

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

301B



FROM: TLMA - Planning and County Counsel

SUBMITTAL DATE:
March 9, 2015

SUBJECT: Approve Indemnification Agreement Substantially in Form for Land Use and Subdivision Projects

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Indemnification Agreement substantially in form attached hereto as Attachment A; and,
2. Authorize the Planning Director or his designee to execute and implement the above referenced Indemnification Agreement on behalf of the County.

BACKGROUND:

Summary

Approvals of land use projects are sometimes the subject of litigation challenging the County's approval and associated environmental documents.

(Continued on Next Page)

Departmental Concurrence

Juan C. Perez
TLMA Director

Gregory P. Priamos
County Counsel

| FINANCIAL DATA | Current Fiscal Year: | Next Fiscal Year: | Total Cost: | Ongoing Cost: | POLICY/CONSENT (per Exec. Office) |
|----------------------|----------------------|-------------------|-------------|------------------------|---|
| COST | \$ N/A | \$ N/A | \$ N/A | \$ N/A | Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/> |
| NET COUNTY COST | \$ N/A | \$ N/A | \$ N/A | \$ N/A | |
| SOURCE OF FUNDS: N/A | | | | Budget Adjustment: N/A | |
| | | | | For Fiscal Year: N/A | |

C.E.O. RECOMMENDATION:

APPROVE

BY:

Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
Nays: None
Absent: None
Date: March 24, 2015
xc: Planning, Co.Co.

Kecia Harper-Ihem
Clerk of the Board
By:

Deputy

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: _____ District: ALL Agenda Number: _____

3-35

BACKGROUND:

Summary (continued)

These judicial challenges which include, but are not limited to, California Environmental Quality Act determinations, are costly and time consuming. Since property owners are the primary beneficiaries of such approvals, it is appropriate that such owners bear the expense of defending against any such judicial challenge, and bear the responsibility of any costs, attorneys' fees and damages which may be awarded to a successful challenger.

The attached indemnification agreement establishes the specific terms concerning an applicant's obligation to indemnify the County in the event a judicial challenge is commenced against a project approval. The agreement will be executed while the applicant's project is being processed by the Planning Department. The agreement does not limit, direct, impede or influence the County's review and consideration of the project. The agreement also does not limit the County's discretion to settle, defend, appeal or decline to settle the judicial challenge. Additionally, the monetary deposit required by the agreement will only be made by the applicant if a judicial challenge is brought against the project approvals. A draft of the indemnification agreement was provided to the Building Industry Association of Southern California for review and no comments were received on it.

The Planning Director and the Office of County Counsel will administer the Indemnification Agreement. The content of the attached indemnification agreement shall remain as approved by the Board with the exception that the Planning Director or designee shall have the authority to update the Indemnification Agreement to include the appropriate parties, project information and noticing information.

Impact on Citizens and Businesses

The Board's approval of this indemnification agreement will help protect public funds from being used to pay litigation costs and expense associated with private development by passing that responsibility to the property owners who benefit from the land use approvals.

SUPPLEMENTAL:

Additional Fiscal Information

N/A

Contract History and Price Reasonableness

N/A

ATTACHMENTS:

- A. Indemnification Agreement
- B. March 20, 2014 Letter to the Building Industry Association of Southern California

INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT ("Agreement"), made by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("COUNTY"), and _____ ("PROPERTY OWNER"), relating to the PROPERTY OWNER'S indemnification of the COUNTY under the terms set forth herein:

WITNESSETH:

WHEREAS, the PROPERTY OWNER has a legal interest in the certain real property described as _____ ("PROPERTY"); and,

WHEREAS, on _____, PROPERTY OWNER filed an application for _____ ("PROJECT"); and,

WHEREAS, judicial challenges of projects requiring discretionary approvals, including, but not limited to, California Environmental Quality Act determinations, are costly and time consuming. Additionally, project opponents often seek an award of attorneys' fees in such challenges; and,

WHEREAS, since property owners are the primary beneficiaries of such approvals, it is appropriate that such owners bear the expense of defending against any such judicial challenge, and bear the responsibility of any costs, attorneys' fees and damages which may be awarded to a successful challenger; and,

WHEREAS, in the event a judicial challenge is commenced against the PROJECT, the COUNTY has requested and the PROPERTY OWNER has agreed to defend, indemnify and hold harmless the COUNTY, its agents, officers, or employees from any claim, action or proceeding against the COUNTY, its agents, officers, or employees to attack, set aside, void or annul any approval of the COUNTY, its advisory agencies, appeal boards, or legislative body concerning the PROJECT or its associated environmental documentation ("LITIGATION"); and,

WHEREAS, this Agreement is entered into by the COUNTY and PROPERTY OWNER to establish specific terms concerning PROPERTY OWNER'S indemnification obligation for the PROJECT.

