

**ATTACHMENT C –
Defense and Indemnification**

DEFENSE AND INDEMNIFICATION AGREEMENT
BETWEEN THE COUNTY OF SAN DIEGO AND COTTONWOOD CAJON ES, LLC

This Agreement is made and entered into between the County of San Diego (County), a political subdivision of the State of California, and Cottonwood Cajon ES, LLC (Applicant).

WHEREAS, Applicant requests that the County process the application described in Attachment A to this Agreement (hereafter referred to as the "Project");

WHEREAS, the Project is a land use development project or other land use decision for which a defense and indemnification agreement is required under San Diego County Code Section 86.201; and

WHEREAS, it is in the public interest for County and Applicant to enter into this Defense and Indemnification Agreement since Applicant will benefit from the County's processing of the application.

NOW, THEREFORE, in consideration of Applicant's request for County to process an application for the Project and other consideration the receipt and sufficiency of which is hereby acknowledged, County and Applicant agree as follows:

1. Applicant shall defend and indemnify the County, its agents, officers and employees (collectively "County Parties") from any claim, action, liability or proceeding against the County Parties to attack, set aside, void or annul the Project or any of the proceedings, acts or determinations taken, done or made as a result of County's processing and/or approval of the Project. Applicant's obligation to defend and indemnify under this Agreement shall apply to any lawsuit or challenge against the County Parties alleging failure to comply with the California Environmental Quality Act or with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Applicant's obligations under this Agreement to defend and indemnify the County Parties shall include, but not be limited to, payment of all court costs and reasonable attorneys' fees, all litigation-related costs, including County staff costs incurred in support of the litigation, all costs of any judgments or awards against the County, and/or settlement costs, which arise out of County's processing and/or approval of the Project.

2. The County shall notify the Applicant promptly of any claim, action or proceeding and cooperate fully in the defense. Upon receipt of such notification, Applicant shall assume the defense of the claim, action, or proceeding, including the employment of counsel reasonably satisfactory to the County and Applicant, and the prompt payment of the attorneys' fees and costs of such counsel. In the event of a disagreement between the

County and Applicant over litigation issues, each party shall have the authority to control the litigation and make litigation decisions with respect to that party's participation in the litigation. If County reasonably determines that having common counsel would present such counsel with a conflict of interest, or if Applicant fails to promptly assume the defense of the claim, action, or proceeding or to promptly employ counsel reasonably satisfactory to County, then County may employ separate counsel to represent or defend the County, and Applicant shall pay the reasonable attorneys' fees and costs of such counsel within 30 days of receiving an itemized billing therefor. At its sole discretion, the County may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the Applicant of any obligation imposed by this Agreement.

3. Applicant's obligations to defend and indemnify under this Agreement shall apply whether or not there is concurrent, active, or passive negligence on the part of the County Parties, except that Applicant's obligation to indemnify shall not apply where the court finds there is gross negligence or willful misconduct by the County Parties. Applicant's obligations under this Agreement shall be effective regardless of whether any or all Project approvals and/or actions by the County regarding the Project remain valid or are invalidated by any court. Applicant's obligations under this Agreement shall terminate upon County's receipt of Applicant's election in writing to withdraw from further pursuit of the Project, except that Applicant shall continue to be responsible for any defense or indemnity obligations existing prior to Applicant's written election to withdraw from further pursuit of the Project or that are not resolved by Applicant's written election to withdraw from further pursuit of the Project. For purposes of clarity, Applicant's defense and indemnity obligation for attorneys' fees and costs, court fees and judgments, damages and all other items subject to Paragraph 1 of this Agreement that are incurred, even if not paid, or are a result of actions prior to Applicant's written election to withdraw (e.g. attorney fees and costs of dismissing a lawsuit), shall continue after Applicant's written election to withdraw.

4. The Board of Supervisors may require security from Applicant to address the risks associated with the Project pursuant to Section 86.202 of the San Diego County Code. When the Board of Supervisors requires security from the Applicant, Applicant shall provide security in the form and amount, and at the time, specified by the Board.

5. Failure to promptly defend or indemnify County, and/or provide security when required by the Board of Supervisors, is a material breach which shall entitle County to all remedies available under law, including but not limited to specific performance and damages. Moreover, failure to defend or indemnify, and/or provide security when required by the Board of Supervisors, shall constitute grounds upon which the County decision-making body may rescind its approval(s) associated with the Project, and a waiver by Applicant of any right to proceed with the Project or any portion thereof.

