

Attachment C

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**FUNDING AGREEMENT FOR THE PROCESSING OF A MAINTENANCE
AGREEMENT AND ACCESS EASEMENT FOR THE HARVEST MOON
AGRICULTURAL EMPLOYEE HOUSING DEVELOPMENT PROJECT**

THIS FUNDING AGREEMENT, hereinafter, "Agreement", is made and entered by and between the County of Monterey, a political subdivision of the State of California, acting as the Board of Directors of the Boronda County Sanitation District (BCSD), hereinafter, "County BCSD" and Café Tori Investments LLC, a California Limited Liability Corporation, hereinafter, "PROJECT APPLICANT", (collectively, the "Parties") and effective retroactive to July 13, 2020 and with reference to the following facts and circumstances regarding the Harvest Moon Agricultural Employee Housing Development Project (Project):

RECITALS

A. On June 24, 2020, the Monterey County Planning Commission approved a Lot Line Adjustment, Use Permit, Variance and General Development Plan that allows Developer to construct and operate a 150-unit farmworker housing project the Harvest Moon Agricultural Housing Project Planning File No. PLN190127 ("Housing Project") subject to certain conditions. Said Project is described as follows in the project conditions of approval at Condition No. 1 of Permit No. PLN190127:

Responsible Department: RMA-Planning

**Condition/Mitigation
Monitoring Measure:**

This Lot Line Adjustment, Use Permit, and Variance (PLN190127) allows a Lot Line Adjustment between two legal lots of record of approximately 48.65 acres (Assessor's Parcel Number 261-011-026-000) and 8.98 acres (Assessor's Parcel Number 261-011-024-000), resulting in two parcels of approximately 51.81 (Parcel 1) acres and 5.81 acres (Parcel 2), a Use Permit and General Development Plan for a 150-unit Agricultural Employee Housing Complex which will accommodate up to 1,200 employees, a Variance to exceed height regulations in the PQP zoning designation, and a Condition Compliance and Mitigation Monitoring and Reporting Plan. The property is located at 800 and 801 Rossi Street in Salinas (Assessor's Parcel Numbers 261-011-026-000 & 261-011-024-000), Greater Salinas Area Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

**Compliance or
Monitoring
Action to be Performed:**

The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.



B. Project Condition of Approval No. 39 provides as follows:

39. NON-STANDARD: IMPROVEMENTS TO FEE STRIP BORONDA SANITATION DISTRICT

Responsible Department: RMA-Public Works

Condition/Mitigation Monitoring Measure: The applicant shall provide a Maintenance Agreement that grants the District and successors in interest right of access through the developer's improvements within the fee strip owned by the District, if and when the District or its successors performs necessary maintenance or repairs on its facility or plans future sanitation infrastructure improvements. The developer and successors in interest shall be responsible for any and all repairs to developed improvements, at their cost, that may be affected during repair, maintenance or expansion of the District facility within the fee strip performed by the District. Affected improvements include, but are not limited to, roads, driveways, fencing, gates, curbs, gutters, and landscaped areas. The developer and successors in interest shall be responsible for the ongoing maintenance, at their cost, of the developed improvements within the easement.

Compliance or Monitoring Action to be Performed: Prior to issuance of grading and building permits for the developer improvements within the fee strip, developer shall provide a draft Maintenance Agreement for consideration by the District. Prior to Final Inspection, the required Maintenance Agreement must be approved by the Board of Supervisors, Acting as the Board of Directors of the Boronda County Sanitations District. Developer shall pay the District for staff time and materials associated with processing the agreement.

C. Project Condition of Approval No. 40 provides as follows:

40. NON-STANDARD: SEWER EASEMENT BORONDA SANITATION DISTRICT

Responsible Department: RMA-Public Works

Condition/Mitigation Monitoring Measure: The applicant shall obtain an easement from the District for the improvements to be installed within the Sewer Fee Strip that is located within parcel APN 261-011-026.

Compliance or Monitoring Action to be Performed: Prior to issuance of a grading or building permit for the developer improvements, developer shall provide a draft easement and legal description for consideration by the District. Prior to Final Inspection, the required easement must be approved by the Board of Supervisors, Acting as the Board of Directors of the Boronda County Sanitations District. Developer shall pay the District for staff time and materials associated with processing the easement.

D. Pursuant to Project Condition Nos. 39 and 40, PROJECT APPLICANT has requested the assistance of County BCSD staff with the preparation and review of a (1) Maintenance Agreement and a (2) proposed Access Easement for consideration by the County BCSD pursuant to said conditions of approval for the Project. The two instruments to be reviewed and approved by the County BCSD will be between the PROJECT APPLICANT and the County BCSD. The Project site is identified as assessor's parcel number (APN) 261-011-026-000, located within the unincorporated area of the County of Monterey, and owned by the PROJECT APPLICANT.