NOW, THEREFORE, it is mutually agreed between COUNTY and PROPERTY OWNER as follows:

1. **Indemnification.** PROPERTY OWNER, at its own expense, shall defend, indemnify and hold harmless the COUNTY, its agents, officers, and employees from and against any claim, action or proceeding brought against the

COUNTY, its agents, officers, and employees to attack, set aside, void or annul any approval of the PROJECT including any associated costs, damages, and expenses including, but not limited to, costs associated with Public Records Act requests submitted to the COUNTY related to the PROJECT and an award of attorneys' fees and costs incurred or arising out of the above-referenced claim, action or proceeding brought against the COUNTY ("Indemnification Obligation.")

2. **Defense Cooperation.** PROPERTY OWNER and the COUNTY shall reasonably cooperate in all aspects of the LITIGATION. Nothing contained in this Agreement, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, appeal or to decline to settle or to terminate or forego defense or appeal of the LITIGATION. It is also understood and agreed that all litigation pleadings are subject to review, revision and approval by COUNTY's Office of County Counsel.

3. **Representation and Payment for Legal Services Rendered.** COUNTY shall have the absolute right to approve any and all counsel retained to defend COUNTY in the LITIGATION. PROPERTY OWNER shall pay the attorneys' fees and costs of the legal firm retained by APPLICANT to represent the COUNTY in the LITIGATION. Failure by PROPERTY OWNER to pay such attorneys' fees and costs may be treated as an abandonment of the PROJECT and as a default of APPLICANT's obligations under this Agreement.

4. **Payment for COUNTY's LITIGATION Costs.** Payment for COUNTY's costs related to the LITIGATION shall be made on a deposit basis. LITIGATION costs include any associated costs, fees, damages, and expenses as further described in Section 1. herein as Indemnification Obligation. Within thirty (30) days of receipt of notice from COUNTY that LITIGATION has been initiated against the PROJECT, PROPERTY OWNER shall initially deposit with the COUNTY's Planning Department the total amount of Twenty Thousand Dollars (\$20,000). PROPERTY OWNER shall deposit with COUNTY such additional amounts as COUNTY reasonably and in good faith determines, from time to time, are necessary to cover costs and expenses incurred by the COUNTY, including but not limited to, the Office of County Counsel, Riverside County Planning Department and the Riverside County Clerk of the Board associated with the LITIGATION. Within ten (10) days of written notice from COUNTY, PROPERTY OWNER shall make such additional deposits. Collectively, the initial deposit and additional deposits shall be referred to herein as the "Deposit."

5. **Return of Deposit.** COUNTY shall return to PROPERTY OWNER any funds remaining on deposit after ninety (90) days have passed since final adjudication of the LITIGATION.

6. **Notices.** For all purposes herein, notices shall be effective when personally delivered, delivered by commercial overnight delivery service, or sent by

certified or registered mail, return receipt requested, to the appropriate address set forth below:

COUNTY:
Office of County Counsel
Attn:
3960 Orange Street, Suite 500
Riverside, CA 92501

PROPERTY OWNER :

With a copy to:

7. ***Default and Termination.*** This Agreement is not subject to termination, except by mutual agreement or as otherwise provided herein. In the event of a default of PROPERTY OWNER's obligations under this Agreement, COUNTY shall provide written notification to PROPERTY OWNER of such alleged default and PROPERTY OWNER shall have ten (10) days after receipt of written notification to cure any such alleged default. If PROPERTY fails to cure such alleged default within the specified time period or otherwise reach agreement with the COUNTY on a resolution of the alleged default, COUNTY may, in its sole discretion, do any of the following or combination thereof:

- a. Deem PROPERTY OWNER's default of PROPERTY OWNER's obligations as abandonment of the PROJECT and as a breach of this Agreement;
- b. Rescind any PROJECT approvals previously granted;
- c. Settle the LITIGATION.

