPROVED AS TO LEGAL FORM  
San Benito County Counsel's Office

By: Matthew Granger  
Date: 12-12-2011