



ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF EL DORADO PROVIDING FOR ANNUAL
CONTRIBUTIONS TOWARDS MISSOURI FLAT
ROADWAY IMPROVEMENTS**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES
ORDAIN AS FOLLOWS:**

The Board of Supervisors of the County of El Dorado (the "County") hereby finds as follows:

A. Development in the area of Missouri Flat Road has generated, and will continue to generate, volumes of traffic which cannot be supported by current roadway improvements, including the Missouri Flat Road overcrossing and interchange at Highway 50.

B. Policy 2.1.4.8 of the County's 1996 General Plan called for the adoption by the County of a "specific plan, redevelopment plan, or a master circulation and funding plan" for the Missouri Flat Area, and restricted discretionary approvals of development projects in that area pending such adoption. The County and certain developers in the Missouri Flat Area cooperated in, and provided funding for, the development of such plan which is referred to as the Missouri Flat Area Master Circulation and Funding Plan (the "MC&FP"). Following review and recommendation by the County Planning Commission, the Board of Supervisors adopted the MC&FP on December 15, 1998.

C. The MC&FP identified those traffic mitigation improvements (the "MC&FP Improvements") needed to restore and maintain levels of service on Missouri Flat Road and surrounding roadways, taking into consideration both existing deficiencies in light of current traffic, and projected traffic impacts of anticipated new development. It also detailed a comprehensive funding program for the MC&FP Improvements which required cooperation and coordination by the County and developers in the area. The MC&FP identified the MC&FP Improvements to be County-owned, as well as the MC&FP Improvements to be owned by other public entities, such as the State of California.

D. In order to implement the MC&FP, the County entered into Development Agreements, dated as of December 15, 1998, with certain developers (the "Developers"), then identified as (1) Wal-Mart Stores Inc. et al.; (2) Prospect Investment Company, El Dorado Land, Ltd., and Sundance Missouri Flat, LLC; and (3) Village/El Dorado Partners, L.P., et al. (collectively, the "Development Agreements").

E. In the Development Agreements, the Developers agreed to pay traffic impact mitigation fees ("TIM Fees") to provide funding for the MC&FP Improvements needed to maintain levels of service on Missouri Flat Road and surrounding roadways, taking into consideration the projected traffic impacts of new development.

F. In the Development Agreements, the Developers also agreed to assist in securing financing for the MC&FP Improvements needed to mitigate existing deficiencies in the traffic level of service, by agreeing to the formation of a community facilities district (the "CFD") and the levy of a special tax on real property therein (the "CFD Special Tax"), in order to finance, through the sale of bonds (the "CFD Bonds"), a portion of the costs of these MC&FP Improvements, with the understanding that the levy would be made to secure the CFD Bonds in the event that annual contributions by the County were not sufficient to pay debt service on the CFD Bonds and other expenses of the CFD. All of these MC&FP Improvements are facilities authorized to be financed by the CFD.

G. In the Development Agreements, the County agreed to enter into an agreement, or otherwise make a binding commitment whereby the County would annually contribute to the CFD funds sufficient to pay debt service on the CFD Bonds plus other expenses of the CFD which would otherwise be funded by the CFD Special Tax during such fiscal year, the contribution not to exceed Tax Increment Revenues (as defined herein) for such fiscal year.

H. On December 15, 1998, the Board of Supervisors found the Development Agreements to be consistent with the objectives, policies, general land uses, and programs specified in the County's General Plan, and, without limitation, that the Development Agreements carried out the purposes of the County's Policy 2.1.4.8. Furthermore, at that time, the Board of Supervisors also reviewed the provisions of the MC&FP and the Development Agreements and determined that all were consistent with the provisions of Measure Y, which had been approved by the voters of the County at the general election on November 3, 1998.

I. On December 15, 1998, the Board of Supervisors also determined that the Development Agreements would, among other things, (1) provide tax increment revenue for construction of a portion of the roadway improvements necessary to mitigate existing deficiencies in traffic level of service, (2) reduce uncertainties in planning and provide for the orderly development of the projects contemplated by the Development Agreements, (3) strengthen the County's economic base and provide long-term jobs, in addition to short-term construction jobs, and (4) generate substantial revenue for the County.

J. As contemplated by the Development Agreements, the Board of Supervisors formed the CFD (Community Facilities District No. 2002-01) in April 2002, following an election at which 100% of the property owners in the CFD authorized the levy of the CFD Special Tax on the real property therein and the issuance of the CFD Bonds secured by the CFD Special Tax.

