

CHAPTER 12. LAFCO INDEMNIFICATION POLICY

To further good government practices and policies of the Commission, and protect the Commission from the costs associated with legal challenges, it is the policy of this Commission that:

1. As ~~part a condition~~ of ~~submitting~~ any application ~~submitted to for action or determination~~ by the Commission, the applicant(s) shall submit a signed agreement in which the applicant(s) agree to indemnify, defend and hold harmless the Commission, its agents, officers, attorneys, and employees from any legal challenges or appeals brought to challenge ~~the review or~~ approval of their applications ~~by the Commission~~ in the form prescribed in Exhibit "A", attached hereto and incorporated herein by reference.
- ~~2.~~—In the event ~~that~~ a lawsuit is brought to challenge the ~~review or~~ approval of ~~a~~ an application proposal by the Commission, the Commission shall notify the applicant(s) promptly and no later than three (3) business days after the Commission has been served. ~~Additionally, the Commission shall submit an invoice to the applicant for an amount to cover a portion of the estimated cost of resolving the matter. This amount will likely range between \$10,000 and \$25,000 and shall be determined at the Commission's sole discretion. The Commission may stop defending the matter, if at any time the Commission has not received timely payment of litigation defense costs.~~
- ~~23.~~ The Executive Officer shall not issue a Certificate of Filing for an application if an indemnification agreement in the form prescribed in Exhibit "A" has not been executed and submitted to the Executive Officer by the applicant(s).

EXHIBIT A

INDEMNIFICATION AGREEMENT

As ~~a condition of submitting any application for consideration by the Commission, part of this Application,~~ Applicant and its successors and assigns, shall indemnify, defend and hold harmless, Santa Clara LAFCO, ~~and~~ its officials, officers, employees, agents, representatives, contractors, and assigns from and against any and all claims, demands, liability, judgments, damages (including consequential damages), awards, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature, at any time arising out of, or in any way connected with, any legal challenges to or appeals associated with, LAFCO's ~~review and /or~~ approval of the Application (collectively, "Indemnification Costs"). Applicant's obligation to indemnify, defend and hold harmless Santa Clara LAFCO, ~~and~~ its officials, officers, employees, agents, representatives, contractors, and assigns under this Agreement shall apply regardless of fault, to any acts or omissions, or negligent conduct, whether active or passive, on the part of the Applicant, Santa Clara LAFCO, ~~or~~ its officials, officers, employees, agents, representatives, contractors or assigns. Applicant's obligation to defend Santa Clara LAFCO, ~~or~~ its officials, officers, employees, agents, representatives, contractors, and assigns under this Agreement shall be at Applicant's sole expense, and using counsel selected or approved by Santa Clara LAFCO in Santa Clara LAFCO's sole discretion.

In the event of a lawsuit, Applicant will be notified by Santa Clara LAFCO within three (3) business days of being served. ~~An invoice will be submitted to the Applicant by LAFCO for an amount between \$10,000 and \$25,000 to cover a portion of the Indemnification Costs ("Reserve"), which shall depend upon the estimated cost to resolve the matter and shall be determined in LAFCO's sole discretion. Applicant shall pay the Reserve to LAFCO within seven (7) calendar days of LAFCO's request. The Reserve shall be applied against LAFCO's final bill for the Indemnification Costs, with any unused portion to be returned to Applicant. LAFCO shall bill Applicant monthly for the Indemnification Costs, which shall be paid to LAFCO no later than 15 calendar days after receipt of LAFCO's bill. LAFCO may stop defending the matter, if at any time LAFCO has not received timely payment of the Reserve and /or the Indemnification Costs. This will not relieve Applicant of any of its obligations pursuant to this Agreement.~~

BY APPLICANT

Signature: _____ Date: _____

Print Name: _____ Title: _____