

**TOWN OF TIBURON  
COMMUNITY DEVELOPMENT DEPARTMENT  
COST BASED FEE SYSTEM**

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

**Recitals**

- A. \_\_\_\_\_ “Owner”) is the Owner of property located at \_\_\_\_\_ [Address or Assessor Parcel Number(s)] in Tiburon, CA (“Project Site”).
- B. \_\_\_\_\_ (“Owner’s Agent”) is Owner’s authorized agent with respect to the proposed improvement of the Project Site known as \_\_\_\_\_ (“Project”).

**Agreement**

1. Owner and Owner’s Agent (collectively, “Applicant”) agree(s) to pay to the Town of Tiburon all reimbursable costs, both direct and indirect, including State-mandated costs, associated with review and processing of all applications for land use entitlements and/or encroachment or grading permit and inspection(s) (collectively, “application”), even if the Applicant withdraws the application or the Town does not approve it. Reimbursable costs include, without limitation, all items within the scope of the Town’s adopted Fee Schedules and Billing Rates Schedule, as well as the cost of retaining professional and technical consultant services and any services necessary to perform functions related to review and processing of the applications and inspection of the work.

2. Applicant will pay one or more deposits to cover the costs noted above at such time(s) and of such amounts as requested by the Community Development Director or designee. Upon the execution of this Agreement, the Applicant shall deposit with the Town the amount of \$ \_\_\_\_\_ against which Town will charge its reimbursable costs on a monthly basis.

3. The Town shall deliver periodic statements to the Applicant showing the reimbursable costs incurred by the Town during the previous month. Said statements shall show how much of the deposit is being used to pay for the invoiced monthly costs, how much of the deposit remains and how much the Applicant must pay to the Town, if anything. With the monthly invoice, the Town shall supply to the Applicant the necessary documentation supporting the amounts charged against the Applicant's deposit and/or for which the Town is demanding payment. Failure of the Applicant to object to an invoice, its contents and/or its supporting documentation, in writing, within 30 days of Applicant’s receipt of said invoice shall be deemed a conclusive waiver of any such objection.

4. In the event the Applicant timely objects to an invoice, and the Town incurs additional costs in reviewing, researching and responding to said objection, the Town will charge said additional costs against the deposit or, if there is insufficient deposit to pay said additional costs, the Applicant shall said costs to the Town within 30 days of the Town's direction to do so; provided, however, that the Town will not charge such additional costs against the deposit or Applicant if the objection reveals that the objection has substantive merit in that the invoice charges were incorrect or inaccurate.

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

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

7. Town shall review and process the application in accordance with this Agreement and all applicable laws, regulations, ordinances, standards and policies. This agreement applies to all subsequent applications related to the project for which the Hourly Billing Rates Schedule applies.

8. Nonpayment or untimely payment of any amount owed hereunder may, at the sole and exclusive discretion of the Community Development Director, result in temporary or permanent cessation of processing of the application or inspection of the work and, after notice, may result in (i) the denial of the application, (ii) an order requiring cessation of all work, and/or (iii) the withholding of permits, plan checks, entitlements, approvals and/or certificates.

9. Applicant's timely performance of Agreement is vital to the Town's decision-making process with respect to the Project. Accordingly, Applicant waives any legal rights to have the Town complete review and processing of the Project, including, without limitation any applicable rights under the California Permit Streamlining Act, California Environmental Quality Act, Subdivision Map Act or any other law, in the event that Applicant breaches this Agreement or is untimely in making payments. In the event that the Town ceases processing pursuant to Section 8, Town will restart said processing as soon as reasonably feasible after Applicant has paid all outstanding amounts.

10. Prior to completion of processing of any phase of the project, any and all outstanding amounts due pursuant to this agreement shall be paid.

