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Funding for Legal Services for Mitigation Fee Act Litigation-1-5-2016 Agenda Abbott & Kindermann

1 message

Joe Harn <joe.harn@edcgov.us>

Mon, Jan 4, 2016 at 2:40 PM

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Dear Board Members,

The contract, Page 1, Compensation states that, "An initial appropriation of \$150,000 has been made for legal services in connection with this matter." I am unaware of this \$150,000 appropriation in our budget.

The Agenda states, "The cost for legal services will be funded by the impact mitigation fee funds named in the Complaint." I believe that it will be problematic to recover these costs from these mitigation fee funds.

We do have a hold harmless clause in our agreement with the EDH CSD. The clause in our agreement with EDH CSD states, "District shall indemnify and defend County against and hold it harmless from any and all loss, damages, and liability for damages, including attorney's fees and other costs of defense incurred by County....."

No such "hold harmless agreement" exists with EDH Fire because prior Boards wanted to require park districts to provide indemnity, but not fire protection districts. I do not believe we can recover our costs related to this litigation from EDH Fire. Further, EDH Fire provided the County with a nexus study on a timely basis. For reasons unknown, this nexus study was not presented to your Board for approval on a timely basis.

In summary, I believe that a specific appropriation should be identified prior to the execution of this contract. Further, a lawful mechanism should be identified for removing these funds from the impact fee accounts prior to the execution of this contract.

Joe Harn
Auditor-Controller
El Dorado County