

**REIMBURSEMENT AGREEMENT
FOR
PRELIMINARY REVIEW PERIOD**

This REIMBURSEMENT AGREEMENT (AGREEMENT) is made, and entered into this ____ day of April, 2018, (“Effective Date”) by and between the County of San Benito (“COUNTY”) and BRISTOL SBLLC (“APPLICANT”):

For purposes of this Agreement “PROJECT” shall refer to APPLICANT’s proposal and any related application(s) for approval of development of a master planned community at the 2770+/- acre Floriani ranch property within the County, and “COUNTY” shall be defined to include the COUNTY’s officers, elected officials, employees, agents, and agencies. COUNTY and APPLICANT agree as follows:

SECTION 1. THE DEPOSIT

1.1 Posting and Replenishing the Deposit

- A. **Initial Posting of Deposit:** Within 30 days after execution of this AGREEMENT, APPLICANT shall deposit with COUNTY in a manner reasonably satisfactory to COUNTY the total amount of TWENTY THOUSAND DOLLARS (\$20,000.00) (the “Deposit”). COUNTY shall maintain the Deposit in an interest-bearing dedicated account for the benefit of APPLICANT (the “Deposit Account”) and shall utilize the Deposit and the Deposit Account solely in accordance with this AGREEMENT.

- B. **Replenishment of Deposit:** Requests to APPLICANT for additional deposits in order to replenish the Deposit to its original amount may be made in writing by the Director of the Resource Management Agency (“Director”) or the Director’s designee. APPLICANT shall make such additional deposits to COUNTY in TWENTY THOUSAND DOLLAR (\$20,000.00) increments, or in such lesser sum specified in writing by COUNTY, in order to replenish the Deposit to its original amount, within thirty (30) calendar days of receipt of the written request for additional funds from the Director or designee. Such requests shall be deemed received by APPLICANT no later than five (5) calendar days from the date of mailing by COUNTY. If the Deposit is wholly expended, COUNTY will have no obligation to do further work on the PROJECT until APPLICANT replenishes the Deposit.

1.2 Records and Accounting

- A. COUNTY will keep records of all funds advanced by APPLICANT pursuant to this AGREEMENT and of all expenditures of such funds, and shall periodically provide such records to APPLICANT. COUNTY will provide to APPLICANT records of use of the Deposit, on a quarterly basis, in the form of a computer printout or other similar document accounting for and summarizing all deposits and charges to the Deposit Account, but shall provide such records on a monthly basis if the PROJECT

Costs to be billed to APPLICANT hereunder for any month exceed TWENTY THOUSAND DOLLARS (\$20,000.00) (each of such quarterly or monthly records being referred to herein as an “Accounting”).

- B. COUNTY shall promptly return to APPLICANT any funds remaining in the Deposit Account after sixty (60) days have passed since expiration of the Preliminary Review Period, and COUNTY has received from APPLICANT payment of all accrued PROJECT Costs.
- C. **Investment:** APPLICANT acknowledges and agrees that, in lieu of paying COUNTY staff costs for maintenance and tracking of interest on the Deposit Account, Applicant waives receipt of any interest on the Deposit.

SECTION 2. PROJECT COSTS TO BE REIMBURSED

2.1 Use of Funds

APPLICANT shall be responsible for payment of all of COUNTY’s reasonable direct and indirect costs of processing the Project (“PROJECT Costs”) incurred by COUNTY during the period commencing on the Effective Date and up to and including the date of COUNTY’s distribution of the notice of preparation of the EIR (“NOP”) for the PROJECT (the “PRELIMINARY REVIEW PERIOD”). On a monthly basis, COUNTY shall deduct funds from the Deposit Account to pay for Project Costs. During the PRELIMINARY REVIEW PERIOD, so long as APPLICANT is fulfilling its obligations hereunder, COUNTY shall process APPLICANT’s application(s) for the PROJECT to the extent necessary or appropriate to support COUNTY’s distribution of the NOP. Notwithstanding the preceding and pursuant and subject to Section 5 (“TERMINATION”), COUNTY may terminate this AGREEMENT prior to distributing the NOP, and/or, subject to applicable law, COUNTY may determine to deny the PROJECT without CEQA review, prior to distribution of the NOP. or at any time during the CEQA review process, in COUNTY’s sole discretion, but without any waiver of APPLICANT’s rights or remedies in connection with any such action by COUNTY.