K. Since the execution of the Development Agreements and the formation of the CFD, significant commercial and retail development has occurred in the CFD, and Tax Increment Revenues generated by these developments have increased significantly.

L. Certain of the MC&FP Improvements have been or are being constructed, and it is necessary and desirable to construct further MC&FP Improvements.

M. In order to finance a portion of the costs of the MC&FP Improvements, the Board of Supervisors has determined that it is necessary and desirable to issue the CFD Bonds.

N. Accordingly, the County desires, by and in accordance with the terms of this Ordinance and Government Code Section 53314.8, and in consideration of the issuance of the CFD Bonds and the application of the proceeds thereof toward payment of a portion of the costs of the MC&FP Improvements, to formalize its binding commitment, as agreed in the Development Agreements, to annually contribute to the CFD funds sufficient to pay debt service on the CFD Bonds plus other expenses of the CFD which would otherwise be funded by the CFD Special Tax during such fiscal year, the contribution not to exceed the Tax Increment Revenues for such fiscal year.

O. The County's contributions hereunder do not constitute a long-term indebtedness or a pledge of General Fund monies of the County. The annual contributions constitute a contingent liability because the County is obligated to pay only the value of its annual use and/or possession of the County-owned MC&FP Improvements, and the annual obligation to make such payment is abated in the event such MC&FP Improvements are damaged or destroyed or otherwise become unavailable for the County's use and/or possession. In addition, the County's annual contribution is abated in the event, and to the extent Tax Increment Revenues are not generated during that fiscal year, due to damage to or destruction of the commercial and retail development in the CFD, or otherwise.

P. The County's contributions hereunder are payable from all legally available amounts in the General Fund of the County and from no other source of County funds, and are therefore not made from a "special fund."

Q. The commitment to make the annual contributions hereunder constitutes a contract with the holders of the CFD Bonds, which contract is protected by Article I, Section 9 of the California Constitution.

NOW THEREFORE, the Board of Supervisors of the County of El Dorado ordains as follows:

Section 1. Short Title

This ordinance shall be known as “The El Dorado County Ordinance Providing for Annual Contributions Towards Missouri Flat Roadway Improvements.” This Ordinance is the “County Funding Agreement” as such term is defined in the CFD Special Tax.

Section 2. Definitions

For purposes of this Ordinance, the following terms shall have the meanings set forth below. Other capitalized terms not defined herein shall have the meanings set forth in the Development Agreements.

“CFD Bonds” or “Bonds” means the bonds to be issued by the CFD under the Mello-Roos Community Facilities Act of 1982 for the purpose of financing the MC&FP Improvements. The Bonds are obligations of the CFD, secured by the CFD Special Tax authorized to be levied on properties within the CFD in the event that County contributions made pursuant to Section 3 are not sufficient to pay annual debt service on the Bonds as it becomes due.

“MC&FP Improvements” means: (a) all of the roadway improvements proposed to be constructed pursuant to the MC&FP and identified as Phase I Roadway Improvements on page 3-25 of the Draft EIR prepared in connection with the development of the Missouri Flat Area MC&FP, and as shown on the Notice of Special Lien, recorded on April 11, 2002, in connection with the formation of the District, or (b) those which are functionally equivalent improvements and design.

“MC&FP Adoption Date” means December 15, 1998.

“Maximum Annual Value” means the maximum annual value of the County’s use and possession of the County-owned MC&FP Improvements, as determined by the Board of Supervisors, based upon the cost of such MC&FP Improvements. As of the date of adoption of this Ordinance, and based upon the cost of replacing the currently completed County-owned MC&FP Improvements, and considering the useful life thereof, the Maximum Annual Value is \$1,351,849. Prior to the issuance of a series of CFD Bonds, the Board of Supervisors shall, in connection with the authorization and issuance thereof, and based upon the sum of the cost of replacing the then completed County-owned MC&FP Improvements plus the estimated cost of construction of the MC&FP Improvements to be County-owned that are to be financed by that series of Bonds, update its determination of Maximum Annual Value for each year that the series of CFD Bonds will be outstanding, considering the useful life of all such MC&FP Improvements on and after the issuance of that series of CFD Bonds.

“Missouri Flat Area” means the geographic area within the County identified as the Missouri Flat Area on Exhibit 3-3 (Proposed Missouri Flat Area Master Circulation and Funding Plan Area and Vicinity) at page 3-16 of the Draft Environmental Impact Report, dated April 1998 (the “EIR”), prepared for the Missouri Flat Area MC&FP area and vicinity.

