

DEFENSE, INDEMNITY, AND HOLD HARMLESS AGREEMENT

This Defense, Indemnity, and Hold Harmless Agreement (“Agreement”) is made and entered into this ____ day of _____, 2018, by and between the El Dorado Hills County Water District (“District”) and the County of El Dorado, a political subdivision of the State of California (“County”).

RECITALS

WHEREAS, Section 99.02 of the Revenue and Taxation Code provides that any local agency may, by the adoption of a resolution of its governing body or governing board, voluntarily transfer any portion of its property tax revenues that is allocable to one or more tax rate areas within the local agency to one or more other local agencies having the same tax rate area or areas; and

WHEREAS, the County and the District share certain tax rate areas, and pursuant to the provisions of Section 99.02 the County can transfer property tax revenues to the District; and

WHEREAS, on June 10, 2014, the Board of Supervisors of the County of El Dorado adopted Resolution No. 064-2014, which redistributed property tax base and annual property tax increment as a result of negotiations related to the dissolution of the Latrobe Fire Protection District (LAFCO Project Number 2014-03) and the annexation of the Latrobe Fire Protection District’s dissolved territory and sphere of influence territory by the El Dorado Hills County Water District (LAFCO Project Number 2014-04); and

WHEREAS, in addition to the redistribution of property tax base and annual property tax increment related to the dissolution and annexation, Resolution No. 064-2014 also included a separate action for a negotiated transfer, under Revenue and Taxation Code Section 99.02, for a portion of the Revenue and Taxation Code Section 96.1 base property tax revenues from the El Dorado County General Fund, the El Dorado County Accumulative Capital Outlay Fund, and the El Dorado County Road District Tax Fund, and the El Dorado County Service Area #7 to the reorganized El Dorado Hills County Water District; and

WHEREAS, certain Revenue and Taxation Code Section 96.1 base property tax revenues are encumbered by the Educational Revenue Augmentation Fund (ERAF) where non-school taxing jurisdictions have no right to receive the revenues associated with the ERAF encumbrance, and Revenue and Taxation Code Section 99.02 transfers of base property tax revenues also transfer the related ERAF liability/encumbrance to ensure ERAF remains whole as required by Revenue and Taxation Code Section 99.02(f)(4); and

WHEREAS, public hearings were not noticed and held in accordance with the requirements of Revenue and Taxation Code Section 99.02 (e) prior to the Board of Supervisors’ adoption of Resolution No. 064-2014 and the approval of the transfer of base property tax revenue included in Resolution No. 064-2014 was not authorized and of no effect; and

WHEREAS, on April 19, 2016, the Board of Supervisors adopted Resolution No. 072-2016, after a duly noticed public hearing and made the necessary findings in accordance with the requirements of Revenue and Taxation Code Section 99.02(e), to effectuate the transfer of General Fund base property tax revenue as contemplated in Resolution No. 064-2014 commencing with the 2016-17 fiscal year, with the transfer of funds contingent upon the District holding a duly noticed public hearing after appropriate notice in accordance with the requirements of Revenue and Taxation Code Section 99.02 (e); and

WHEREAS, on May 29, 2018, the District conducted its public hearing pursuant to Revenue and Taxation Code Section 99.02(e) and adopted a resolution accepting and concurring with the transfer; and

WHEREAS, on June 12, 2018, the Board of Supervisors adopted Resolution No. _____, amending Resolution No. 072-2016 concurring with the transfer and clarifying that the property tax revenue transfer will commence fiscal year 2018/19.

NOW THEREFORE, County and District mutually agree as follows:

1. Transfer of Funds

Commencing with the 2018-19 fiscal year, County shall transfer the base property tax revenues from the County General Fund to the District in accordance with Resolution No. _____, attached hereto and incorporated herein by reference as Exhibit A.

2. District's Obligation to Defend and Indemnify

District shall defend, indemnify and hold the County, its officers and employees, harmless against and from any and all claims, proceedings, suits, losses, damages, and liability for damages, including attorneys' fees and costs incurred, which are claimed to or in any way arise out of or connected with the County's transfer to the District of the base property tax revenues as set forth in Exhibit A. District agrees to indemnify the County for the amount of funds that a court orders to be refunded either through direct payment to the County within thirty (30) days or through the withholding of property tax revenues due to 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 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
330 Fair Lane
Placerville, CA 95667

DISTRICT:

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.

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 to 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.

//

//

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

County of El Dorado

Dated: _____

By: _____
Michael Ranalli, Chair
Board of Supervisors

ATTEST: James S. Mitrisin,

Clerk of the Board

By: _____
Deputy Clerk

El Dorado Hills County Water District

Dated: _____

By: _____
Chair, Board of Directors