

EXHIBIT B

**INDEMNIFICATION AND
REIMBURSEMENT FOR EXTRAORDINARY
COSTS AGREEMENT FORM**

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AGREEMENT FOR INDEMNIFICATION AND
REIMBURSEMENT FOR EXTRAORDINARY COSTS

THIS AGREEMENT is entered into on this _____ day of _____, 2000 by and between the _____ (hereinafter referred to as "Applicant") and the County of Kings (hereinafter referred to as "County") on the terms and conditions hereinafter set forth.

RECITALS

WHEREAS, Applicant has applied to the County of Kings, a political subdivision of the State of California, for _____ (hereinafter referred to as "Project") for operation of _____ on the real property described in Exhibit A attached hereto; and

WHEREAS, the consideration of the Project by County will involve the issuance of a _____ permit (hereinafter referred to as the "Permit") which may involve review under the California Environmental Quality Act (hereinafter referred to as "CEQA"); and

WHEREAS, County may incur extraordinary costs (hereinafter referred to as "Extraordinary Costs") described in connection with the Permit approval process and the CEQA process for the Project; and

WHEREAS, the parties desire to allocate responsibility and liability for such extraordinary costs pursuant to the terms of this Agreement.

TERMS AND CONDITIONS

1. Conditions to the Project Approval and Processing: The processing of Project documents by County and the effectiveness of all approvals, permits and consents for the Project by the County are expressly conditioned upon performance by the Applicant of the following terms and conditions:

1.1. Full performance of all conditions imposed in connection with the applicable permit or the Project approval.

1.2. Full compliance with the terms, conditions, provisions and requirements of the permit application process.

1.3. Posting of all applicable fees for CEQA review required by the provisions of California Fish & Game Code section 711.4, which at the time of execution of this Agreement are in the amount of \$1,250.00 for a negative declaration and \$850.00 for an environmental impact report.

1.4. Full performance of the terms and conditions of this Agreement.

1.5. Compliance with all required mitigation measures of an approved CEQA environmental document for the Project.

1.6. Payment of all Security Deposits, if required by the County, for fulfillment of any of the above-described terms and conditions.

1.7. Timely payment by Applicant of all amounts invoiced by County under Section 7 below and of all demands made by County for deposit of funds under Section 8 below.

2. Ordinary Costs. The County of Kings is authorized to charge for the actual costs of processing the Permit, including all staff, administration, consultant, outside counsel and County Counsel time actually expended on the Project. In this regard, the County has determined to establish flat fees for the usual and ordinary costs associated with normal permit processing. Unless one of the events set forth in Section 4 below arises or is reasonably foreseen by the Kings County Planning Director to be likely to arise, Applicant shall be charged only the flat normal application processing fee.

3. Obligation for Extraordinary Costs. In the event a permit requires, or appears likely to require, processing in excess of ordinary time and resource allocation, additional fees will be charged to cover the costs of such extraordinary processing (hereinafter referred to as "Extraordinary Costs"). Applicant shall be responsible for all Extraordinary Costs in connection with application processing and all necessary environmental review processing and for all Extraordinary Costs associated with Project approvals or denials, appeals arising therefrom and litigation arising therefrom. In the event that Applicant refuses to make deposits or to pay amounts incurred and invoiced for such Extraordinary Costs, the County may close the Project application processing and may recover from the Applicant the costs incurred.

4. Extraordinary Events. The following are examples of Extraordinary Events which shall give rise to the Applicant's obligation to pay for Extraordinary Costs under the terms of this Agreement:

4.1. Incomplete or inaccurate information provided by the Applicant.

- 4.2. A change in an application by means of an amendment, correction or similar circumstance.
- 4.3. Significant opposition to a project by any person, group, organization or entity.
- 4.4. An appeal of a Project land use decision.
- 4.5. Non-compliance in whole or in part by the Applicant with a condition of an application, a permit or a planning or building department request.
- 4.6. Significant delays in processing caused by the Applicant or the Applicant's agents.
- 4.7. Unique, novel or irregular applications or requests by the Applicant.
- 4.8. Litigation involving or challenging the Project, or arising in any way from the Project's consideration, review, negotiation or approval by County.
- 4.9. Other circumstances or events which significantly increase the workload of County staff to process an application.
- 4.10. Preparation of an environmental impact report or mitigated negative declaration under CEQA, which may or may not include the employment of outside consultants and legal counsel by County or Applicant for the preparation of such environmental documents.

The determination by County that an Extraordinary Event has occurred and that Applicant shall thereafter be responsible for the payment of Extraordinary Costs shall be in the sole and absolute discretion of County and shall not be reviewable in any court or administrative proceeding.

5. Charging for Extraordinary Costs. County shall charge Applicant for Extraordinary Costs as hereinafter set forth. Applicant shall pay for all Extraordinary Costs either through the Deposit Process described in Section 8 below or as and when invoiced by County under the provisions of Section 7 below. The determination as to whether to utilize the Deposit Process or the Invoice Process shall be at the sole and absolute discretion of the County, after consultation with Applicant.