PROJECT Costs shall include, but are not limited to:

- i. All actual COUNTY staff time, including, but not limited to, the Resource Management Agency (Planning & Public Works), Office of County Counsel, Environmental Health, Administration, Clerk of the Board, GIS Department, Integrated Waste, and the Clerk/Auditor/Recorder, expended on PROJECT processing-related activities. Such staff time includes direct labor costs as well as departmental and indirect overhead costs. COUNTY shall bill at COUNTY’s documented standard hourly rates, based on COUNTY’s direct and indirect costs, including, but not limited to salaries, benefits, reasonable overhead and other reasonable administrative expenses.

- ii. All actual costs, not already included under subsection (i) above, expended on PROJECT processing-related activities (e.g., costs of telephone, mileage, supplies, postage, etc.). Such costs shall not include general overhead, but shall be limited to costs incurred solely because of processing of the PROJECT.
- iii. All actual costs of any outside consultants hired to assist COUNTY with PROJECT processing-related activities, 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. Fees and other costs of any consultants hired by COUNTY shall be billed at the rate actually incurred by COUNTY. COUNTY will consult with APPLICANT in advance regarding the selection of any third party consultant(s) proposed to be retained by the COUNTY pursuant to this AGREEMENT for the purpose of receiving APPLICANT's feedback regarding the cost, scope, and qualifications of any such consultant(s). APPLICANT may also propose consultant(s) to the COUNTY for COUNTY consideration. Final work products and deliverables prepared by consultants to the COUNTY shall reflect the independent judgment of the COUNTY.

2.2 Back-Up for PROJECT Costs

Each Accounting shall also include and 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 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.). APPLICANT shall approve COUNTY's reimbursement of all PROJECT Costs set forth in each Accounting within ten (10) business days of receipt, unless APPLICANT disputes the Accounting as set forth below. If COUNTY does not receive a response from APPLICANT within this ten (10) business day timeframe, the requested reimbursement shall be deemed approved by APPLICANT. In the event APPLICANT notifies COUNTY in writing within this ten (10) business day timeframe that it does not approve said reimbursement, COUNTY and APPLICANT shall promptly meet and confer in good faith to try to resolve such dispute; provided, however, that each party hereby reserves any and all rights and remedies at law or in equity otherwise available to them regarding such dispute. COUNTY may draw on the Deposit Account to reimburse itself for PROJECT Costs prior to presenting the Accounting for such reimbursement to APPLICANT and prior to or after receiving APPLICANT's response thereto. For those PROJECT Costs set forth in Section 2.1(iii) above, COUNTY shall pay said costs directly to the outside consultants, list those payments on the Accounting, and provide appropriate documentation indicating the name of each outside consultant and the services provided.

SECTION 3. FEES, PERMITS AND COUNTY REGULATIONS

The parties agree that, for purposes of this AGREEMENT, the amounts paid by APPLICANT under this AGREEMENT shall be credited against any PROJECT application, processing or

permit fees that may become due or owing to COUNTY at any time after the Effective Date. Any PROJECT application shall not be deemed complete by COUNTY until all PROJECT application fees have been paid, unless this AGREEMENT is amended by the parties to further address PROJECT application fees. Nothing in this AGREEMENT shall be deemed to abrogate the responsibility of APPLICANT 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 APPLICANT 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 future project other than the PROJECT.

SECTION 4. TERM

Subject to Section 5, the term of this AGREEMENT shall commence on the Effective Date and terminate upon expiration of the PRELIMINARY REVIEW PERIOD. Nothing herein shall be deemed to abrogate APPLICANT(S)' responsibility to pay for PROJECT Costs incurred by COUNTY during the PRELIMINARY REVIEW PERIOD. Nothing in this AGREEMENT shall be construed to vest any rights to develop the PROJECT or require COUNTY approval of the PROJECT.

SECTION 5. TERMINATION

COUNTY or APPLICANT may, at its respective option, terminate this AGREEMENT at any time during the PRELIMINARY REVIEW PERIOD on thirty (30) days' prior written notice to the other party ("Termination Notice"). In the event of termination, APPLICANT(S) 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 Deposit Account to any unreimbursed PROJECT Costs through the termination date, and COUNTY shall then refund any remaining funds in the Deposit Account to APPLICANT within sixty (60) days of the date of termination.

