

**AGREEMENT FOR USE OF GRASSY RUN COMMUNITY
SERVICES DISTRICT FUNDS**

between

GRASSY RUN COMMUNITY SERVICES DISTRICT

and

THE COUNTY OF EL DORADO

AGREEMENT FOR USE OF GRASSY RUN COMMUNITY SERVICES DISTRICT FUNDS

This AGREEMENT FOR USE OF GRASSY RUN COMMUNITY SERVICES DISTRICT FUNDS ("Agreement") is made this _____ day of _____, 2011 ("Effective Date"), by and between the GRASSY RUN COMMUNITY SERVICES DISTRICT ("District"), a public agency, and the COUNTY OF EL DORADO ("County"). The District and County are sometimes individually referred to herein as "Party" and collectively as "Parties."

RECITALS

This Agreement is made with respect to the following facts:

A. In 1982 pursuant to petition of the parcel owners of the Grassy Run Homeowners' Association (GRHA), the Local Agency Formation Commission of the County of El Dorado (LAFCO), authorized and approved the formation of the District;

B. The District is comprised of approximately 445 acres, and is located in the Shingle Springs area immediately north of US Highway 50, approximately 1,000 feet west of the Greenstone Road exit and Grassy Run Court;

C. The District was established to substitute the use of the property tax collection system of the County for the collection of dues and assessments of GRHA and was empowered to provide road and road maintenance services for the road system servicing the parcels located within the territory of GRHA;

D. In June 1997, the District adopted Resolution No. 97-2, whereby it resolved that no further funds or monies of the District would thereafter be spent on the Grassy Run roads for any purpose, and no District funds have been spent for that purpose since that time;

E. On February 24, 2011, the District adopted Resolution No 11-01 whereby it resolved that it would petition LAFCO to issue an Order, Decision or Ruling dissolving the District, authorizing and directing the District's General Manager Richard W. Nichols to sign all necessary and appropriate documents on behalf of the District and to act as the District's main contact person for purpose of dealing with LAFCO concerning the petition for dissolution; and that the petition for dissolution would at a minimum represent to LAFCO that GRHA would operate and maintain the Grassy Run road system after the dissolution of the District;

F. On April 14, 2011, LAFCO accepted the District's petition for dissolution, and assigned the dissolution LAFCO Project number 2011-04;

G. On August 2, 2011, the County adopted resolution 134-2011, to declare its support for LAFCO Project number 2011-04 for purposes of Government Code 56857(e);

H. Upon dissolution, and after payment of all costs incurred in connection with dissolution, it is estimated that the District will have ~~approximately \$114,105.23 somewhat in excess of \$100,000.00~~ remaining in the District's account held by the County's Auditor-Controller (the "Funds");

I. Pursuant to Government Code Section 57457(b), upon dissolution of the District, its remaining assets will be distributed to the County as the successor to the District. Although Government Code Section 57463 authorizes the District's successor, subject to the provisions of Government Code Section 57462, not applicable here, to use any funds, money, or property of the dissolved District for the purpose of winding up the affairs of the District, and provides that any funds, money or property of the dissolved District distributed to the County may be used for any lawful purpose of the County, it also provides that so far as may be practicable, the funds, money, or property of the dissolved District shall be used for the benefit of the lands, inhabitants, and taxpayers within the territory of the dissolved District;

J. The County and the District agree that use of the Funds for uses authorized by this agreement are for the benefit of the lands, inhabitants, and taxpayer within the territory of the District which is to be dissolved; and

K. The County, to the extent legally feasible and in accordance with the terms of the Agreement, agrees to utilize the Funds for the purposes set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises and agreements, and for other good and valuable consideration, the sufficiency of which the Parties acknowledge, County and District hereby agree as follows:

1. Transfer of District Funds to County. No more than ten (10) business days following the adoption of the LAFCO Resolution dissolving the District, the issuance by LAFCO of its Certificate of Completion of all conditions required in said Resolution, and the transmittal of same to the County, the County's Auditor-Controller, who has custody and control of the District's Funds, shall transfer the Funds to the County.

2. County Use of District Funds and Completion of Tasks.

2.1 *Use of Funds.* County shall, for the express benefit of GRHA and its members, the former inhabitants of the District, use the Funds solely for the purpose of accomplishing the tasks ("Tasks") specified in Exhibit A to this Agreement, which is attached hereto and incorporated herein by this reference (the "Project"), except as provided herein. County shall commence planning for the first Task no more than thirty (30) days following execution of Agreement and shall diligently pursue the Project, in accordance with the order of performance for the Tasks specified in Exhibit A, until all Tasks in the Project have been fully completed, until the Funds have been fully expended, or until there are insufficient Funds left to accomplish any of the remaining Tasks, whichever occurs first. The Funds shall only be diverted from and not used for the Project to the extent that County Counsel determines in a written legal opinion sent to and approved by LAFCO, and a copy of which

shall be sent to GRHA, that the use of the Funds as specified in Exhibit A would be an illegal use of public funds, or to the extent funds are not sufficient for carrying out any Task under the Project pursuant to Section 2.2 of this Agreement. The County will use its best efforts to keep administrative, planning, engineering, design and other professional services with respect to the Tasks as low as is practicable.