11. Applicant will defend, indemnify, release and hold harmless the Town, its agents, offices, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnitees"), the purpose of which is to attack, set aside, void or annul the approval of this Agreement, the Project application(s) or adoption of the

environmental document which accompanies it. This indemnification shall include, without limitation, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the Applicant, third parties and/or the indemnitees, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnitees. The Applicant will also indemnify the indemnitees for all costs incurred in additional investigation or study, or for supplementing, redrafting, revising or amending any document (e.g., the EIR, Specific Plan, General Plan, Precise Development Plan, Zoning Ordinance, etc.) if such is made necessary by the claim, action or proceeding and if the Applicant desires approvals from the Town which are conditioned on the approval of said documents.

12. Nothing in this agreement shall prohibit the Town from participating in the defense of any claim, action or proceeding. In the event that the Applicant is required to defend the indemnitees in connection with any said claim, action or proceeding, the Town shall retain the right to (i) approve the counsel to so defend the indemnitees, (ii) approve all significant decisions concerning the matter in which the defense is conducted, and (iii) approve any and all settlements, which approvals shall not be unreasonably withheld by the Town. The Town shall also have the right not to participate in said defense, except that the Town agrees to cooperate with the Applicant in the defense of said claim, action or proceeding. If the Town chooses to have counsel of its own defend any claim, action or proceeding where the Applicant has already retained counsel to defend the Town in such matters, the fees and expenses of the counsel selected by the Town shall be paid by the Town.

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

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

15. The laws of the State of California shall govern this Agreement. In the event that a dispute arises under this agreement, Marin County shall be the proper venue for any judicial resolution of said dispute.

16. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining portions shall not be affected unless the effect thereof would materially change the economic burden on either party.

17. This Agreement shall be binding on the assigns and successors in interest to both parties. Neither party may assign their obligations under this Agreement without the written consent of the other party.

18. This Agreement represents the entire Agreement between the parties. This Agreement may only be amended in writing.

IN WITNESS WHEREOF the parties hereto have caused their duly authorized representatives to execute this Agreement the day and year above written.

**OWNER/APPLICANT:**

Name of Property Owner: \_\_\_\_\_

Signature of Property Owner: \_\_\_\_\_

Date: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
*Signature of Applicant (if other than Owner)*

\_\_\_\_\_  
*Date*

*Address:* \_\_\_\_\_

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

**PERSONAL GUARANTEE**

**The undersigned warrants that s/he is the \_\_\_\_\_ [majority shareholder, managing member, general partner] of \_\_\_\_\_ ("Owner"). For good and valuable consideration, the undersigned absolutely and unconditionally guarantees the timely performance of, promises to perform the obligations of and guarantees to make the payments required to be made by \_\_\_\_\_ [state the name of the entity] (collectively, "indebtedness") as set forth hereinabove. This guarantee shall take effect upon the date first written above and continue in full force until all indebtedness shall have been fully paid and satisfied. The undersigned waives any right**

to require the Town to (a) make any presentment, protest, demand or notice of any kind, including notice of change of any terms of the indebtedness, default by the Owner, any action or non-action taken by the Owner, or the creation of new or additional indebtedness; (b) proceed against any person, including the Owner, before proceeding against the undersigned; (c) proceed against any collateral for the indebtedness; (d) apply any payments or proceeds received against the indebtedness in any order; and/or (g) pursue any remedy or course of action in the Town's power whatsoever. The undersigned agrees to any modification or change in the terms of the indebtedness, whatsoever.

\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**TOWN OF TIBURON:**

\_\_\_\_\_  
*Margaret Curran, Town Manager*

\_\_\_\_\_  
*Date*

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ann Danforth, Town Attorney

**FOR TOWN USE ONLY:**

Name of Project:

\_\_\_\_\_

Name of Applicant:

---

Name of Property Owner:

---

Address of Project:

---

Type of Application:

Fee Deposit: \$ \_\_\_\_\_ Receipt No. \_\_\_\_\_

Staff Member Receiving:

Date Received:

File Number(s):

*S:\Planning\Forms\Cost Recovery Agreement CDD short form.doc*