

RESCUE UNION SCHOOL DISTRICT

**AGENDA ITEM:**     *Discussion Item Only: Review the El Dorado Schools Financing Authority Community Facilities District No. 1 Memorandum of Understanding (MOU)*

**BACKGROUND:**

In 1987, the El Dorado Hills Land Development Company (the Landowners) presented the El Dorado Hills Specific Plan to the County of El Dorado proposing to develop what would become the Serrano Villages. On June 19, 1990, the Rescue Union School District, Buckeye Union Elementary School District, and the El Dorado Union High School District established the El Dorado Schools Financing Authority (a Joint Powers Authority) for the purpose of financing, acquisition, and construction of educational facilities.

In the spring of 1991, the El Dorado Hills Development Company (the “Landowners”) petitioned the El Dorado Schools Financing Authority to form the Community Facilities District (CFD) No. 1. At or near the same time, the Landowners elected to form the Community Facilities District No. 1 in order to finance adequate school facilities made necessary in part by the development within the El Dorado Hills Specific Plan and adopted by the El Dorado County Board of Supervisors on or about January 19, 1989. In accordance with the Mello-Roos Community Facilities Act of 1982, the Landowners of Community Facilities District No. 1 elected to authorize the levy of a special tax to assist in funding the construction and acquisition of school facilities to serve the residents of dwellings constructed on the Landowners’ property.

Rescue Union School District receives special taxes (Mello Roos) paid by the homeowners in Community Facilities District No. 1 designated for the financing, acquisition and construction of school facilities made necessary by the development with the El Dorado Hills Specific Plan. The Mello Roos collection currently does not have an explicit termination date.

Funds from the Mello Roos collection have been used to expand capacity by building the state of the art two-story classroom complex at Marina Village Middle School, supported construction at Lakeview School, and to purchase property for a new school in the future.

**STATUS:**

The El Dorado Schools Financing Authority consisting of its member school districts, the Rescue Union School District, Buckeye Union School District and the El Dorado Union High School District and the Serrano El Dorado Owners’ Association are in the process of developing a Memorandum of Understanding related to the establishment of an end date for Community Facilities District No. 1 of the El Dorado Schools Financing Authority. All material terms of the MOU have been conceptually agreed to by all parties and a draft of the MOU will be presented to the Board for its information and discussion at the Board meeting. Once the draft MOU is finalized, it will be presented to the Governing Board of the El Dorado Schools Financing Authority for action. Rescue Union School

District has one appointed Board member sitting on the Governing Board of the El Dorado Schools Financing Authority.

**FISCAL IMPACT:**

The District through 2017-18 has received approximately \$8.2M including interest from Mello Roos collections.

Currently, the District is obligated to pay lease payments with respect to certain outstanding series of certificates of participation (COPs), which lease payments have historically been funded by the Special Tax revenues received by the District through CFD No. 1. Under the terms of the MOU, the District's outstanding obligations will be repaid in full.

**BOARD GOAL(S):**

Board Focus Goal II – FISCAL ACCOUNTABILITY:

Keep the district fiscally solvent through prudent LCAP aligned budget processes in order to meet the needs of our students.

Board Focus Goal V - FACILITY / HOUSING:

Build, improve and maintain school facilities to meet current and future education needs while integrating the most effective and efficient use of resources.

Local Control Accountability Plan GOAL 6:

The District will create and maintain facilities and grounds that are safe, clean and conducive to the learning process.

**RECOMMENDATION:**

Staff recommends that the Board give direction to the Board's representative on the El Dorado Schools Financing Authority Governing Board to approve the terms of the draft MOU.

## **MEMORANDUM OF UNDERSTANDING**

This MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into by and among the EL DORADO SCHOOLS FINANCING AUTHORITY ("Authority"), a joint powers authority organized and existing under the laws of the State of California ("State"), the BUCKEYE UNION SCHOOL DISTRICT ("Buckeye"), a public school district organized and existing pursuant to the laws of the State, the EL DORADO UNION HIGH SCHOOL DISTRICT ("El Dorado"), a public school district organized and existing pursuant to the laws of the State, RESCUE UNION SCHOOL DISTRICT ("Rescue"), a public school district organized and existing pursuant to the laws of the State, COMMUNITY FACILITIES DISTRICT NO. 1 OF THE EL DORADO SCHOOLS FINANCING AUTHORITY ("CFD No. 1"), a Mello-Roos community facilities district, organized and operating under the laws of the State and the SERRANO EL DORADO OWNERS' ASSOCIATION ("Association"), a nonprofit mutual benefit corporation organized and existing pursuant to the laws of the State. The Authority, Buckeye, El Dorado, Rescue, CFD No. 1 and the Association shall collectively be referred to as the "Parties" and each individually as a "Party."

