



Legislation Text

File #: 18-0060, **Version:** 1

County Counsel recommending the Board authorize the Chair to sign the Indemnity, Hold Harmless, Estoppel, and Defense Agreement between El Dorado County and Joe Harn, individually and as the Auditor-Controller of the County of El Dorado relating to the transfer or disbursement of funds by the Auditor Controller to the County or a special district pursuant to a request under the Mitigation Fee Act.

FUNDING: This is a non-monetary agreement. If defense and indemnification under the Agreement becomes necessary the County will have options as to how to fund such defense and indemnity including the Risk Fund or the Mitigation Fee Account which was the subject of the transfer.

DEPARTMENT RECOMMENDATION

County Counsel recommending the Board authorize the Chair to sign the Indemnity, Hold Harmless, Estoppel, and Defense Agreement between El Dorado County and Joe Harn, individually and as the Auditor-Controller of the County of El Dorado relating to the transfer or disbursement of funds by the Auditor Controller to the County or a special district pursuant to a request under the Mitigation Fee Act.

DISCUSSION / BACKGROUND

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

In 1988, the County of El Dorado passed Ordinance No. 3991 establishing a “Fire District Improvement Fee” which authorizes the El Dorado County Board of Supervisors to adopt and collect fees on behalf of fire districts within the County to offset the impacts of new development on fire protection services.

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.

Over time, the County of El Dorado has adopted various development impact mitigation fee programs pursuant to the Mitigation Fee Act including but not limited to a Traffic Impact Mitigation (TIM) Fee program to address the impacts of development on the roads, streets, and highways within the jurisdictional boundaries of the County.

In December, 2015, Thomas Austin, *et al.*, filed suit against the County and certain Districts within the County, which, among other things, demanded a refund of all development impact fees collected by the County and held by the County in certain development impact fee accounts. This case is still pending in El Dorado County Superior Court and remains unresolved.

Since the inception of the Austin litigation, Districts are requesting that funds be transferred from the development impact fee accounts held by the County on behalf of the Districts to the operating accounts of the Districts to reimburse the Districts for expenditures they have incurred for facilities and equipment necessitated at least in part by new development.

The County and the Auditor-Controller want to enter this agreement so that the Auditor-Controller can proceed to transfer the aforesaid money to the appropriate accounts of the County or a special district 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 / COMMENTS

Approve and authorize the Chair to sign the Indemnity, Hold Harmless, Estoppel and Defense Agreement between El Dorado County and Joe Harn, individually and as the Auditor-Controller of the County of El Dorado.

FINANCIAL IMPACT

This agreement has no direct financial impact on the County. If defense and indemnification under the Agreement becomes necessary, the County will have options as to how to fund such defense and indemnity, including the Risk Fund or the Mitigation Fee Account.

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

CONTACT

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