“Missouri Flat Area Development” means any development which would generate Projected Annual Taxable Sales (as defined herein) equal to or greater than that of the proposed projects specifically originally identified in the Development Agreements.

“Projected Annual Taxable Sales” means the amount arrived at by multiplying the applicable Taxable Sales Target (as defined herein) times the number of square feet devoted to the specific use or category of use to which the Taxable Sales Target applies. As dictated by the context in which it is used, the Projected Annual Tax Sales may be calculated for a particular property or project, or for the Missouri Flat Area in its entirety. Unless otherwise stated, Projected Annual Taxable Sales on a property or within an area includes only Projected Annual Taxable Sales generated by development after the MC&FP Adoption Date (as defined herein).

“Property Tax Increment” means that portion of the County’s share of the one percent (1%) ad valorem property tax levied under Article XIII A, Section 1(a) of the California Constitution which is generated by any increased assessed value attributable to buildings or structures constructed in the Missouri Flat Area after the MC&FP Adoption Date. For this purpose, buildings or structures shall be deemed to be constructed after the MC&FP Adoption Date if the certificate of occupancy is issued after that date. Construction includes construction of buildings or structures on vacant land, the addition of buildings or structures on property on which other buildings or structures already exist, replacement of existing structures, and significant expansions of existing structures, but does not include the remodeling of existing structures.

Property Tax Increment does not include any revenues received by any public agency other than County, and it does not include any property tax revenues received under Article XIII A, Section 1(b) of the California Constitution, or that is otherwise restricted in its purpose.

“Sales Tax Increment” means any unrestricted sales and use tax revenues received by the County which are generated by transactions which occur in buildings or structures in the Missouri Flat Area, or their accessory areas, constructed after the MC&FP Adoption Date. For this purpose, construction shall be deemed to have occurred after the MC&FP Adoption Date if the certificate of occupancy for the structure is issued after that date. Construction includes construction of buildings or structures on vacant land, the addition of buildings or structures on property on which other buildings or structures

already exist, replacement of existing structures, and significant expansions of existing structures, but does not include the remodeling of existing structures. Where construction consists of the expansion of an existing structure, the Sales Tax Increment attributable to the expansion shall be determined by pro rating total sales tax generated in the building based on the proportion the floor area in the expanded area devoted to retail sales bears to the total floor area in the building devoted to retail sales.

Sales Tax Increment does not include: (a) sales tax revenues restricted to specific uses, such as revenues received under Proposition 172 (Article XIII, Section 35 of the California Constitution) for public safety purposes; (b) any special tax or override in excess of the current one percent (1%) of sales tax currently received by County for general purposes; or, (c) any sales tax received by any public entity other than the County.

“Tax Increment Revenues” is an amount equal to eighty-five percent (85%) of Total Tax Increment. Pursuant to Section 6.B of the Development Agreements, and subject to the limitations set forth in that section, the County has committed to devote such amount, annually, to MC&FP purposes in accordance with the Development Agreements. Total Tax Increment is used as a basis for determining the maximum amount of the County’s obligation hereunder. However, the County’s obligations under this Ordinance, and the use of terms such as Total Tax Increment and Tax Increment Revenues, is not intended to be a pledge of that particular revenue source or the creation of a special fund.

“Taxable Sales Target” means the projected annual retail sales per square foot for various types of uses as set forth in Exhibit E of the Development Agreements.

“Total Tax Increment” means the total of Property Tax Increment plus Sales Tax Increment.

Section 3. Contribution; Duration

Subject to the provisions of Section 4, the County shall annually contribute to the CFD funds sufficient to pay debt service on the CFD Bonds plus other expenses of the CFD which would otherwise be funded by the CFD Special Tax during such fiscal year, the contribution not to exceed the Tax Increment Revenues for such fiscal year.

Each such annual contribution shall be made in order to pay a portion of the costs of the MC&FP Improvements, all of which are facilities authorized to be financed by the CFD.

The County’s obligation hereunder is to be funded exclusively by annually available General Fund amounts. No other source of County funds is being obligated by this Ordinance. Nothing in this paragraph is intended to prevent the use in any fiscal year of funds accumulated,

but not spent during prior fiscal years, from collected Tax Increment Revenues, for any purposes consistent with the MC&FP.

The County will take such action as may be necessary to include the annual payments payable hereunder in its operating budget for such fiscal years, and to make all necessary appropriations for such payments.