### **RECITALS**

**WHEREAS**, the Authority was formed pursuant to that certain Joint Exercise of Powers Agreement, dated as of June 19, 1990, by and among Buckeye, El Dorado and Rescue (each, a "School District" and collectively, the "School Districts"), in order to provide for, among other things, the financing of public school facilities on behalf of the School Districts;

**WHEREAS**, the Authority established CFD No. 1 in 1991 pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 as amended, being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State ("Mello-Roos Act");

**WHEREAS**, CFD No. 1 was and is authorized, pursuant to State law, to levy special taxes ("Special Taxes") and incur bonded indebtedness in order to finance school facilities pursuant to the Mello-Roos Act on behalf of the School Districts, as members of the Authority, and such Special Taxes have been levied and collected by CFD No. 1 in each fiscal year since the fiscal year which ended on June 30, 1996;

**WHEREAS**, the Parties wish to address various matters relating to the levy of the Special Taxes and use of Special Tax revenues;

**WHEREAS**, The Parties acknowledge that this MOU is not intended to represent the final agreement of the Parties hereto with respect to the matters referenced herein and that the Parties intend to pursue and reach a final settlement agreement generally conforming to the terms set forth in this MOU at a future date; and

**NOW THEREFORE**, it is mutually understood and agreed to as follows:

## **I. TERMINATION OF CFD NO. 1 SPECIAL TAXES**

The levy and collection of the Special Taxes shall terminate upon the receipt of a total amount of \$155,587,862 in Special Tax revenues by CFD No. 1 calculated in actual funds collected and calculated since the initial levy thereof; provided that in no event shall the Special Taxes be levied after the fiscal year ending June 30, 2034. The date on which the Special Taxes terminate shall be referred to herein as the "Special Tax Termination Date." Following the Special Tax Termination Date the Authority, on behalf of CFD No. 1, shall take actions pursuant to the Mello-Roos Act to cancel the Special Taxes and record a Notice of Cessation of the lien of the Special Taxes pursuant to State law.

The Parties acknowledge that following the Special Tax Termination Date and the recordation of the Notice of Cessation that properties within the boundaries of CFD No. 1, which have not yet developed, shall be subject to then-existing statutory school fees or such other school funding mitigation requirements as shall then be in force and effect for such territory.

The issue of the collection of then-delinquent Special Taxes of CFD No. 1 as of the Special Tax Termination Date shall be set forth in the Final Settlement Agreement (as defined below).

Currently, each School District is obligated to pay lease payments with respect to certain outstanding series of certificates of participation ("COPs"), which lease payments have historically been funded in part by Special Tax revenues received by the School Districts. Each School District expressly acknowledges and understands that additional Special Tax revenues shall not be received, or otherwise available for, the payment of lease payments with respect to its respective COPs following the Special Tax Termination Date, and accordingly, that each School District shall have full individual and sole responsibility for the payment of lease payments with respect to its respective COPs following such Special Tax Termination Date.

## **II. USE OF CFD NO. 1 SPECIAL TAX REVENUES**

Special Tax revenues allocated and distributed to El Dorado, beginning in fiscal year 2018-19 through the Special Tax Termination Date, shall be applied equally to (i) facilities needs of Oak Ridge High School, and (ii) the construction of a new high school within the boundaries of El Dorado to serve the El Dorado Hills community. Notwithstanding the foregoing, if a new high school has not been constructed within, or proximate to, CFD No. 1 within five (5) fiscal years following the Special Tax Termination Date, El Dorado shall use the Special Tax revenues designated for construction of such Oak Ridge High School for any purpose that directly or indirectly benefits the area within CFD No. 1, including, but not limited to, the improvement or modernization of existing school facilities, but not including deferred maintenance expenditures.