5.1. Extraordinary Cost Schedule. Extraordinary Costs shall include, but shall

not be limited to, the following and shall be billed by County as set forth below:

5.1.1. All damages, costs and/or attorneys fees awarded against County or Applicant by a court in the course of litigation challenging the Project.

5.1.2. Costs incurred in preparation of CEQA documents by Consultants and outside counsel.

5.1.3. Costs incurred by County Staff, Consultants, County Counsel and outside counsel employed by County to defend litigation filed against the County and/or Applicant.

5.1.4. Extraordinary Costs shall also include the total dollar amount of all other County Department employees' time (computed on the basis of hours spent multiplied by the salary and benefit rate paid by the County to such individual employees), all fees and costs charged by outside consultants and contract personnel, and all amounts expended by County for photocopies, telephone calls, FAX charges, postage, trip expenses (gas, meals, lodging, parking, transportation) and any and all other direct costs incurred or expended by the County in connection with the Project.

5.2. Charges. The rates at which Applicant shall be billed for Extraordinary Costs shall be as follows:

Planning Staff	Gross salary per hour of each employee x hours billed
County Counsel	\$81 per hour
County Counsel Staff	\$20 per hour
Special Counsel	As billed to County
Consultants	As billed to County
Other Costs	As billed by County

6. Notice of Extraordinary Event. In the event that one or more Extraordinary Events arises, or is reasonably foreseen to arise, the Director of Planning shall give written notice thereof to the Applicant together with either a request for deposit of Extraordinary Costs or a statement that the County intends to utilize the Invoice Process described in Section 7 below. Deposits shall be made as set forth in this Section and in Section 8 below.

6.1. Submission of Initial Deposit. Upon receipt of a Notice of Extraordinary Event which demands deposit, Applicant shall within ten (10) days deposit the sums requested in the Notice. Failure to comply with a deposit demand shall be governed by Subsection 8.6 below.

6.2. Obligation After Deposit. In the event Applicant decides to proceed with the application and makes the initial deposit as requested, the County shall proceed with application processing, and Applicant shall be responsible for all Extraordinary Costs incurred, whether or not the latter are covered by or included in the Initial Deposit and regardless of when such costs are incurred.

7. Invoices. As an alternative to the Deposit Process described in Sections 6 and 8 herein, County may in its sole and absolute discretion determine that it will directly invoice Applicant in arrears for Extraordinary Costs. County shall invoice Applicant for such costs within thirty days of County's receipt of invoice therefor, or, in the case of such costs for which an invoice would not ordinarily be submitted to County, within thirty days of the last day of the month in which such costs are actually incurred. Applicant agrees to make payment to County for such invoiced amounts. Applicant shall make payment for such reimbursement within thirty (30) days of the date on which County places the invoice in the mail to Applicant addressed as specified in Section 25.

8. Deposits. Deposits shall be made by Applicant and handled by County pursuant to the terms of this Section. All Deposits made by Applicant shall be deposited in an interest bearing account, and all interest shall accrue to the account of Applicant. Interest amounts shall either be applied to the payment of Extraordinary Costs or shall be credited to Applicant to be ultimately returned pursuant to the provisions of subsection 8.7 below at the conclusion of the Project.

8.1. Initial Deposit. Applicant shall provide funds in the amount set forth in the "Notice of Extraordinary Costs" in the form of a check made payable to the "Kings County Treasurer" as set forth in Section 6.1 above.

8.2. Incremental Deposits. The County may request deposits in advance of expenditures or obligations for expenditures. Except for requests for deposit on consulting or outside legal service contracts, individual deposit requests shall not exceed \$25,000 without Applicant's prior written authorization or assent.

8.3. Additional Deposits. If the deposit or any increase therein is inadequate to pay for costs actually incurred by the County, Applicant will be notified of the need to supplement the deposit. Applicant shall make payments of additional deposits within thirty days of receipt of notice of the need to supplement the deposit. Further deposit will be required in the full amount of any contract or contracts for consulting services. Any request for Applicant to make deposit or payment to the County must be made in writing and mailed or telefaxed to Applicant, in accord with "Notices" set forth in Section 25.

8.4. Use Of Deposits. The Initial Deposit constitutes an initial estimate of Extraordinary Costs associated with processing the Application and the initial study. County may use the Initial Deposit funds and all future deposit funds to cover all Extraordinary Costs, including qualifying expenses incurred on the Project from its inception. Credit shall be given for any standard application permit fee paid by Applicant.

8.5. Draw Down Of Deposit. On a monthly basis, or on such other time intervals as the Director of the Planning Department may deem necessary and appropriate, Costs incurred shall be deducted from the Deposit, and an accounting of the status of the Deposit shall be provided to the Applicant. In the case of Costs expended against billings from outside consultants, copies of such billing statements shall be provided to the Applicant. The Applicant shall not be entitled to any detail revealing the substantive contents or "detail of billings" pertaining to legal advisement to the County by contract attorneys or County Counsel, but shall be entitled to an accounting of the total amounts paid to such attorneys or reimbursement to the County General Fund, as the case pertains.

