

INDEMNITY, HOLD HARMLESS, AND DEFENSE AGREEMENT

This Indemnity, Hold Harmless and Defense Agreement (“Agreement”) is made and entered into this ____ day of _____, 2013, by and between the El Dorado Local Agency Formation Commission (“LAFCO”) and the County of El Dorado, a political subdivision of the State of California (“County”).

RECITALS

A. For decades there has been some form of local agency formation commission existing in El Dorado County. Prior to the enactment of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“Cortese-Knox-Hertzberg”), the administrative support of LAFCO existed as part of the County, with designated County employees assigned to support the commission.

B. The enactment of Cortese-Knox-Hertzberg, effective January 1, 2001, amended previous laws governing local agency formation commissions and among other things, required LAFCO to make its own provision for personnel under Government Code sections 56380, 56384 and 56385. Section 56380 also allows LAFCO to contract with any public agency or private party for personnel and services.

C. LAFCO employees have continued to be included in the County’s contract with the California Public Employees Retirement System (“CalPERS”) after the execution of various memoranda of understanding between the County and LAFCO.

D. LAFCO is in the process of entering into its own, separate contract with CalPERS, removing LAFCO employees from the County contract.

E. LAFCO and the County wish to enter into this Agreement in order to provide for LAFCO to defend, indemnify, and hold harmless the County against liability or higher costs arising out of LAFCO employees’, as further defined herein, participation in CalPERS.

AGREEMENT

1. LAFCO’s obligation to defend, indemnify and hold harmless.

LAFCO agrees as follows:

A. As of September 16, 2011, LAFCO ceased reporting compensation and making contributions to CalPERS on behalf of LAFCO employees.

B. LAFCO accepts responsibility for making any payments required to be made to CalPERS for retirement benefits for any LAFCO employees performing services for LAFCO.

C. For purposes of this agreement, any County employee who may have been assigned to work on LAFCO matters prior to January 1, 2001, shall be deemed to have been a County employee, rather than a LAFCO employee (“County Employee”).

D. LAFCO accepts full and total responsibility for any and all payments of any kind and nature that are claimed by CalPERS and/or that are due to CalPERS and/or to any other individuals by El Dorado County, its officers, boards, commissions, employees or agents individually and/or collectively that are related in any way to service by LAFCO employees including, but not limited to, former employees of El Dorado County who subsequently became or become LAFCO employees on or after January 1, 2001 but only to the extent of service accrued on or after January 1, 2001, (hereinafter, collectively LAFCO employees) including, but not limited to, employer and/or employee CalPERS contributions of any kind and nature including, but not limited to, normal contributions and contributions for prior service as a LAFCO employee, payment of any and all penalties and administrative costs associated with failure by LAFCO to make employer or employee contributions and/or failure to report employee compensation within applicable time limitations at any time, and/or any and all costs associated with any unfunded liabilities as a LAFCO employee, and/or any and all other monetary sums of any kind and nature that are due CalPERS now or in the future in connection with such employees’ service as LAFCO employees. LAFCO’s obligations under the preceding sentence shall be collectively known as “LAFCO Obligations.” The LAFCO Obligations shall exclude any liability with respect to: (1) County Employees who provided services to LAFCO prior to January 1, 2001, (2) by increases in costs incurred by the County in connection with its CalPERS obligations regarding County Employees.

E. LAFCO agrees to defend, indemnify and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney’s fees and costs incurred, brought for, or on account of injuries to or damage to or death of any person, including but not limited to any employees and the public, or for damage to property, or any economic or consequential losses of any kind and nature to the extent arising out of or connected to the LAFCO Obligations, and/or to the Reallocation Agreement executed by LAFCO and the County and provided to CalPERS, except as expressly prohibited by law. This duty to indemnify and save the County harmless includes the duties to defend set forth in California Civil Code section 2778.

F. If LAFCO fails to establish its own CalPERS contract, and CalPERS subsequently reverses out service credit and compensation reported on behalf of LAFCO employees (and/or directs the County to do so), the County will consider refund to LAFCO the aggregate employee and employer contributions reversed out, as adjusted for any investment gains and/or interest, to the extent such contributions are received or held by the County. If CalPERS uses any of such contributions to offset County obligations to CalPERS rather than refunding them to LAFCO or to the County, the County will consider paying to LAFCO an amount equal to the amount offset by CalPERS against County obligations. The parties understand that any refund will not include funds due the County by LAFCO, including but not limited to unfunded CalPERS liabilities related to LAFCO employees. The County shall consider returning to LAFCO any funds that the County determines is owed to LAFCO.

2. General Provisions.

A. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of and for El Dorado County. No such action may be instituted by either party until they have met and conferred over any disputed issues.

B. Severance. Any provision of this Agreement which proves to be invalid or illegal shall in no way affect, impair or invalidate any other provisions of this Agreement, and such other provisions shall remain in full force and effect.

C. Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified in writing signed by both parties. This Agreement shall be interpreted as if jointly prepared by the parties. No presumption shall arise from the identity of the drafter.

D. Authority. Each party warrants to each other that the individual signing this Agreement on behalf of such party is fully authorized to bind such party and agrees to be bound by this Agreement as of the effective date of this Agreement.

E. No Third Party Rights. This Agreement has been created exclusively for the benefit of the signatory parties and no rights are created in any third party by entry into this Agreement.

F. Notices. All notices permitted or required under this Agreement shall be deemed made when delivered to the applicable party's representative as provided in this Agreement. Additionally, such notices may be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

COUNTY:

Terri Daly, Chief Administrative
Officer, or successor.
County of El Dorado Chief
Administrative Office
330 Fair Lane
Placerville, CA 95667

LAFCO:

Jose Henriquez, Executive Officer,
or successor,
El Dorado Local Agency Formation Commission
550 Main St., Suite E
Placerville CA 95667

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid, return receipt requested and addressed to the party at its applicable address.

IN WITNESS WHEREOF, the parties hereto have executed this Indemnity, Hold Harmless and Defense Agreement on the dates set forth below.

COUNTY OF EL DORADO

Ron Briggs, Chairman, Board of Supervisors

Date: _____

ATTEST:

James S. Mitrison, Clerk of the Board

By: _____
Deputy Clerk

APPROVED AS TO FORM AND CONTENT:

**EL DORADO LOCAL AGENCY
FORMATION COMMISSION**

Don Mette, Chair

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM AND CONTENT:

BEST BEST & KRIEGER LLP

By: _____
General Counsel