

ASSUMPTION OF DEFENSE AND INDEMNITY AGREEMENT

This Assumption of Defense and Indemnity Agreement (the "Agreement") is entered into by _____, an individual ("_____"), and the City of _____ ("City").

RECITALS

A. On or about July 12, 2012, attorney _____, representing a client designated as "John Doe", sent the City a draft complaint purporting to name _____ as a defendant, among others. The lawsuit is entitled *John Doe v. _____, and _____* (the "Lawsuit"). The Lawsuit asserts claims against all defendants for alleged civil rights violations pertaining to the adoption of Ordinance no. ___ on or about _____ (the "Ordinance"), which took effect on or about _____. Plaintiff in that case seeks compensatory and punitive damages against all defendants.

B. ...

C. Under California Government Code sections 825 and 995, _____ has requested that City provide her legal defense and indemnity in the Lawsuit and any other necessary defense and indemnity arising out of the adoption and enforcement of the Ordinance.

D. City desires and agrees to provide a legal defense and indemnify _____ in the Lawsuit and any other necessary defense and indemnity arising out of the adoption and enforcement of the Ordinance on the terms and conditions set forth herein.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged – including, without limitation, the recitals, the covenants, conditions, representations and warranties set forth in this Agreement, and _____'s employment or service to the City – the parties hereto agree as follows:

AGREEMENT

1. Provision of Defense

(a) City agrees to retain and pay the law firm of Best Best & Krieger ("BB&K") as legal counsel for _____ in the Lawsuit and in any other lawsuits arising out of adoption or enforcement of the Ordinance ("Ordinance-related Lawsuits"), on condition that _____ reasonably and in good faith cooperates in the conduct of his defense with City.

(b) City shall not pay for any costs of separate legal counsel chosen by _____ to assist with this defense without City's prior written approval.

2. Representation by BB&K

_____ agrees to be represented in any Ordinance-related Lawsuits by BB&K. _____ hereby acknowledges that BB&K serves as the City Attorney for City and that BB&K will also represent City and the other defendants in any Ordinance-Related Lawsuits. _____ and City agree that if, at any time during BB&K's representation of _____ and City in any

Ordinance-Related Lawsuit, a perceived or actual conflict of interest arises between _____ and City or the other defendants, BB&K may withdraw from representing _____ and shall continue to represent City and the other defendants.

In the event BB&K withdraws from representing _____ in any Ordinance-Related Lawsuit pursuant to Section 2 of this Agreement, _____ hereby agrees to allow City in its sole discretion to retain and pay for new legal counsel to represent _____ in any Ordinance-Related Lawsuit.

_____ and City agree that this Agreement has been entered into for the benefit of _____, and that City shall be deemed a third party beneficiary of this Section 2 and Section 3 below.

3. _____'s Acknowledgments.

_____ acknowledges that (s)he:

a. Has been advised by City that his/her interests in any Ordinance-Related Lawsuit may conflict with those of City;

b. Has received from City a full disclosure of the facts pertaining to present and potential conflicts of interest;

c. Has been advised by City to seek independent counsel regarding this Agreement;

d. Is aware and agrees that if a conflict arises in the future between _____ and City or the other defendants concerning this Agreement or any Ordinance-Related Lawsuit, BB&K may withdraw from representing _____ and continue to represent City and the other defendants; and

e. Consents to representation by BB&K in any Ordinance-Related Lawsuit under these circumstances.

4. Agreement to Indemnify.

The City has concluded that, based on the known record of the matters upon which the Lawsuit is based, a review of the record underlying the adoption and enforcement of the Ordinance, and statements made by Plaintiff's counsel in connection with the Lawsuit, any actions or omissions on _____'s part giving rise to the Lawsuit and to any Ordinance-Related Lawsuit (a) occurred within the course and scope of _____'s office and employment, (b) were based on a well-reasoned understanding of underlying Constitutional principles as set forth in the record, and (c) were in good faith, without actual malice, and in the apparently best interests of City. Therefore, City agrees to use all available resources to pay any judgment, damages (general and punitive), award of fees and/or costs, and compromise or settlement on behalf of _____.

5. Execution of Other Documents.

The parties hereto agree that they will cooperate with each other and will execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as any party hereto may reasonably request from time to time in order to effectuate the provisions and purposes hereof.

6. Captions.

The headings of sections of this Agreement are inserted solely for convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

7. Severability.

If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and shall be enforced to the fullest extent permitted by law.

8. Governing Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to conflicts of laws, principles or rules.

9. Counterparts.

This Agreement may be executed in counterparts, each of which is deemed to be an original, but such counterparts together shall constitute one in the same instrument. All

parties acknowledge receipt of a copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Assumption of Defense and Indemnity Agreement, and when fully executed it shall be effective.