## **III. SCHOOL DISTRICT GENERAL OBLIGATION BONDS**

Effective in perpetuity from the Final Settlement Date (as defined herein), El Dorado shall neither call nor conduct a general obligation bond election within all or any portion of the territory within CFD No. 1 for purposes of financing the initial construction of new high school facilities within the boundaries of El Dorado but located either (i) on or using the two existing parcels owned by El Dorado as of the date hereof for such purposes, or (ii) on property which is within reasonable proximity to the two existing parcels owned by El Dorado as of the date hereof for such purposes. The provisions of this Section in no way restrict the calling or conducting of general obligation bond election(s) by El Dorado for any other purpose whatsoever or in any other territory of El Dorado (which may be accomplished through the use of a school facilities improvement district).

The Parties agree that the provisions of this Section shall not apply to any general obligation bond election(s) called and conducted by Buckeye or Rescue (which may, or may not, be accomplished through the use of a school facilities improvement district).

#### **IV. ADVISORY COMMITTEE**

The Parties intend that, following the execution of the Final Settlement Agreement, the Authority shall, at its cost and expense, form, appoint members to and support an advisory committee (“Committee”), which will conform to the provisions of this Section and the terms set forth in the Final Settlement Agreement.

With respect to the Committee, the Parties intend as follows:

- The Committee shall consist of 5 to 11 members, with the standing membership consisting of an odd number of members. Members of the Committee shall be residents or property owners within the boundaries of CFD No. 1. Members of the Committee shall not be employees, vendors or contractors of any of the School Districts.
- Members shall be appointed to the Committee by the Authority Board in consultation with the Association. Terms for Committee members shall be set forth in the Final Settlement Agreement.
- The Committee shall remain in existence until all Special Tax revenues of CFD No. 1 have been expended by the JPA and the School Districts.
- The Committee shall have a role similar to a Citizens’ Oversight Committee (as described in California Education Code Sections 15278 through 15282, inclusive), but pertaining only to the Special Tax revenues of CFD No. 1 and use thereof.

#### **V. TERM**

This MOU, including all terms and conditions set forth herein, shall remain valid from the date hereof to the Final Settlement Date or December 1, 2019, whichever first occurs (the “MOU Term”). Unless explicitly stated herein, all requirements, terms, and conditions established through this MOU shall terminate at the end of the MOU Term.

## **VI. GENERAL RELEASE OF PRIOR CLAIMS**

The Parties intend to release and forever discharge each other and their present and former directors, officers, shareholders, managers, agents, trustees, beneficiaries, attorneys and employees from all obligations, damages, losses, costs, expenses and liabilities whether known or unknown, contingent or direct, liquidated or unliquidated, and from any claims, demands, judgments, actions or suits of any kind (collectively, "Claims") arising prior to the date hereof which they may have against one another relating to CFD No. 1, the authorization of the Special Taxes or bonded indebtedness of CFD No. 1, the levy and collection of the Special Taxes, and the use of the proceeds of such Special Taxes, including without limitation, any attorneys' fees incurred in connection therewith. The release set out in this Section shall be effective until the end of the MOU Term. The Parties intend that the provisions of the Final Settlement Agreement (as defined herein) concerning release of liabilities shall supersede this MOU as to the subject matter of this Section.

## **VII. BINDING EFFECT**

The Parties each expressly acknowledge and agree that the Association is executing this MOU on behalf of itself and not on behalf of any other person or party. The execution and delivery of this MOU by the Association shall not be considered as a binding agreement or obligation on any other taxpayer or landowner within the boundaries of the Association or CFD No. 1.

## **VIII. FINAL SETTLEMENT**

The Parties acknowledge and agree that this MOU does not represent the final agreement of the Parties hereto with respect to the matters referenced herein. The Parties intend to pursue and reach a final settlement agreement ("Final Settlement Agreement") with respect to the terms set forth in this MOU at a future date. The Parties intend that upon approval and execution of the Final Settlement Agreement ("Final Settlement Date") that the Final Settlement Agreement shall thereupon supersede this MOU.

## **IX. AMENDMENTS TO THE MOU**

Any changes to this MOU must be accomplished by written consent of the Parties. This MOU supersedes any prior agreement, whether written or oral, between the Parties regarding the matters set forth herein.