8.6. Failure To Make Deposits. In the event that Applicant does not make deposits as requested pursuant to the terms hereof, the County may suspend the processing of the Application. The refusal or failure to make a requested deposit within thirty days after request shall constitute an abandonment of the Project by the Applicant and shall terminate all processing on the Application. The County shall not be liable for such termination and Applicant hereby indemnifies and holds the County harmless from any and all claims arising out of such termination, including those of Applicant.

8.7. Deposits In Excess Of Costs. At the conclusion of the Project, if the actual total of the Extraordinary Costs is less than the total of the Deposits plus interest accrued thereon, the excess amount will be returned to the Applicant or applied toward subsequent phases of environmental review on the Applicant's Project or any subsequent projects at the option of the Applicant, including the Costs of an environmental impact report, negative declaration or any other environmental reviews.

9. Project Accounting. The County shall maintain books and records necessary to track all costs associated with the Project, and to account for all sums deposited and/or paid by the Applicant, which records may be inspected in the Planning Department by the Applicant at any time, and a report of which shall be provided to Applicant on a monthly basis.

10. Right of Withdrawal and Termination of the Agreement. The Applicant has the right to withdraw its application or abandon the Project by filing written notice thereof with the County. Notwithstanding the above provision, this Agreement shall survive

such abandonment or withdrawal and remain in full force and effect until Applicant has fully complied with its obligation to reimburse and indemnify County for all Extraordinary Costs regardless of the date such costs are incurred. In addition, if the Project is pending before the Planning Commission or the Board of Supervisors at the time of receipt of such written notice, the matter shall not be considered withdrawn or abandoned until the withdrawal is approved by the Planning Commission or the Board of Supervisors, whichever is applicable.

11. Indemnification. Applicant shall indemnify, defend and hold the County, its officers, Agents, and employees harmless from and against any and all costs, claims, damages, judgments, or payments in compromise and settlement, including therein all direct and administrative costs, attorneys' fees, including, but not limited to county counsel or special counsel fees incurred with respect to any action to attack, set aside, void, or annul any approvals or denials by the County, arising out of or in connection with the Project, whether by way of court action or administrative proceeding. In the event that any action is filed, including, but not limited to, notice of administrative appeal, summons and complaint, or writ proceeding (collectively referred to as "Action"), the County may request and the Applicant shall make a deposit in the amount requested by the Director of the Planning Department in the initial amount which shall not exceed twenty-five thousand dollars (\$25,000) to cover initial cost and fees, and shall replenish the deposit on an ongoing basis as may be requested during the ongoing proceedings, if any. In the event that actual costs are less than the sums deposited, the unused balance shall be returned to the Applicant by warrant made payable to Applicant as they mutually advise in writing. Any special counsel hired to defend County under the provisions of this Section must be approved by the Board of Supervisors. The litigation deposit provided for under the provisions of this Section are additional to and supplemental to any other deposit or deposits required under the terms of this Agreement. It is intended as security only and it is in no way intended to limit, and shall not be construed to limit, the obligations of Applicant to fully reimburse County for all Extraordinary Costs.

12. Waiver. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is express, in writing and signed by the party so waiving.

13. Assignment. This Agreement constitutes a personal contract and no party hereto shall assign or transfer this Agreement, or any part hereof, without the prior written consent of the other, unless such transfer is otherwise expressly permitted hereby.

14. Completeness of Instrument. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, and covenants made and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

15. Supersedes Prior Agreements. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

16. Attorney's Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief which such party may be entitled.

17. Rules of Construction. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

17.1. Captions. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

17.2. Number and Gender. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

17.3. Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

17.4. Term Includes Extensions. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

18. Successors and Assigns. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

19. Modification. No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

20. Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

21. Other Documents. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

22. Partial Invalidity. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

23. Jurisdiction. It is agreed by the parties hereto that unless otherwise expressly waived by them, action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Kings, State of California.

24. Controlling Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

25. Notices. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

To County:

Chairman, Board of Supervisors
County of Kings
1400 W. Lacey Blvd.
Hanford, California 93230

To Applicant:

With a copy to:

County Counsel
County of Kings
1400 W. Lacey Blvd.
Hanford, California 93230

With a copy to:

26. Incorporation of Exhibits. All exhibits mentioned herein and attached hereto are specifically incorporated herein by this reference and made a part of this Agreement.

27. Time Is Of the Essence. Time is of the essence of this Agreement and of each covenant, term and condition herein.

28. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

THIS AGREEMENT is entered into by and between the parties as of the date and year first set forth above.

APPLICANT

COUNTY

(Signature)

Chairman
Kings County Board of Supervisors

(Type or print name)

ATTEST:

Catherine Venturella
Clerk of the Board