2.2 *Completion of Tasks Once Commenced; Contribution of County Funds.* County shall not be obligated to expend any County funds, other than the Funds, to complete any Task. Prior to commencing any Task, the County shall estimate the cost of that Task. The cost estimated shall include a reasonable contingency. If the cost of the Task exceeds Funds available, County shall consider downsizing or modifying the Task, if feasible, to bring the cost within the amount of Funds available. If the Task cannot be downsized or modified to bring the cost within the Funds available, if the County, in its sole discretion, determines not to utilize other County funds for completion of the Task, the County shall consider the next Task in order. If, at any point, the Funds available are insufficient to complete any Task, County shall be under no further obligation to comply with this Agreement and the Funds may be used for any lawful purpose of the County. In the event that the Funds are fully expended after the County has commenced a Task but prior to its completion, County shall use its best efforts to complete the current phase of the Task. GRHA shall not be responsible for any of the costs of completing any Task. The completion of such Tasks shall be performed in accordance with the standards hereinafter set forth in Sections 5.1 and 5.2 of this Agreement. Work on each Task shall be sequential, not concurrent, to ensure availability of funds for each Task.

2.3 *Accounting of Funds; Interest.* Immediately upon receipt of the Funds from District, County shall identify such Funds separately in the County's treasury and shall account for such funds separately, and such Funds shall accrue interest at the County's pooled rate. All interest earned on the Funds until the Funds have been fully expended shall be treated as the Funds and spent solely in the manner authorized for expenditure of Funds by this Agreement.

3. Construction and Installation of Project.

3.1 *Planning and Contracting.* County shall have the sole responsibility for all planning, design, engineering, construction and installation relating to the Project and all contracting with appropriate contractor(s), engineers and other professionals reasonably required to undertake and complete the planning, design, engineering, construction and installation of the Project. Any reliance by the County, its contractors or professionals on existing planning, design, or engineering plans or specifications shall be in the sole discretion and determination of the County, its contractors and professionals and at County's risk. County shall permit GRHA to submit input relating thereto, and to that end County shall provide the GRHA with copies of any proposed bid documents not less than five (5) working days prior to posting and/or disseminating the same to potential bidders or contractors; provided, however, that any such input from GRHA shall be advisory only and shall not limit the County's discretion and responsibility for the planning, design, engineering, construction and installation of the Project.

3.2 *Contract.* If any Task is to be performed by an independent contractor, County shall deliver a legible copy of each contract between the County and its contractor(s) for construction and installation of the each Task to GRHA and LAFCO not less than five (5) working days prior to

commencement of any work of construction or installation of the Task. Each such contract shall contain a project schedule showing a timeline for work on the Task, including estimated start and end dates. Work on the first Task to be done shall commence not sooner than May 1, 2012, and not later than September 1, 2012, so that the Task can be completed in a timely manner and not delayed because of inclement weather.

3.3 *Applications.* County shall prepare and submit for review and approval all applications, documents, fees, charges or other items (including, without limitation, deposit, fund or surety) required to expediently commence construction and installation of the Project pursuant to all local, state and federal laws, rules and regulations.

3.4 *Approvals.* County shall obtain all entitlements, permits and other approvals required for construction and installation of the Project.

4. Term. This Agreement shall commence on the Effective Date and shall terminate on the date the County issues a written notice to GRHA that the Project has been fully completed, that the Funds have been fully expended, or that there are insufficient funds to accomplish any of the remaining tasks after consideration of downsizing or modifying the Tasks as provided in Section 2.2, whichever occurs first. The written notice shall include a written accounting detailing the expenditure of the Funds over the term of the Agreement.

5. Standard of Care; Performance Standards.

5.1 County shall implement the Project in a skillful and competent manner and in accordance with all applicable local, state, and federal laws, rules and regulations.

5.2 County shall meet or exceed the following performance standards for the Project:

Complete the Tasks for the Project in accordance with the order set forth in Exhibit A.
Expend the Funds entirely on the Project, except as otherwise allowed in this Agreement.
Implement the Project in a manner consistent with Exhibit A and all provisions of this Agreement.

6. General.

6.1 *Incorporation of Recitals.* The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

6.2 *Nonwaiver of Rights or Remedies.* The failure of a Party to exercise any one or more of its rights or remedies under this Agreement shall not constitute a waiver of that Party's right to enforce that right or seek that remedy in the future. No course of conduct or act of forbearance on any one or more occasions by any Party to this Agreement shall preclude that Party from asserting any right or remedy available to it in the future. No course of conduct or act of forbearance on any one or more occasions shall be deemed to be an implied modification of the terms of this Agreement.

6.3 *No Assignment.* This Agreement may not be assigned by either Party, without the prior and express written consent of the other Party. Any attempted assignment of this Agreement

not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

6.4 *Entire Agreement; Modifications.* This Agreement represents the entire understanding of the Parties and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement shall not be modified except by a writing signed by both parties.