There shall be no carry-over obligations on the part of the County to make contributions hereunder in the event that the Tax Increment Revenues during a given fiscal year are less than is required to pay CFD Bond debt service and the other expenses of the CFD for that fiscal year. The County shall not be required to make any contribution in any fiscal year for any prior fiscal year during which the County's contribution for such prior fiscal year fell short of that necessary to pay CFD Bond debt service and expenses for such prior fiscal year.

The County's obligation hereunder shall, subject to abatement as herein provided, continue until such time as: (1) the CFD Bonds have been discharged, (2) any remaining financial obligations of the CFD have been fully funded through reserve accounts or similar mechanisms, so that the property in the CFD is no longer subject to the levy of the CFD Special Tax, or (3) there are sufficient moneys in the Special Reserve Account, described in Section 6, to pay CFD Bond debt service as it becomes due for the term of the CFD Bonds or to redeem the CFD Bonds.

Section 4. Limitations; Abatement

In no event shall the County's contribution in any fiscal year exceed the Maximum Annual Value of the County's use and/or possession during that fiscal year of County-owned MC&FP Improvements.

Moreover, the County's contribution in each such fiscal year shall be limited to an amount equal to the Tax Increment Revenues received during such fiscal year.

The County's obligation to make an annual contribution hereunder shall be abated to the extent that the scheduled amount of such annual contribution exceeds an amount equal to the Tax Increment Revenues received for such fiscal year.

Moreover, the County's obligation to make an annual contribution hereunder shall be abated to the extent that the County-owned portion of the MC&FP Improvements are materially damaged or destroyed or are otherwise unusable so that there is substantial interference with the County's use and/or possession of the County-owned portion of the MC&FP Improvements in such year. After any such abatement, remaining County contributions shall represent fair consideration for the use and/or possession of the portion of the County-owned portion of the MC&FP Improvements not damaged, destroyed or otherwise rendered unusable. Such abatement shall continue for the period commencing with such damage, destruction or loss of use and ending with the substantial completion of the replacement, repair or return of use.

Nothing in this Section 4 is intended to prevent the use of moneys in the Special Reserve Account, established pursuant to Section 6, for the payment of the CFD Bonds.

Section 5. Use of Tax Increment Revenues

The County Auditor shall annually calculate the Tax Increment Revenues, and cause: (1) the amount to be contributed to the CFD, pursuant to Section 3, to be transferred to the CFD Bond Indenture Trustee for deposit into the funds and accounts established thereunder for payment of CFD Bond debt service and the other expenses of the CFD which would otherwise be funded by the CFD Special Tax for such fiscal year; and (2) the amount, if any, to be deposited into the Special Reserve Account, pursuant to Section 6, to be deposited therein.

Section 6. Special Reserve

In accordance with the MC&FP and the Development Agreements, the County has deposited not less than \$1,500,000 into the Special Reserve Account, established with the County Treasurer, for the purpose of making available funds to pay CFD Bond debt service in the event that Tax Increment Revenues in any year are insufficient to pay that debt service, reducing the likelihood that the collection of the CFD Special Tax would be required.

In any fiscal year that the Maximum Annual Value of the County-owned MC&FP Improvements exceeds the amount to be contributed to the CFD, pursuant to Section 3, such excess shall, in accordance with the Development Agreements, be used to replenish any then existing shortfall in the Special Reserve Fund.

Section 7. Severability

If any subdivision, paragraph, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this Ordinance, or of any provisions of the MC&FP or the Development Agreements.

Section 8. Effective Date

This Ordinance shall take effect and shall become effective 30 days from the date of final passage.

Ordinance No. _____

Page 9

Section 9. Publication

Within 15 days of its passage, this Ordinance shall be published one time in the Mountain Democrat, a newspaper of general circulation published in the County, with the names of the members of the Board of Supervisors voting for and against the same.

INTRODUCED at a regular meeting of the Board of Supervisors of the County of El Dorado held on the _____ day of _____, 2008.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the _____ day of _____, 2008, by the following vote of said Board:

Ayes:

ATTEST
CINDY KECK
Clerk of the Board of Supervisors

Noes:
Absent:

By _____
Deputy Clerk

Chairman, Board of Supervisors

I CERTIFY THAT:
THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

Date _____
ATTEST: CINDY KECK, Clerk of the Board of Supervisors
of the County of El Dorado, State of California.

By _____
Deputy Clerk