SECTION 6. 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**:

John Guertin
Director
County of San Benito
2301 Technology Parkway
Hollister, CA 95023-2513
Email: jguertin@cosb.us
Fax: 831.637.5334

With a copy to:

Barbara Thompson
County Counsel
County of San Benito
481 Fourth Street, 2nd Floor
Hollister, CA 95023
Email: bthompson@cosb.us
Fax: 831.636.4044

With a copy to:

Taven M. Kinison Brown
County of San Benito
2301 Technology Parkway
Hollister, CA 95023-2513
tkinisonbrown@cosb.us
Fax: 831.637.5334

To the **APPLICANT**:

Bristol SB LLC
c/o Rockne Construction, Inc.
100 Bayview Circle, Suite 2200
Newport Beach, CA 92660
Attn: John Patterson, President
Email: jpatterson@npland.com
Fax: 949-945-2561

With a copy to:

Jennifer Hernandez
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111
Email: jennifer.hernandez@hklaw.com
Fax: 415.743.6910

SECTION 7. DEFAULT BY APPLICANT

- 7.1 Default.** If APPLICANT breaches any of its obligations under this AGREEMENT, the Director shall provide written notice of such breach to APPLICANT (“Notice of Breach”) and if such breach remains uncured for a period of thirty (30) days following APPLICANT’s receipt of such Notice of Breach, APPLICANT shall be deemed in default under this AGREEMENT (“APPLICANT Default”). Upon an APPLICANT Default, the Director may terminate this AGREEMENT by delivering at least ten (10) days’ prior written notice of such termination to APPLICANT.
- 7.2** Upon the occurrence of any APPLICANT Default, whether for monetary or non-monetary breaches, COUNTY, at COUNTY’s option and upon at least ten (10) days prior written notice to APPLICANT, may suspend processing and/or consultant activities related to the PROJECT until such APPLICANT Default is cured by APPLICANT.
- 7.3** In the event of an APPLICANT Default, APPLICANT 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 APPLICANT(S)’ failure to provide COUNTY with funds as required under this AGREEMENT. In the event of an APPLICANT Default, no such map, permit or other approval shall be deemed approved by operation of law in connection with the PROJECT.

SECTION 8. INDEMNIFICATION

In addition to PROJECT Costs, APPLICANT agrees to execute an indemnification agreement with COUNTY, indemnifying COUNTY from any third party legal actions arising from any COUNTY approval of the PROJECT, with terms consistent with the COUNTY’s standard form of such agreements used for projects similar to the PROJECT, that COUNTY may require as a condition of approval to any approval for the PROJECT.

SECTION 9. 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 10. COMPLETE AGREEMENT

Except as may otherwise be explicitly set forth herein, this AGREEMENT (including all recitals thereto) constitutes the final, complete, and exclusive statement of the terms hereof between COUNTY and APPLICANT(S) 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 11. UNENFORCEABILITY; SEVERABILITY

If a court of competent jurisdiction holds any clause or portion of this AGREEMENT to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses, or portions of them, 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 12. SUCCESSORS AND ASSIGNS

This AGREEMENT shall bind and benefit APPLICANT(S) and COUNTY and their successors-in-interest, whether voluntary or involuntary. APPLICANT agrees to require any successor to assume all duties and obligations set forth herein. APPLICANT(S) shall provide COUNTY with notice of any transfer of ownership interest in the PROJECT or subject property.

SECTION 13. APPLICABLE LAW

This AGREEMENT shall be construed and enforced in accordance with the laws of the State of California. 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 APPLICANT.

SECTION 14. 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 15. 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 APPLICANT(S) or the affairs of COUNTY, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

SECTION 16. CONSTRUCTION

Captions and headings in this AGREEMENT are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as “herein,” “hereto,” and “hereunder” shall refer to this Agreement in its entirety and not to any specific section or paragraph; (c) the terms “include,” “including,” and similar terms shall be construed as though followed immediately by the phrase “but not limited to;” and (d) “shall,” “will,” “must,” “agrees,” and “covenants,” are mandatory and “may” is permissive. 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 17. TIME IS OF THE ESSENCE

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

SECTION 18. COOPERATION

APPLICANT 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 19. 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 San Benito County Superior Court. COUNTY and APPLICANT each consent to the personal jurisdiction of the court in any such action or proceeding.

SECTION 20. 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 21. NO PROMISE OR REPRESENTATION

APPLICANT 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 APPLICANT.

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: _____

Date: _____

ATTEST:

Clerk of the Board

By:

Date: _____

APPROVED AS TO LEGAL FORM

San Benito County Counsel's Office

By:

Barbara Thompson, County Counsel

Date: _____

APPLICANT
Bristol SB LLC, A Nevada Limited Liability
Company

By: Bristol Pacific LLC

A Nevada limited liability company

Its managing member

By: Rockne Construction, Inc.

A California Corporation

Its managing member

By:

John R. Patterson

Its President

Date: _____

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