

RESOLUTION NO. 2007-17

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
APPROVING THE FORM OF INDEMNITY AGREEMENT BETWEEN THE
COSUMNES COMMUNITY SERVICES DISTRICT AND THE CITY OF ELK GROVE**

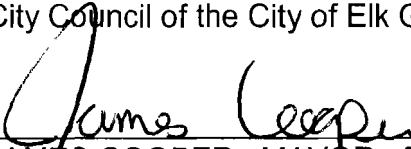
WHEREAS, the Cosumnes Community Services District (the "Cosumnes CSD") has requested the City of Elk Grove to levy development impact fees to fund the cost of acquisition and construction of fire protection facilities serving the City;

WHEREAS, The City will consider adopting such impact fees in the near future;

WHEREAS, City policy requires entities for which the City adopts development fees to defend, indemnify, and hold harmless the City against any litigation related to such fees;

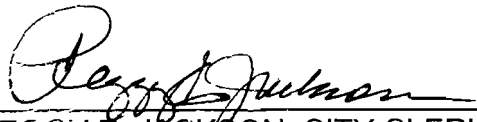
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk Grove that the form of Indemnity Agreement attached to staff's report on this Agenda Item is approved and the City Manager is authorized to execute an agreement in substantially that form.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 24th day of January 2007.



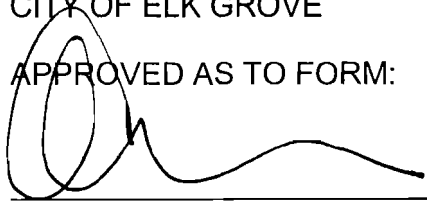
JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

**INDEMNITY AGREEMENT
BETWEEN THE COSUMNES COMMUNITY SERVICES DISTRICT
AND THE CITY OF ELK GROVE**

This Indemnity Agreement (this "Agreement") dated _____, 2007, is entered into by and between the Cosumnes Community Services District, formerly known as the Elk Grove Community Services District (the "District"), a public agency organized under the laws of the State of California, and the City of Elk Grove (the "City"), a municipal corporation of the State of California.

1. **Imposing Impact Fees for the District.** In consideration of the District's request that the City Council levy the fees described in the Cosumnes Community Services District Nexus Study to update the District's fire fee programs (the "Nexus Study"), that the justification of the amount of the fire facilities fees has been prepared by the District, that the District will be the recipient of the fees collected, and that pursuant to Government Code section 66020 persons may protest the imposition of fees imposed upon a development project and thereafter file an action to set aside the imposition of the fees, the City Council has agreed to exercise its independent legislative authority to levy the fees described in the Nexus Study in exchange for the protections outlined herein.

2. **Indemnification for Impact Fees.** The District shall defend, indemnify, and hold harmless the City and its agents, officers and employees from any claim, action or proceeding against the City, or its officers, elected officials, consultants (whether professional, legal, technical, or other), independent contractors and employees ("the City's Agents") from any and all damage, liability or loss, or any claim of damage, liability or loss, including without limitation attorney's fees or costs (including claims for "private attorney general" fees), connected with or arising out of any action, proceeding or alternative dispute resolution process ("Action") against the City or the City's Agents to: (a) attack, review, set aside, void, or annul the imposition of the fire facilities impact fees on a development project; or (b) to impose personal liability against the City's Agents resulting from or arising out of the imposition of the fire facilities impact fees. The City shall promptly notify the District of any such claim, action or proceeding.

3. **City Participation.** The City may choose to actively participate in the defense of any Action in which it is named as a party. If the City retains outside counsel, agents, or consultants (collectively "Agents") as part of City's active participation, then the City shall exercise sole control and supervision over such Agents and shall pay all of the Agents' costs and fees.

4. **Cooperation of City and District.** In the event of any such Action, the City and the District shall confer and cooperate with each other in response to such Action, including the use of outside consultants and/or legal counsel. However, this agreement to 'confer and cooperate' shall in no way be construed to limit either party's independence in its response to such Action, including without limitation, either party's authority in connection with the retention and/or use of outside consultants and/or legal counsel, nor shall it obligate either party to in any way compromise or alter its attorney-client relationships or confidences with legal counsel or outside consultants.

5. **City Retains Discretion.** Nothing in this Agreement shall be construed in a manner that requires the City to exercise its discretion in a particular manner.

6. **Waiver.** Waiver of one or more provisions or violations shall not be construed as a course of conduct to be relied upon and may not be the basis for any expectation of future waiver or estoppel. No waiver of any breach of any term or provision of this Agreement shall constitute a waiver of any other or future breaches of the same or any other term or provision.

7. **Public Record.** This Agreement shall be a public record of the City and of the District.

8. **Governing Law.** This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Sacramento, State of California.

9. **Authority of Signers.** The person or persons executing this Agreement on behalf of the parties to this Agreement warrant and represent that they have the authority to execute this Agreement and represent that they have the authority to bind the parties to this Agreement to the performance of their obligations hereunder.

10. **Notice.** Any notice, payment or instrument required or permitted by this Agreement to any party shall be deemed to have been received when personally delivered to any party or seventy-two (72) hours following mailing of the same, first class, postage prepaid, addressed as follows:

City: City of Elk Grove
8380 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Attorney

District Cosumnes Community Services District
8820 Elk Grove Boulevard
Elk Grove, CA 95624
Attn: Jeff Ramos

11. **Captions.** Captions to sections of this Agreement are for convenience purposes only, and are not part of this Agreement.

12. **Severability.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

13. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

14. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the matters contained herein and supersedes all prior agreements between them, whether written or oral, respecting the subject matter hereof and no other terms, conditions or warranties, whether express or implied, shall form a part hereof. This Agreement may be amended only by subsequent written agreement signed by both parties.

15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and the year first written above.

COSUMNES COMMUNITY SERVICES DISTRICT

By _____
Donna Hansen, General Manager

Attest:

Clerk of the Board

Approved as to form:

District Counsel

CITY OF ELK GROVE

By _____
John Danielson, City Manager

Attest:

City Clerk

Approved as to form:

City Attorney

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2007-17

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on January 24, 2007 by the following vote:


AYES : COUNCILMEMBERS: Cooper, Leary, Scherman, Davis, Hume

NOES: COUNCILMEMBERS: None

ABSTAIN : COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None





Peggy E. Jackson, City Clerk
City of Elk Grove, California