## **X. ENTIRE AGREEMENT**

This MOU contains the entire agreement and understanding concerning the subject matter hereof and supersedes and replaces all prior negotiations and proposed agreements, written or oral. The Parties acknowledge that neither any other Party nor its agents nor attorneys have made any promise, representation or warranty whatsoever, express or implied, not contained herein to induce the execution of this MOU and

acknowledge that this MOU has not been executed in reliance upon any promise, representation or warranty not contained herein.

**XI. INTERPRETATION GUIDES**

In interpreting this MOU, it shall be deemed that it was prepared by the Parties collectively and no ambiguity shall be resolved against any Party on the premise that it or its attorneys were responsible for drafting this MOU or any provision thereof. Headings used in this MOU are for convenience and ease of reference only and are not intended nor may be constructed as a guide to interpret any provision of this MOU.

**XII. COOPERATION**

The Parties hereto agree to cooperate with each other in the execution of such further documents, and to take such other actions, as are reasonably necessary in good faith, to effectuate this MOU and the intent hereof.

**XIII. NOTICES**

All notices, demands and communications between the Parties shall be given by personal delivery, registered or certified mail, postage prepaid, return receipt requested, Federal Express or other reliable private express delivery, or by facsimile transmission or email. Such notices, demands or communications shall be deemed received upon delivery if personally served or sent by facsimile or email or after three business days if given by other approved means as specified above. Notices, demands and communications shall be sent:

To the Authority: El Dorado Schools Financing Authority  
4675 Missouri Flat Road  
Placerville, CA 95667  
Attn: Superintendent, El Dorado Union High School District

To CFD No. 1: Community Facilities District No. 1 of the  
El Dorado Schools Financing Authority  
4675 Missouri Flat Road  
Placerville, CA 95667  
Attn: Superintendent, El Dorado Union High School District

To Buckeye: Buckeye Union School District  
5049 Robert J. Matthews Parkway  
El Dorado Hills, CA 95762  
Attn: Superintendent

To El Dorado: El Dorado Union High School District  
4675 Missouri Flat Road  
Placerville, CA 95667  
Attn: Superintendent

To Rescue: Rescue Union School District  
2390 Bass Lake Road  
Rescue, CA 95672  
Attn: Superintendent

To the Association: Serrano El Dorado Owners' Association  
4525 Serrano Parkway, Suite 110  
El Dorado Hills, CA 95762  
Attn: \_\_\_\_\_

**XIV. CAPTIONS**

The captions contained within this MOU are for purposes of reference only and shall not limit or define the meaning of the provisions hereof.

**XV. CALIFORNIA LAW GOVERNS AGREEMENT**

This MOU and all rights and obligations arising out of it shall be construed in accordance with the laws of the State.

**XVI. DUE AUTHORITY OF SIGNATORIES TO EXECUTE MOU**

Each individual signing this MOU warrants and represents that he or she has been authorized by appropriate action of the Party which he or she represents to enter into this MOU on behalf of the Party.

**XVII. COUNTERPARTS**

This MOU may be signed in one or more counterparts which, taken together, shall constitute one original document.

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IN WITNESS HEREOF, the Parties hereto have signed their names and executed this MOU through their duly authorized officers this 22<sup>nd</sup> day of May, 2019.

EL DORADO SCHOOLS FINANCING  
AUTHORITY

BUCKEYE UNION SCHOOL DISTRICT

By: \_\_\_\_\_  
Name: RON CARRUTH, Superintendent  
El Dorado Union High School District aka  
Administrator of ESFA  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: DAVID ROTH, Superintendent  
Date: \_\_\_\_\_

EL DORADO UNION HIGH SCHOOL  
DISTRICT

RESCUE UNION SCHOOL DISTRICT

By: \_\_\_\_\_  
Name: RON CARRUTH, Superintendent  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: CHERYL OLSON, Superintendent  
Date: \_\_\_\_\_

COMMUNITY FACILITIES DISTRICT  
NO. 1 OF THE EL DORADO SCHOOLS  
FINANCING AUTHORITY

SERRANO EL DORADO OWNERS'  
ASSOCIATION

By: \_\_\_\_\_  
Name: RON CARRUTH, Superintendent  
El Dorado Union High School District aka  
Administrator of ESFA

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_