

MENDOCINO

Local Agency Formation Commission

Ukiah Valley Conference Center | 200 South School Street | Ukiah, California 95482
Telephone: (707) 463-4470 | E-mail: eo@mendolafco.org | Web: www.mendolafco.org

PRE-APPLICATION AGREEMENT

INTRODUCTION

Mendocino LAFCo encourages prospective applicants (applicant) to consult with LAFCo staff early in the process where they are seeking approval of a change of organization or reorganization. When that consultation requires more than a few hours of staff time, it is LAFCo policy that applicants, including public agencies, pay the direct cost attributable to such extended pre-application assistance. These direct costs include all out-of-pocket expenses, staff time, and LAFCo legal counsel time and other forms of staff assistance. A schedule of LAFCo staff charge-out rates is attached.

To facilitate payment, parties requesting LAFCo services must submit a deposit along with this Agreement to Pay. The amount of the deposit will be determined by the LAFCo Executive Officer. The deposit set by the Executive Officer is based on the estimated cost of processing. The processing cost for projects can seldom be accurately estimated in advance and are, to large extent, determined by the Applicant. Therefore, please understand that the actual cost of pre-application assistance may exceed the amount of the deposit requested, and/or any estimate of cost.

TERMS

1. DEPOSIT

Applicant agrees to pay the following deposit with execution of this agreement: \$_____. The deposit shall be applied toward services performed and costs expended on the Applicant's behalf. The deposit will be placed in LAFCo's general account and pre-application expenses incurred by LAFCo will be tracked separately from other LAFCo expenses. No interest will accrue on the deposit. LAFCo will keep an accounting of amounts charged against the deposit. In the event any balance of the deposit remains after subtraction of all LAFCo charges, the balance will be refunded to Applicant upon completion of pre-application services. When the deposit is exhausted, LAFCo will begin monthly billing or request an additional deposit.

2. MONTHLY BILLING OR ADDITIONAL DEPOSIT

Should LAFCo pre-application expenses exceed the initial deposit, an additional deposit will be requested or the Applicant will be billed the 5th of each month for all services performed and costs expended in the previous billing month. Applicant agrees to pay all amounts shown as due and owing by the 10th of the following month, unless an alternate payment schedule is agreed to by LAFCo. The period from the time of billing to the 10th of the following month is known as the "payment period".

3. OBJECTIONS TO BILL

Applicant agrees that any questions or disagreements Applicant may have concerning the bill or amount due shall be communicated to LAFCo prior to the end of the payment period, along with payment of any undisputed portion of the bill. If Applicant fails to communicate to LAFCo any objection to the bill prior to the end of the payment period, Applicant is agreeing that the amount stated is correct and is giving up any right to later deny payment to LAFCo.

4. LATE PAYMENTS

(1) Although both parties agree and expect that Applicant shall pay each bill in full when due, should Applicant fail to pay the full amount due within the payment period, Applicant understands that LAFCo will cease work.

(2) If an Applicant is repeatedly late in payment, or fails to pay an outstanding charge for 60 days or more, the LAFCo Executive Officer may require an additional deposit to assure payment of future LAFCo charges, before LAFCo recommences work.

5. STAFF ASSIGNMENTS; CONFLICTS OF INTEREST

(1) Except as provided below, LAFCo will assign staff to tasks as it determines appropriate, in its absolute discretion. However, where LAFCo determines that there is a need for an outside consultant, it will follow its policies in connection with hiring of outside consultants.

(2) If Applicant believes that any staff has a conflict of interest that could adversely affect the handling of your application, a written request for disqualification must be submitted within 15 days of execution of this agreement. The letter should state the conflict of interest. The Executive Office will make an initial determination. If the request is denied, Applicant may request in writing that the Commission consider the conflict within 15 days of Executive Officer's denial notification.

(3) In the event of disqualification of a regular LAFCo staff member, Applicant understands that outside contract staff must be hired. Applicant agrees to pay the charges incurred for any such contract staff even though they may exceed the charge-out rates of staff member being replaced.

6. PAYMENT NOT DEPENDENT ON FUTURE ACTIONS

Applicant understands and agrees that the LAFCo charges are payable regardless of whether the application is ultimately filed, withdrawn, denied or otherwise terminated prior to completion. In the event of withdrawal, Applicant shall be responsible for all charges incurred prior to the time of receipt of written notice of application withdrawal, plus LAFCo's reasonable charges for file closure.