6.5 *Successors.* This Agreement and each of its terms shall be binding upon and inure to the benefit of the Parties' successor-in-interest.

6.6 *Attorneys' Fees.* In the event that any action or proceeding, including arbitration, is commenced by either Party against the other to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing Party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its actual attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

6.7 *Choice of Law and Venue.* This Agreement is executed and is to be performed in the County of El Dorado, California. It shall be construed under and in accordance with the laws of the State of California and any action or proceeding to enforce or interpret it shall be brought and heard in the County of El Dorado, California.

6.8 *Time is of the Essence.* Except as otherwise expressly stated, time is of the essence in the performance of every act required pursuant to this Agreement.

6.9 *Covenant of Further Assurances.* The Parties shall take all other actions and execute all other documents which are reasonably necessary to effectuate this Agreement.

6.10 *Interpretation.* The Parties agree that this Agreement is the product of mutual negotiations and is an arms-length transaction. Each Party has had the opportunity to obtain the advice and assistance of legal counsel of its own choosing in connection with the negotiation of this Agreement. It is further agreed that this Agreement is a product of mutual drafting efforts by both Parties and, accordingly, the rule that ambiguities in a document shall be construed against the drafter of the document shall have no application to this Agreement.

6.11 *Severability.* If any term or provision of this Agreement is found to be invalid or unenforceable, the Parties both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

6.12 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same agreement.

6.13 *Authority to Execute.* Each Party signing this Agreement on behalf of that Party represents and warrants to the other Party that all necessary legal prerequisites to that Party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the Party on whose behalf he or she signs to the Agreement.

6.14 *Notices.* Notices required under this Agreement shall be sent to the following:

If to the County:

Director of Transportation
County of El Dorado
2850 Fairlane Court
Placerville, CA 95667
(530) 621-5900

With copy to: County Counsel

County of El Dorado
330 Fair Lane
Placerville, CA 95667
(530) 621-5770

If to the District (or GRHA):

Richard W. Nichols
5361 Reservation Road
Placerville, CA 95667
(530) 676-4667

Notices given pursuant to this Agreement shall be deemed received as follows: if sent by United States Mail – five (5) calendar days after deposit into the United States Mail, first class postage prepaid; if by express courier service or hand delivery – one (1) calendar day after deposit with the courier or hand delivery service. The addresses for notices set forth in this Section may be changed upon written notice of such change to either the District or County, as appropriate.

[Signatures on the following page]

**SIGNATURE PAGE
TO
AGREEMENT FOR USE OF GRASSY RUN COMMUNITY SERVICES DISTRICT
FUNDS**

The Parties have signed this Agreement by and through the signatures of their authorized representatives, set forth below:

Dated: _____

COUNTY OF EL DORADO

By: _____

Ray Nutting
Chair, Board of Supervisors

ATTEST:

By: _____

Suzanne Allen de Sanchez
Clerk to the Board of Supervisors

Dated: _____

GRASSY RUN COMMUNITY SERVICES
DISTRICT

By: _____

Richard W. Nichols
General Manager

By: _____

Jack Martin, Vice-President and
Acting President

Exhibit “A”
To
AGREEMENT FOR USE OF GRASSY RUN COMMUNITY SERVICES DISTRICT
FUNDS

Description of Tasks in Project and Order of Performance
<p>TASK 1: Fill in the “dip” in the pavement at the entrance to Buck Mountain Road at Greenstone Road. It is acknowledged that this will be a “patch” and not a complete reconstruction of the encroachment. GRCS D acknowledges that a “dip” in the encroachment is a necessary design feature of the encroachment to provide for drainage, and that the patch will reduce, but not eliminate, the “dip.” This Task is subject to GRCS D obtaining the written consent for the work to be done from the adjacent property owners who are not within GRCS D.</p>
<p>TASK 2: Pave all public sections of Grassy Run Court (a) at its intersection with Greenstone Road, and (b) at the cul-de-sac, including behind the cluster mailboxes, or pave portions of the roadway if Funds are insufficient to pave the entire roadway. If only a portion is to be paved, the Department of Transportation will consult with and receive advice from Richard Nichols, [then] former General Manager of GRCS D, over which portions shall be paved. Final discretion lies with the Department of Transportation.</p>
<p>TASK 3: Install solar powered street lights along Grassy Run Court cul-de-sac either for directed lighting to cul-de-sac generally or for lights for the cluster mail-box area. The mail boxes are located within the cul-de-sac easement, and thus on public property. This Task shall be subject to approval by GRHA who shall be responsible for determining whether directed lights are agreeable to the residents fronting on the cul-de-sac. The determination of GRHA shall be communicated to the Department of Transportation within 60 days after the Department of Transportation gives notice to GRHA of the availability of Funds to perform this Task.</p>
<p>TASK 4: Perform pavement overlay and striping of the park and ride lot at the intersection of Greenstone Road at Grassy Run Court to complement the paving being done on Grassy Run Court.</p>