



Legislation Text

File #: 17-1062, **Version:** 1

County Counsel recommending the Board authorize the Chair to sign the Defense, Indemnity, and Hold Harmless Agreement between the County of El Dorado and El Dorado Hills Community Services District relating to the transfer of park and recreation development impact mitigation fees in the amount of \$1,738,070.04 and any subsequent transfers to the El Dorado Hills Community Services District.

FUNDING: El Dorado Hills Community Services District Development Impact Mitigation Fee Account (8963117).

DEPARTMENT RECOMMENDATION

County Counsel recommending the Board authorize the Chair to sign the Defense, Indemnity, and Hold Harmless Agreement between the County of El Dorado ("County") and El Dorado Hills Community Services District ("EDH/CSD") relating to the transfer of park and recreation development impact mitigation fees in the amount of \$1,738,070.04 and any subsequent transfers of development impact mitigation fees to EDH/CSD.

DISCUSSION / BACKGROUND

In 1995, 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.

In 1997, the County began collecting fees on behalf of EDH/CSD, pursuant to Resolution 112-97. In 2005, the County and EDH/CSD also entered into the Agreement Pertaining to the Collection of Park and Recreation Fees relating to the collection of the development impact mitigation fee. The County has disbursed those fees to EDH/CSD upon request pursuant to the terms of the County Ordinance, and in accordance with law.

On August 18, 2016 the County and the EDH/CSD entered into a Settlement, Indemnity, and Hold Harmless Agreement whereby the County agreed to transfer the amount of verified expenditures from the EDH/CSD Development Impact Fee account to a EDH/CSD operating account within 15 days of the County confirming the expenditures and in exchange, the EDH/CSD agreed to indemnify the County in the event a court determined that any funds so transferred were subject to refund.

On May 4, 2017 the EDH/CSD made a request for disbursement of funds in the amount of One million three hundred six thousand eighty-six dollars and sixty-four cents (\$1,306,086.64) for prepayment of the Promontory Park lease payments.

On May 8, 2017 the EDH/CSD made a request for disbursement of funds in the amount of Four hundred thirty-one thousand nine hundred eighty-three dollars and forty cents (\$431,983.40) for the November 1, 2016 and May 1, 2017 Promontory Park lease payments (\$344,800) and February

2016 to March 2017, 2% Project Administration fee (\$87,183.40).

A concern arose among some that the August 18, 2016 Settlement, Indemnity, and Hold Harmless Agreement between the County and the EDH/CSD was not robust enough to cover the requested transfer of \$1,738,070.04 and to protect the Board members from any potential personal liability related to the transfer. The County and EDH/CSD began negotiations on the subject Defense, Indemnity, and Hold Harmless agreement to address those concerns and to ensure that the defense and indemnification obligations would apply to all future transfers of development impact mitigation fees from the County to the EDH/CSD.

The Defense, Indemnity, and Hold Harmless Agreement addresses the request for the transfer of the \$1.7 million (§1.A) and any future requests for transfer (§1.B). The agreement also provides defense and indemnification for all County officers as set forth in Government Code section 24000 for all claims and liability related to the transfer of the requested funds. This includes protection for any claimed potential personal liability of the County officer. (§2).

The County and the EDH/CSD want to enter this agreement so that the Auditor-Controller can proceed to transfer the aforesaid money to the Operating Account of the EDH/CSD in accordance with law and without liability.

ALTERNATIVES

The Board of Supervisors could decline to approve this agreement.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

Chief Administrative Office and Auditor-Controller

CAO RECOMMENDATION

Approve and authorize the Chair to sign the Defense, Indemnity, and Hold Harmless Agreement between the County of El Dorado and El Dorado Hills Community Services District relating to the transfer of park and recreation development impact mitigation fees in the amount of \$1,738,070.04 and any subsequent transfers to the El Dorado Hills Community Services District

FINANCIAL IMPACT

This agreement has no financial impact on the County.

CLERK OF THE BOARD FOLLOW UP ACTIONS

Following Board approval, the Board Clerk will forward 3 fully executed originals of the Agreement to County Counsel for distribution and administration.

STRATEGIC PLAN COMPONENT

Good Governance and Infrastructure

CONTACT

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