Dated: _____

City of _____

By: _____

Dated: _____

By: _____

_____, an Individual

SAMPLE ONLY



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June 29, 2015

Commissioner _____
LAFCO

Re: Conflict Waiver - *John Doe v. LAFCO, et al.*

Dear Commissioner ____:

As you are already aware, we represent LAFCO, several LAFCO Commissioners, and LAFCO staff in the above-entitled case. We also represent LAFCO as general counsel. Furthermore, you also know that you have been named individually as a defendant in this lawsuit and have asked us to represent you in this case. It is our understanding that your representation in this case has been and will continue to be paid for by LAFCO. Accordingly, we have to inform you about our representation of you as an individual, discuss with you the potential impact of our representation and the potential impact of this relationship, and obtain your informed written consent.

RULES OF PROFESSIONAL CONDUCT

Rule 3-310 of the California Rules of Professional Conduct provides in pertinent part:

(C) A member [of the Bar] shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.



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OUR REPRESENTATION

In this matter, we represent the other named defendants. However, we are also representing you in this case because of your office with LAFCO. LAFCO is paying our fees and costs; however, you and the other defendants are our clients in this matter. Therefore, in this case, not only is there an attorney-client relationship between our firm and the other defendants, but there is also an attorney-client relationship, with its corresponding duty by us, between our firm and you. Further, there is an attorney-client relationship between our firm and LAFCO.

As provided for in the Assumption of Defense and Reservation of Rights Agreement entered into between you and LAFCO, you agree that if, at any time during our representation of you and the other defendants in this case, a perceived or actual conflict of interest arises between you and any other defendant(s), or you and LAFCO, we may withdraw from representing you and shall continue to represent LAFCO and the remaining defendants. You agree not to assert any reason, including, but not limited to, the existence of confidential information that you may have provided to us during the time that we represent you in this case or at any other time, that would preclude us from continuing to represent the other defendants, LAFCO, or both.

ADVERSE CONSEQUENCES

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of this representation. Although we always conduct ourselves in accordance with the highest professional and ethical standards, you should consider whether it is possible that:

- We may not be able to present the appropriate position, claims or defenses for you in order to avoid taking adverse positions to the other defendants, LAFCO, or both.
- We may impair your position, claims or defenses because of an adverse position we take for the other defendants, LAFCO, or both.
- Disputes may arise between you, the other defendants, and/or LAFCO regarding tactics, objectives or resolution of this matter because of our joint representation of clients.
- We may disclose confidential information to the other defendants, LAFCO, or both that you would not like revealed since we cannot keep confidences between clients on the same matter.
- We may be forced to withdraw from representing you because of disputes or further conflicts of interest which could increase one or more clients' attorney's fees and costs. If that happened, we would then be representing only LAFCO and



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any other of the defendants not subject to conflicts, and could be advancing positions or defenses on behalf of LAFCO and the other remaining defendants, which are not in your interests.

- The fact and extent of payments by LAFCO for our representation may not be confidential, and its disclosure may create an appearance of impropriety.
- There may be an appearance of impropriety in our representation of the other defendants, LAFCO, and you, simultaneously.
- We may be tempted to favor the interests of one client over another.
- Our exercise of independent judgment to you may be impaired or clouded by our pre-existing relationship with LAFCO or the other defendants.
- We may be restricted from forcefully advocating a client's position for fear of alienating another client.

YOUR CONSENT

If you wish us to continue to represent you in this matter, we need you to sign this consent letter. It is understood that this consent will not waive any protection that you may have with regard to attorney-client communications with us, except as to co-clients in this matter. Those communications will remain confidential and will not be disclosed to any third party without your consent.

We believe that you are familiar with the factual background in this matter, and we have given you a sufficiently-detailed description for obtaining informed written consent. However, if you believe that there is any other information that you or we need to have before such consent can be granted, please let us know immediately.

In the event that circumstances change or we become aware of new information that requires a new consent from the parties, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of involved parties.

We should emphasize that you are entitled to and should consider obtaining an independent legal opinion regarding the advisability of signing this consent form.

Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Section 3-310 of the California Rules of Professional Conduct previously quoted in this letter.



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A copy of this letter is enclosed for your files. If you have any questions, please do not hesitate to call.

Sincerely,

Scott C. Smith
of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

By: _____
Commissioner

Dated: _____

SAMPLE

LAFCO

INTERNAL MEMORANDUM

TO: General Counsel

FROM: Commissioner

SUBJECT: Request for Defense and Indemnity – *John Doe v. LAFCO et al.*

DATE:

I am requesting defense and indemnification for any and all liability that may arise from and as alleged in the petition/complaint entitled *John Doe v. LAFCO et al.*, Case No.:

Commissioner

Date