



PRE-APPLICATION AGREEMENT and INDEMNIFICATION

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. INDEMNITY

Should Mendocino LAFCo or any member of its commission, staff, contractors and/or agents be named as a party in any litigation or administrative proceeding in connection with the Applicant's proposal or request for services, Applicant agrees to indemnify, save harmless, and promptly reimburse LAFCo for (1) all reasonable expenses and attorneys' fees in connection with the defense of LAFCo and (2) any damages, penalties, fines or other costs imposed upon or incurred by LAFCo, including expert witness fees, whether or not there is concurrent passive or active negligence on the part of LAFCo, its agents, officers, attorneys, employees, and contractors or consultants. 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, and that such actions shall not relieve or limit Applicant's obligations to indemnify and reimburse defense costs. Provided however, that LAFCo shall not settle with any plaintiff without consulting with Indemnitor prior to settling. Such indemnity obligation shall include LAFCo defense costs incurred in responding to a legal challenge by the Applicant to a LAFCo 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.

Executed at _____, California, on _____, 20____.	
APPLICANT (Agency Name if Agency Submitted Resolution of Application)	REAL PARTY IN INTEREST (If different from Applicant)
Name (print): _____	Name (print): _____
Title: _____	Title: _____
Signature: _____	Signature: _____

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