E. Due to the magnitude and complexity of the Project, County BCSD and PROJECT APPLICANT have agreed that it is necessary and desirable that County BCSD engage County

BCSD staff to provide assistance with the preparation of said instruments and perform related work in furtherance of Project Conditions of Approval Nos. 39 and 40.

F. County BCSD and PROJECT APPLICANT hereby agree that County BCSD shall engage County BCSD staff to assist with the preparation and review of the two (2) instruments to be submitted by PROJECT APPLICANT pursuant to Conditions of Approval Nos. 39 and 40.

G. A fundamental premise of this Agreement is that nothing herein is to be construed as a representation, promise, or commitment on the part of County BCSD to give special treatment to, or exercise its discretion favorably for the Project, in exchange for PROJECT APPLICANT's obligation to cover County BCSD's staff costs and providing County BCSD staff to work on the Project.

H. The subject matter of this Agreement is the PROJECT APPLICANT's funding of the County BCSD's staff services for the Project pursuant to Conditions of Approval Nos. 39 and 40.

I. County BCSD and PROJECT APPLICANT make this Agreement with full knowledge of the requirements of state and local law, including, but not limited to the California Environmental Quality Act (Public Resources Code Section 21000 et seq., hereinafter, "CEQA") and the State CEQA Guidelines (California Code of Regulations Title 14, Section 15000 et seq., hereinafter, "Guidelines") and the Monterey County Code.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, PROJECT APPLICANT AND COUNTY BCSD AGREE AS FOLLOWS:

1. Deposits to Fund this Agreement. PROJECT APPLICANT shall deposit an amount equal to the Project Base Budget for County BCSD staff services provided pursuant to Project Conditions of Approval Nos. 39 and 40. This amount totals \$6,480.00.

PROJECT APPLICANT shall deposit a total amount of \$6,480.00 with County of Monterey Resource Management Agency upon approval of this Agreement by the County of Monterey Board of Supervisors acting as the Board of Directors for the BCSD, currently scheduled for July 28, 2020.

PROJECT APPLICANT's deposit of \$6,480.00 with County BCSD shall be a condition precedent to County BCSD's obligation under this Agreement.

2. Fifteen Percent (15%) Project Contingency. An additional fifteen percent to PROJECT APPLICANT's Base Budget shall be included in this Agreement between PROJECT APPLICANT and County BCSD to cover contingencies. This 15% Project Contingency totals \$972.00 and is subject to the procedures set forth in this Agreement. PROJECT APPLICANT shall



deposit an additional amount of \$972.00 to cover contingencies for County BCSD staff services provided pursuant to Project Conditions of Approval Nos. 39 and 40.

3. Maximum Budget Under Agreement. The maximum amount which may be charged to PROJECT APPLICANT under this Agreement is \$7452.00.

4. Progress Reports. Within thirty (30) days after the end of each quarter, County BCSD shall provide progress reports to the PROJECT APPLICANT showing charges from the prior quarter associated with completion of task(s) as specified in this Agreement. Any Base Budget funds remaining at completion of the Project shall be returned to the PROJECT APPLICANT.

5. Payments to County BCSD.

a. County BCSD's invoices shall be paid from Base Budget funds deposited by PROJECT APPLICANT in the amount of \$6,480.00.

Should this Agreement be terminated prior to June 30, 2021, any unearned balance of the Base Budget deposited by PROJECT APPLICANT to fund the Base Budget amount shall be returned to PROJECT APPLICANT within sixty (60) days of receipt of notice of termination by County BCSD.

b. Project Contingency

An additional fifteen percent (15%) of County BCSD's Base Budget, in an amount not to exceed \$972.00 covers potential contingencies, and transfer of any Project Contingency funds into the Base Budget shall require the approval of both County BCSD and PROJECT APPLICANT. Within five (5) working days of receipt of a request from County BCSD, PROJECT APPLICANT shall approve or disapprove the Request for Transfer from Project Contingency and, if approved, at the same time submit a check to the County BCSD for the amount requested.

If PROJECT APPLICANT takes more than five (5) working days to respond to a Request for Transfer from Project Contingency, additional costs may accrue to County BCSD, which may result in another Request for Transfer from Project Contingency.

6. No Promise or Representation. PROJECT APPLICANT and County BCSD agree that nothing in Agreement is to be construed as a representation, promise, or commitment on the part of County BCSD to give special treatment to, or exercise its discretion favorably for the Project, it being understood that PROJECT APPLICANT's funding obligation under Agreement is undertaken without regard to County BCSD's actions regarding the Project.



