

**Funding Agreement
Between
County of El Dorado and XX**

Funding Agreement #XX-XXXX

COUNTY FILE NUMBER XX

THIS FUNDING AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and XX, a XX, whose mailing address is XX (hereinafter referred to as "Applicant");

RECITALS

WHEREAS, Applicant is proposing to develop real property composed of approximately XX acres in the XX area. The property is located on the (location) (Assessor's Parcels XX). Applicant has filed for a development application for a (Project type[s]). Applicant proposes to construct approximately (description and quantity of proposed structure types and/or open space, etc.) (Project);

WHEREAS, an Environmental Impact Report (EIR) is required for the processing of the Project pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15064;

WHEREAS, Public Resources Code Section 21082.1 authorizes County to enter into agreements to prepare environmental documents for a proposed project including the preparation of an EIR and Mitigation Monitoring Program;

WHEREAS, Public Resources Code Section 21089 authorizes County to collect fees to recover the costs for the preparation and processing of environmental documents.

NOW, THEREFORE, County and Applicant mutually agree as follows:

ARTICLE I

Purpose: The purpose of this Agreement is to provide a mechanism for Applicant to reimburse County for the costs incurred in the preparation of an EIR for the Project should Applicant not make timely payment. Both County and Applicant make this Agreement with full knowledge of the requirements of CEQA of 1970 and the State CEQA Guidelines adopted pursuant thereto. This Agreement is subject to all other applicable laws, regulations,

and ordinances including those of the County of El Dorado relating to payment of monies for services rendered.

ARTICLE II

Work: The work to be funded is the preparation of an EIR which considers the impacts and alternatives that implementation of the proposed (Project Name and Project Type) may have on that real property described as Assessor Parcel Numbers: (APN[s]).

ARTICLE III

Employment of Consultant as Independent Contractor: County may engage various Consultants as independent contractors for preparation of the Project EIR for the development of the (Project Name and Project Type) located in (location), in El Dorado County, California.

The EIR shall be prepared for the County. It shall be prepared to be legally adequate to allow the County to meet its obligations as the CEQA lead agency to consider all discretionary actions necessary for the Project (Public Resources Code, §21082). Consultant(s) shall prepare the EIR to be accurate and objective. Consultant(s) shall act solely as Consultant(s) to County and shall not act in any capacity as Consultant(s) to, representative of, or agent of Applicant. Applicant shall not engage in communications or contact with Consultant(s) without prior written authorization of County.

The execution of this Agreement shall not constitute a representation or assurance by County that the EIR shall be certified or that the Project will be approved.

ARTICLE IV

Funding for this Agreement: Funding of this Agreement is provided entirely by Applicant. Applicant acknowledges and agrees that Applicant is the sole source of funding for the agreement(s) between County and its Consultant(s) for the preparation of the Project EIR, as well as compensation for County staff time.

- A. Applicant shall pay invoices associated with the development of the Project EIR through monthly Time and Materials billings, as established by an Agreement for Payment of Processing Fees.
 - a. Through this Agreement for Payment of Processing Fees, Applicant is responsible for payment of all applicable fees associated with the Project and is required to make payment within ninety (90) days of the date of the invoice. Additionally, any outstanding balances must be paid in full prior to being scheduled for County action. If payment is not received by County within ninety (90) days of said invoice, the County B-4: Collections – Recovery of Public Funds process is initiated.

- B. Within thirty (30) days of execution of this Agreement, Applicant shall deposit with County the sum of (deposit amount). The total deposit amount represents twenty percent (20%) of the estimated Consultant costs in preparation of the Project EIR.

Applicant agrees the deposit will be held until payment of any and all final Planning Division invoices associated with preparation of the Project EIR following final County action, or withdrawal of the Project, or termination of this Agreement. By deposit of the above-referenced funds and by execution hereof, Applicant agrees that County may utilize said funds to compensate its Consultants and/or County staff if Applicant fails to pay any outstanding invoices after final County action, or withdrawal of the Project, or termination of this Agreement.

It is understood that County may request an additional deposit if there is a substantial increase in costs associated with development of the Project EIR. Such request shall require processing of an amendment to this Agreement.

ARTICLE V

Deposit: County will place all deposits paid by Applicant pursuant to this Agreement into the Project account in the Planning Project Special Revenue Fund. The deposit shall not bear interest.

ARTICLE VI

Reimbursement: Upon processing payment of all final Planning Division invoices following final County action, or withdrawal of the Project, or termination of this Agreement, County shall reimburse Applicant for the full deposit amount or any difference between County's costs to fund its Consultants and/or County staff, as set forth above, and the amount deposited.

ARTICLE VII

Interest of Applicant and Consultant: Applicant covenants that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with Consultant's services hereunder. Applicant covenants that it will notify the County if the County engages, or attempts to engage, a Consultant who has performed any work or provided any services under contract or agreement directly with the project or any part of the project herein described or who has performed work or provided services for Applicant on any other development project within the preceding five (5) years.

ARTICLE VIII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
PLANNING AND BUILDING DEPARTMENT
2850 FAIRLANE COURT
PLACERVILLE, CA 95667
ATTN: Ande Flower, Planning Manager

Or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

(Applicant mailing address)

Or to such other location as the Applicant directs.

ARTICLE IX

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE X

Administrator: The County officer or employee with responsibility for administering this Agreement is Ande Flower, Planning Manager, or successor.

ARTICLE XI

Termination: Either County or Applicant may terminate this Agreement by presentation to the other party hereto of written notice of said termination fifteen (15) days prior to effective date of said termination. In the event of termination by either party, County shall retain fees from the funds deposited in an amount equal to all Consultant fees, County staff time, and other costs incurred prior to the effective date of said termination. The remaining balance, if any, deposited by Applicant shall be reimbursed to Applicant.

ARTICLE XII

Assignment: This Agreement shall be binding upon the successors-in-interest and assigns of Applicant. Applicant shall inform County of any assignment or successor-in-interest to the rights and obligations under this Agreement. Failure to notify County of such changes may

result in implementation of the County's escheatment process per Government Code Section 50050-50057 for disposing of unexpended fees, as established by Planning and Building Department Fee Policies and Procedures.

ARTICLE XIII

Agreement Negotiated: It is agreed and understood by the parties hereto that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

ARTICLE XIV

Entire Agreement: This document and the documents referred to herein are the entire Agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

ARTICLE XV

Indemnity: To the fullest extent permitted by law, Applicant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Applicant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Applicant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code section 2778.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

- - COUNTY OF EL DORADO - -

By: _____ Dated: _____
Director of Planning and Building
"COUNTY"

- - APPLICANT - -

By: _____ Dated: _____
XX
President
"Applicant"

By: _____ Dated: _____
XX
Secretary