In the event of a default, PROPERTY OWNER shall remain responsible for any costs and attorney's fees awarded by the Court or as a result of settlement and other expenses incurred by the COUNTY related to the LITIGATION or settlement.

8. ***COUNTY Review of the PROJECT.*** Nothing in this Agreement shall be construed to limit, direct, impede or influence the COUNTY's review and consideration of the PROJECT.

9. ***Complete Agreement/Governing Law.*** This Agreement represents the complete understanding between the parties with respect to matters set forth herein. This Agreement shall be construed in accordance with the laws of the State of California.

10. ***Successors and Assigns.*** The obligations specific herein shall be made, and are binding on the successors in interest of the PROPERTY OWNER, whether the succession is by agreement, by operation of law or by any other means.

11. **Amendment and Waiver.** No modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by all parties.

12. **Severability.** If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. **Survival of Indemnification.** The parties agree that this Agreement shall constitute a separate agreement from any PROJECT approval, and if the PROJECT, in part or in whole, is invalidated, rendered null or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Agreement, which shall survive such invalidation, nullification or setting aside.

14. **Interpretation.** The parties have been advised by their respective attorneys, or if not represented by an attorney, represent that they had an opportunity to be so represented in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.

15. **Captions and Headings.** The captions and section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

16. **Jurisdiction and Venue.** Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the Courts of Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

17. **Counterparts; Facsimile & Electronic Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. To facilitate execution of this Agreement, the parties may execute and exchange facsimile or electronic counterparts, and facsimile or electronic counterparts shall serve as originals.

18. **Joint and Several Liability.** In the event there is more than one PROPERTY OWNER, the liability of PROPERTY OWNER shall be joint and several, and PROPERTY OWNER each of them shall be jointly and severally liable for performance of all of the obligations of PROPERTY OWNER under this Agreement.

19. **Effective Date.** The effective date of this Agreement is the date the parties sign the Agreement. If the parties sign the Agreement on more than one date, then the last date the Agreement is signed by a party shall be the effective date.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed by their authorized representatives as of the date written.

COUNTY:
COUNTY OF RIVERSIDE,
a political subdivision of the State of California

By: _____
Name: _____
Title: _____

Dated: _____

PROPERTY OWNER:

By: _____
Name: _____
Title: _____

Dated: _____

FORM APPROVED COUNTY COUNSEL
BY:  3/9/15
MICHELLE CLACK DATE

PAMELA J. WALLS
County Counsel

OFFICE OF COUNTY COUNSEL
COUNTY OF RIVERSIDE

3960 ORANGE STREET, SUITE 500
RIVERSIDE, CA 92501-3674
TELEPHONE: 951/955-6300
FAX: 951/955-6322 & 951/955-6363



ANITA C. WILLIS
Assistant County Counsel

Via Email Transmission to: bblankenship@riversidebia.org

March 20, 2014

Bill Blankenship, Deputy Director
Building Industry Association of Southern California
Riverside Chapter

Re: Indemnification Agreement

Dear Mr. Blankenship,

Pursuant to our discussions several months ago, enclosed for your review and comment is a draft Indemnification Agreement which we will be requiring real parties in interest (applicants) to enter into when litigation is initiated on their projects. You may recall that recently an applicant failed to honor the indemnification condition on a project and the County was required to use general fund money to pay opposing counsel attorney fees and costs. Additionally, our office and the Planning Department were not reimbursed for our time. The Board of Supervisors has authorized our office to require such indemnification agreements to further support our efforts to collect for payment of attorney fees and costs as well as for staff time spent defending litigation if an applicant fails to honor the indemnification condition imposed on a project.

If you have any questions or comments, please contact me within the next several weeks to discuss.

Sincerely,

PAMELA J. WALLS
County Counsel


KARIN WATTS-BAZAN
PRINCIPAL DEPUTY COUNTY COUNSEL
/Enclosures

KWB/nlr
032014
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ATTACHMENTS FILED
WITH
THE CLERK OF THE BOARD