7. VOLUNTARY INDEMNIFICATION AGREEMENT

As part of the application, applicant shall be asked to sign and submit a [voluntary indemnification agreement](#) (attached) for all reasonable expenses and attorney fees incurred from proceedings brought by a third party in connection with the application. While LAFCo retains the discretion in all cases to decide whether to defend an action, the Applicant's voluntary agreement to indemnify LAFCo will have a significant bearing on LAFCo's decision whether to defend its decision.

8. WAIVER

LAFCo's failure to enforce any term hereof shall not be deemed to be a waiver. No delay or omission in the exercise of any remedy of LAFCo on default shall impair such right or remedy or be construed as a waiver thereof, unless waiver is set forth clearly in writing and signed by the waiving party. Such written waiver shall not be construed as a waiver of any other default concerning the same or any other agreement provision, charge, or payment of principal amount owing to LAFCo.

9. AUTHORITY TO SIGN

The party executing this agreement on behalf of Applicant personally warrants that they have full authority to enter into this agreement on behalf of the Applicant for which they are signing, and that said entity will be legally bound to the agreement by their signature hereto. In the event that such authority does not exist, the individual who has signed this agreement agrees that he or she shall be personally liable for the charges.

APPLICANT AUTHORIZATION

Authorized Signature

Date

ATTACHMENT

Staff Service Rates

Mendocino LAFCo Staff	Rate
Executive Officer	\$ 160.00
Analyst	\$ 125.00
GIS / Spatial Analyst	At cost
Clerk	\$ 90.00
Legal Counsel	\$ 275.00

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Voluntary Indemnification Agreement

LAFCo may not condition acceptance of an application upon requiring the Applicant to indemnify LAFCo. However, LAFCo has complete discretion whether to defend any lawsuit that is filed to challenge its decisions. With its limited budget, LAFCo will usually be reluctant to allocate resources to defend challenged decisions. If the Applicant desires to assure that LAFCo will consult with Applicant before determining how to proceed on a legal challenge and increase the likelihood that LAFCo will defend its decision on Applicant's proposal, Applicant may enter into the following voluntary contractual agreement to indemnify LAFCo in the event of legal challenge:

1. FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged. The Applicant shall defend, indemnify and hold harmless, LAFCo, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought by a third party, the purpose of which is to attack, set aside, void, or annul LAFCo's decision with respect to Applicant's proposal or any required findings or determinations under CEQA made as part of that decision. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney's fees, or expert witness fees that may be asserted by any person or entity other than the applicant, arising out of or in connection with LAFCo's approval of the Applicant's proposal, whether or not there is concurrent, passive, or active negligence on the part of LAFCo, its agents, officers, attorneys, employees and contractors.
2. Applicant agrees that LAFCo shall have the right to appoint its own counsel to defend it and conduct its own defense in the manner it deems in its best interest subject to the provisions of this agreement, and that such actions shall not relieve or limit Applicant's obligations to indemnify and reimburse defense costs.
3. In exchange for such indemnity, LAFCo agrees to the following:
 - a. To immediately notify the Applicant of any litigation or administrative proceeding with respect to the Applicant's application in which LAFCo is named as a party.
 - b. In the event that the Applicant is not joined in the action or proceeding, LAFCo agrees to support a motion by the Applicant to intervene in the action or proceeding.
 - c. To consult with Applicant before making any decision whether to defend the legal challenge. If Applicant desires to defend the case and confirms in writing its commitment to reimburse LAFCo for its defense costs and provides a deposit for such costs as LAFCo shall reasonably determine, LAFCo will proceed to defend unless it has reasonable cause not to do so. If a determination is made to defend the action, LAFCo counsel will consult and reasonably cooperate with Applicant's counsel in the defense of the action. LAFCo shall not enter into any settlement of all or a part of the action without consulting with Applicant.

APPLICANT:

- I/We have reviewed the Voluntary Indemnification Agreement and choose not to sign.
- I/We have reviewed and agree to the Voluntary Indemnification Agreement as presented above.

Date: _____

By: _____
Authorized Officer

MENDOCINO LAFCO:

Date: _____

By: _____
Executive Officer

May 3, 2021