

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: http://mendolafco.org

FEE AGREEMENT and VOLUNTARY INDEMNIFICATION

(Updated May 2021)

1. DEPOSIT

Applicant agrees to pay the following deposit with execution of this agreement: \$_____. LAFCo charges are based upon actual staff time and other expenses incidental to processing applications including CEQA compliance as a Responsible Agency, reviewing project proposals (Pre-Application Requests), and researching matters as requested. Such charges may be incurred prior to or without the filing of an application with LAFCo. Individuals and agencies who request services, research, or review must provide a deposit toward project expenses, as listed on the current [fee schedule](#) along with a signed copy of this agreement. All deposits are subject to increase, should the Executive Officer determine that the magnitude of the project justifies the increase. The staff time necessary to process an application or request for service cannot be easily predicted in advance. Therefore, applicants should be aware that LAFCo charges may exceed the applicable initial deposit.

The deposit will be placed in LAFCo's general account and 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 application services. When the deposit is exhausted, LAFCo will request an additional deposit.

2. BILLING PROCEDURE

LAFCo invoices will detail tasks, hours, staff charge-out rates, staff members responsible for work, and/or costs of contracted services. Invoices will also reflect the remaining balance of the initial deposit. Should the deposit be depleted, all staff work will cease until the deposit on file has been replenished. Projects with delinquent balances will not be scheduled for hearing, and the Commission will consider applicants to have waived any and all statutory deadlines.

This form must be signed by the Applicant as the person responsible for payment. Where an agency has filed a Resolution of Application, an authorized staff member must sign the application and bind the agency as the entity responsible for payment. The application must be filed with LAFCo along with the applicable deposit. Questions regarding specific billing procedures should be directed to the LAFCo Executive Officer at (707) 463-4470.

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. 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.

5. STAFF ASSIGNMENTS; CONFLICTS OF INTEREST

The Executive Officer shall assign LAFCo staff members to projects as appropriate. Should the scope of a project require that outside consulting or other needed services be obtained, applicants will be responsible for the entire cost of recruitment, source selection, and payment for such outside services. Applicants are responsible for paying actual costs for any services obtained through contract, even if such costs exceed the charge-out rate of a regular staff member providing similar services.

6. 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.

7. 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.

8. COMPLIANCE WITH POLITICAL EXPENDITURE AND CONTRIBUTION DISCLOSURE REQUIREMENTS

Pursuant to Government Code Sections 56700.1 and 57009 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, and 82015 and 82025 of the Political Reform Act applicants for LAFCo approvals and those opposing such proposals are required to report to LAFCo all political contributions and expenditures with respect to the proposal that exceed \$250. LAFCo has adopted policies to implement the law (Mendocino LAFCo Policy 6.2. By your signature to this application or request for service, you are binding the applicant to abide by these disclosure requirements. You are further agreeing that should LAFCo be required to enforce these requirements against you (or if the agency is the formal applicant, the real party in interest) that you will reimburse LAFCo for all staff cost and legal fees, and litigation expenses incurred in that enforcement process.

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.

10. AGREEMENT

I certify that I have reviewed the above information, the current LAFCo fee schedule, the State Board of Equalization fee schedule, and the State Department of Fish and Wildlife related to CEQA filing fees. I agree, as project applicant or authorized representative, to pay Mendocino LAFCo for all staff services, materials, and other charges attributable to my application or request for services, including the obligation of indemnification should the Voluntary Indemnification Agreement (attached) be signed. I understand that services may be required before LAFCo receives a formal application, and I agree to pay for such services whenever incurred and regardless of whether a formal application is submitted to LAFCo. I also understand and agree that LAFCo's charges are payable regardless of whether the application is ultimately filed, withdrawn, denied, or otherwise terminated prior to completion.

I understand that if the cost of services exceeds the deposit on file, staff work on my project will cease, and my project will not be scheduled for hearing until the requested additional funds are provided. I agree to remit the applicable State Board of Equalization filing fee, and State Department of Fish and Wildlife CEQA filing fee if applicable, when required. I agree to pay all charges within 30 days of receipt of invoice or in any case prior to the filing of the Certificate of Completion for the project.

Executed at _____, California, on _____, 20__.

APPLICANT (Agency Name if Agency
Submitted Resolution of Application)

REAL PARTY IN INTEREST
(If different from Applicant)

Signature: _____

Signature: _____

Title: _____

Title: _____

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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