

## SETTLEMENT, INDEMNITY, AND HOLD HARMLESS AGREEMENT

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This Settlement, Indemnity, and Hold Harmless Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the El Dorado Hills Community Services District (“District”) and the County of El Dorado, a political subdivision of the State of California (“County”).

### Recitals

**WHEREAS**, Pursuant to the California Mitigation Fee Act, (Cal. Gov. Code §66000 et seq.) local agencies may establish fees in connection with approval of a development project to offset the costs of new public facilities that become necessary as a result of the development; and

**WHEREAS**, The County of El Dorado passed Ordinance No. 4404, establishing “CSD and Parks and Recreation Impact Mitigation Fees,” which authorizes the El Dorado County Board of Supervisors to adopt fees on behalf of community services districts within the County to offset the impacts of new development on parks and recreation services equipment and capital facilities; and

**WHEREAS**, District is duly organized, pursuant to Government Code section 61000 et seq., to provide parks and recreation services within its boundaries in the unincorporated area of the County; and

**WHEREAS**, County first began collecting fees on behalf of the District in 1997 and disbursing those fees to the District upon request; and

**WHEREAS**, the District has made a request for disbursement of Five-hundred seven-thousand seven-hundred thirty dollars and ninety-six cents (\$507,730.96) as reimbursement for Promontory lease payments, basketball courts and administration. Of further concern are the anticipated future requests for reimbursement from the District and the County. Similarly, the District seeks to be reimbursed Forty-two thousand six-hundred four dollars and sixteen cents (\$42,604.16) for 2014-15 project administration from the District Development Impact Fee account per the parties' previous agreements. Both parties wish these monetary transfers occur as soon as possible without the need for litigation among the various parties.

**THEREFORE**, County and District mutually agree as follows:

#### 1. Transfer of Funds

Within fifteen (15) days following full execution of this Agreement and the submission of documentation confirming the expenditures, County shall transfer the verified amount requested from the District Development Impact Fee account to a District operating account to be specified by District.

#### 2. District’s Obligation to Indemnify and Hold County Harmless.

If in the matter of *Thomas Austin and Helen Austin v. The County of El Dorado, et al.*, or any subsequently filed litigation challenging the County's transfer of monies to the District under the Mitigation Fee Act (Government Code section 66000, et seq.), the Court determines that the monies transferred by the County to the District are subject to refund pursuant to Government Code section 66001 or any other provision of the Mitigation Fee Act, District agrees to hold County harmless in regards to such sums. District agrees to either (1) pay the amount to be refunded to those entitled to the

refund or (2) indemnify County for the amount to be refunded through direct payment to the County within 30 days or through the withholding of property tax revenues due the District.

### 3. 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. Administrator. The County employee with responsibility for administering this Agreement is Don Ashton, Chief Administrative Officer, or successor.

F. 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.

G. Effective Date: The effective date of this Agreement shall be upon execution by the parties.

H. 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:**  
Don Ashton, Chief Administrative  
Officer or successor.  
330 Fair Lane  
Placerville, CA 95667

**DISTRICT:**  
Brent Dennis, General Manager  
1021 Harvard Way  
El Dorado Hills, CA 95762

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.

I. Settlement: This Agreement is the result of a compromise and settlement of claims which are potentially contested, and shall never, at any time, for any purpose, either in whole or in part,

be construed as an admission or acknowledgment of liability, or an admission or acknowledgment of responsibility, or an admission or acknowledgment of fact or evidence of such fact on the part of any Party. This Agreement, and all negotiations associated with it, is intended to affect a compromise that is subject to the protections of Section 1152 of the Evidence Code of the State of California.

J. Time of the Essence: The Parties shall act promptly and in good faith to do all such acts, including, but not limited to, execution of any necessary documents, required effectuate the terms of this Agreement.

K. Enforcement of Agreement. In the event of litigation, including but not limited to the filing of a petition for writ of mandate to enforce any of the terms and conditions of this Agreement, the prevailing party shall be entitled to attorney’s fees and costs. This provision is intended to apply to any failure of the County to transfer the verified funds to the District within fifteen (15) days of the submission of documentation confirming the valid expenditures and also to any claims by the County for defense and indemnity as set forth herein.

L. Termination. Either party may terminate this Agreement with at least sixty (60) days' written notice to the other party at any point in time after at least two (2) years from the execution of this Agreement or the conclusion of the *Thomas Austin and Helen Austin v. The County of El Dorado, et al.* matter referenced in paragraph 2, whichever occurs later.

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

Dated: \_\_\_\_\_

**County of El Dorado**

By: \_\_\_\_\_  
Ron Mikulaco, Chairman, Board of Supervisors

ATTEST: James S. Mitrisin,  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk

**El Dorado Hills Community Services District**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Terry Crumpley,  
President, Board of Directors