6. Applicant shall be and remain obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise transfer all or any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of ownership of the real property upon which the Project is located (or any interest therein). However, the Applicant may be released from such obligations if the Applicant obtains the County's prior written consent to such transfer, which consent shall not be unreasonably withheld.

7. All notices required under this Agreement shall be in writing and delivered by the United States Postal Service, any commercially available letter or package delivery service, or electronic mail (email) provided that a copy of the email is retained that shows the date and time of transmission. The notices shall be addressed to the following:

COUNTY

Director of Planning and
Development Services
County of San Diego
c/o Tamika Brown for Vince Nicoletti
5510 Overland Ave., Suite 210
San Diego, CA 92123
Email: Tamika.Brown@sdcounty.ca.gov

APPLICANT (PRINT):

Cottonwood Cajon ES LLC
c/o Michael Schlesinger
9663 Santa Monica Blvd, Suite 974
Beverly Hills, CA 90210
Email: cottonwoodcajonesllc@gmail.com

With a copy to:
Jennifer Lynch, Partner
Manatt Phelps & Phillips
12730 High Bluff Dr, Suite 300
San Diego, CA 92130
Email: jlynch@manatt.com

8. Each party executing this Agreement represents and warrants that it has been duly authorized to enter into this Agreement, and has full and complete authority to do so. Each party expressly waives any defense to this Agreement based on any lack of authority to enter into and be bound by the terms of this Agreement.


9. This Agreement shall constitute the complete understanding of the parties with respect to the matters set forth herein. Neither party is relying on any other representation, oral or written. This Agreement may not be changed except by a written amendment signed by both parties.

IN WITNESS HEREOF, the parties do hereby agree to the terms of this Agreement.

COUNTY

APPLICANT

By: _____
 Vince Nicoletti, Director of
 Planning and Development Services

By:  _____
 Michael Schlesinger

Date: _____

Date: ⁸⁻¹⁹⁻²⁵ _____

Attachment A

Project Description:

The Cottonwood Sand Mine Project proposes the conversion of the existing Cottonwood Golf Club golf courses to a ten-year sand mining operation with an additional two-year reclamation period. Approximately 214.4 acres of the approximately 280-acre site are proposed for extractive use and restoration which would occur in a total of four phases. The extraction process would occur in three phases over the span of ten years and the cleanup, equipment removal, and final reclamation would occur in the fourth phase over two years. Areas included within the Project boundary that are not disturbed by mining would be subject to habitat improvement through removal of invasive species in the river channel (if necessary) or would be left in their current condition including the existing Sweetwater River channel. The project would make certain improvements to Willow Glen Drive prior to beginning mining operations. The Project's mining operations would extract, process, and transport aggregate consisting primarily of sand suitable for Portland cement concrete. Approximately 4.3 million cubic yards (cy) (6.40 million tons) of material are proposed to be extracted, with approximately 3.8 million cy (5.7 million tons) produced for market use. Those materials undesirable for processing (approximately 427,000 cy) would be retained on site and utilized for backfilling. In addition, approximately 2.5 million cy would be imported to the site to meet the sites overall backfill requirements.

Sand excavation and processing would occur Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m. Trucking operations for material sales and backfill import would occur Monday through Friday from 9:00 a.m. to 3:30 p.m. There would be no processing of materials or trucking from the site on Saturdays, Sundays, and major holidays. Reclamation of the site would include the removal of all artificial structures, grading to achieve final landforms, incorporation of accumulated wash fines, salvaged topsoil, and imported backfill materials, as well as revegetation

the removal of all artificial structures, grading to achieve final landforms, incorporation of accumulated wash fines, salvaged topsoil, and imported backfill materials, as well as revegetation and monitoring. The project requires a Major Use Permit (MUP) and Reclamation Plan (RP).

The project is located at 3121 Willow Glen Drive within the Valle De Oro Community Planning Area within the unincorporated area of San Diego County. The project site extends west to east from approximately 600 feet east of the intersection of Willow Glen Drive and Jamacha Road, to approximately 0.25 miles west of the intersection of Willow Glen Drive and Hillsdale Drive. Willow Glen Drive parallels the north side of the project site and Steele Canyon Road bisects the western portion of the site.