7. Term. Agreement shall become effective retroactive to July 13, 2020 upon the date of Board approval and County BCSD's acceptance of this Agreement and continue through June 30, 2021, unless terminated pursuant to Paragraph 8 or amended pursuant to Paragraph 12 of this Agreement.

8. Termination. Agreement shall terminate on June 30, 2021 but may be terminated earlier by PROJECT APPLICANT or County BCSD, by giving thirty (30) days' written notice to the other. Upon such termination, PROJECT APPLICANT shall immediately pay any outstanding invoices, as well as pay for any work performed by County BCSD through effective date of termination.

9. Entire Agreement. Agreement and its attachments constitute the entire agreement between the PROJECT APPLICANT and County BCSD respecting the matters set forth herein. County BCSD and PROJECT APPLICANT each represent that neither has relied on any promise, inducement, representation, or other statement made in connection with Agreement that is not expressly contained herein.

10. Negotiated Agreement. It is agreed and understood by PROJECT APPLICANT and County BCSD that this Agreement has been arrived at through negotiations and that neither is deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

11. Assignment. Neither County BCSD nor PROJECT APPLICANT shall have the right to assign its respective rights and obligations hereunder without the written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

12. Amendment. This Agreement may be amended, modified, or supplemented only in writing by both County BCSD and PROJECT APPLICANT.

13. Contracting Officer. The contracting officer of County BCSD, and the only entity authorized by law to make or amend Agreement on behalf of County BCSD, is the County of Monterey Board of Supervisors acting as the Board of Directors for the BCSD or a County BCSD employee whom they have specifically authorized.

14. Waiver. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in any other instance or a waiver of any other condition or breach of any other term.

15. Governing Law. Agreement shall be construed, interpreted, and applied in accordance with the laws of the State of California applicable to commercial contracts entered and to be performed wholly in California.

16. Construction. The language in all parts of Agreement shall be construed, in all cases, according to its fair meaning. The parties acknowledge that each party has reviewed Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of Agreement.

17. Relationship of Parties. The parties agree that this Agreement establishes only a funding arrangement between the parties, and that the parties are not joint venturers or partners.

18. Indemnification. PROJECT APPLICANT agrees to defend, indemnify and hold County BCSD, it's officers, agents and employees harmless in any action brought by any third party in which the authority of the County BCSD to enter into this Agreement or the validity of this Agreement is challenged.

19. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same Agreement.

20. Notices. Notice to the parties in connection with Agreement shall be given personally or by regular mail addressed as follows:

TO COUNTY BCSD: Carl P. Holm, AICP, RMA Director
County of Monterey Resource Management Agency
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901-4527

TO PROJECT APPLICANT: Café Tori Investments LLC
18900 Portola Drive Suite 200
Salinas, CA 93908

WITH A COPY TO:

TO PROJECT APPLICANT'S REPRESENTATIVES Jason Retterer, Partner & Branch Manager
Johnson, Rovella, Retterer, Rosenthal & Gilles, LLP
318 Cayuga Street
Salinas, CA 93901

Jeffrey D. Nohr, Project Manager
Avila Construction Company
12 Thomas Owens Way, Suite 200
Monterey, CA 93940

Notice shall be deemed effective at the time of personal delivery or seventy-two (72) hours after mailing.

21. The RECITALS set forth above are incorporated into this Agreement.

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Funding Agreement
Café Tori Investments LLC
Harvest Moon Agricultural Employee Housing Development Project
RMA
Term: Retroactive to July 13, 2020 – June 30, 2021
Not to Exceed: \$7,452.00

IN WITNESS WHEREOF, PROJECT APPLICANT and County have executed Agreement as of the day and year written below.

COUNTY OF MONTEREY

CAFE TORI INVESTMENTS LLC*

By: Carl P. Holm, AICP, RMA Director

By: [Signature]
(Signature of Chair, President or Vice President)

Date:

Its: RICKY NGUYEN, Manager
(Print Name and Title)

Approved as to Fiscal Provisions

Date: 07/20/2020

By: _____
Auditor/Controller

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Date: _____

Its: TONY FLORES, Manager
(Print Name and Title)

Date: 7/20/20

Approved as to Form
Office of the County Counsel
Leslie J. Girard, County Counsel

By: _____
Mary Grace Perry
Deputy County Counsel

Date: _____

*INSTRUCTIONS: IF PROJECT APPLICANT is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If PROJECT APPLICANT is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If PROJECT APPLICANT is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. IF PROJECT APPLICANT is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

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