

## AGREEMENT NO \_\_\_\_\_

THIS AGREEMENT is made and entered into on \_\_\_\_\_, by and between the \_\_\_\_\_, a City, referred to herein as "APPLICANT" and KERN COUNTY LOCAL AGENCY FORMATION COMMISSION, referred to herein as "LAFCO".

### R E C I T A L S

WHEREAS, APPLICANT has requested that LAFCO file its application for \_\_\_\_\_ described in its Resolution No. \_\_\_\_\_; and

WHEREAS, APPLICANT desires to indemnify LAFCO from liability or loss connected with the filing, processing, and approval (if approved) of the application as provided in this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED between LAFCO and APPLICANT as follows:

1. APPLICANT shall defend, indemnify, and hold harmless LAFCO, its commissioners, officers, employees, and agents (hereinafter collectively "LAFCO") from all claims, actions, or proceedings relating to or arising out of, directly or indirectly, the project described in Paragraph 2 of this Agreement (hereinafter "claims") as follows:

(a) All claims to attach, set aside, void, or annul LAFCO's filing, processing or approval (or any condition of said approval) of the project and all claims seeking to impose personal liability on LAFCO as a result of LAFCO's involvement in such project.

(b) All costs, attorney's fees (including a third-party award of attorney's fees), expenses, liabilities, losses, damages, and judgments (all hereinafter "damages") of whatever nature rendered against LAFCO as a result of any such claim, except where such damages result solely, exclusively, and 100% from the negligence of LAFCO.

(c) Additionally, APPLICANT acknowledges, its understanding that Articles 13C and 13D of the California Constitution (Proposition 218) have been interpreted by some as requiring approval by the voters or property owners within the area of a pending annexation of all taxes, assessments, fees, and charges which will be imposed on the area prior to the completion of the annexation. Notwithstanding the foregoing, APPLICANT has decided not to impose such a condition on the project and objects to LAFCO doing so and agrees to defend and indemnify LAFCO against same in the same manner and under the same conditions as described in Paragraphs 1(a) and (b) of this Agreement. APPLICANT also agrees to release LAFCO from all losses, damages judgments, and attorney's fees and costs incurred or suffered by APPLICANT as a result of APPLICANT'S and LAFCO's failure to impose such a condition on the project and, with

regard thereto, APPLICANT acknowledges and waives its rights under California Civil Code Section 1542 which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

2. The APPLICANT'S obligations created by this Agreement shall apply to claims arising out of or relating to, directly, or indirectly, the APPLICANT'S project (the "project") described as: In the Matter of \_\_\_\_\_, Proceeding No. \_\_\_\_\_.

3. The Agreement shall not apply to claims based on alleged illegalities or inadequacies that predate or existed prior to the filing of the application.

4. LAFCO will promptly notify APPLICANT in writing of any such claim, action or proceeding within 10 business days of the date that LAFCO receives written notice thereof. If LAFCO fails to give APPLICANT timely notice, APPLICANT shall not thereafter be responsible to defend or indemnify or hold harmless LAFCO or its commissioners, officers, employees, and agents pursuant to this Agreement.

5. LAFCO may, in its unlimited discretion, participate in the defense of any such claim, action or proceeding if both of the following occur:

- (a) LAFCO bears its own attorney's fees and costs; and
- (b) LAFCO defends the claim, action, or proceeding in good faith.

6. APPLICANT shall not be required to pay or perform any settlement of such claim, action or proceeding unless the settlement is approved by APPLICANT.

7. LAFCO may without cause terminate this Agreement by giving written notice as provided below. APPLICANT may not terminate this Agreement for any reason.

8. All notices to either party under this Agreement shall be deemed valid and effective when personally served upon the party or upon deposit in the United States mail, postage prepaid, by certified and/or registered mail, addressed as follows:

LAFCO: LOCAL AGENCY FORMATION COMMISSION  
Attention: Executive Officer  
5300 Lennox Ave Suite 303  
Bakersfield CA 93309

APPLICANT:

9. This Agreement represents the complete understanding between the parties with respect to matters as set forth herein.

10. In the event action is taken by either party hereto against the other to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

\_\_\_\_\_  
Executive Officer  
Local Agency Formation Commission

\_\_\_\_\_  
"APPLICANT"

Approved as to form:

\_\_\_\_\_  
Attorney for APPLICANT