

**FUNDING AND ROAD MAINTENANCE AGREEMENT
FOR SERRANO-SILVA VALLEY PARKWAY
SLURRY-STRIPING PROJECT
BETWEEN THE COUNTY AND ASSOCIATION**

AGMT # 07-1462

THIS FUNDING AND ROAD MAINTENANCE AGREEMENT, hereinafter called “Agreement” made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California (hereinafter referred to as “County”) and **SERRANO EL DORADO OWNERS’ ASSOCIATION**, a California non-profit, mutual benefit corporation in the State of California, whose principal place of business is 4525 Serrano Parkway, El Dorado Hills, California 95762 and whose local office address is 4525 Serrano Parkway, El Dorado Hills, California 95762 (hereinafter referred to as “Association”) concerning the road maintenance for the **Serrano-Silva Valley Parkway Slurry-Striping Project** (hereinafter referred to as “Project”) on the streets listed in Exhibit A and in accordance with the Special Provisions entitled **Serrano El Dorado Owners’ Association Serrano-Silva Valley Parkway Slurry-Striping Project Special Provisions** and the cost estimate prepared by Parker Development and approved by Richard W. Shepard, P.E., Director of Transportation (hereinafter referred to as “Director”) El Dorado County Department of Transportation (hereinafter referred to as “Department”).

RECITALS

WHEREAS, County plans to perform base failure repairs and drainage improvements to Serrano Parkway and Silva Valley Parkway; and,

WHEREAS, Association, at Association’s sole cost and expense, desires to slurry seal and restripe portions of primarily Serrano Parkway and Silva Valley Parkway (hereinafter the “Maintenance Work”) after County’s repairs, and County is willing to allow the Association to apply slurry seal coating and restripe said roadways at Association’s expense so long as the Maintenance Work is coordinated with County and complies with the terms and conditions of this Agreement and the County’s encroachment permit; and

WHEREAS, Association has prepared Plans, Special Provisions and cost estimates for the Maintenance Work that have been approved by Director; and

WHEREAS, it is the intent of the parties hereto that the performance of Association’s Maintenance Work shall be in conformance with the terms and conditions of this Agreement and shall be in conformity with all applicable state and local laws, rules and regulations;

NOW, THEREFORE, the parties hereto in consideration of the recitals, terms and conditions herein, do hereby agree as follows:

SECTION 1. THE WORK

Association will, at its sole cost and expense, in a workmanlike manner, faithfully and fully perform the Maintenance Work referred to as the Serrano-Silva Valley Parkway Slurry-Striping Project and will perform the requirements of this Agreement in accordance with the Special Provisions, plans, change orders, and itemized cost estimates, each and all approved by Director and hereby made a part of this Agreement for all purposes as if fully incorporated herein. All construction work shall be in accordance with all applicable state and local rules, regulations, and County ordinances, policies and standards, and inclusive of prevailing wage and other labor requirements, and State licensing regulations. Association's obligations herein are for the completion of all of the Maintenance Work and shall not be relieved by contracting for the improvements.

An itemized account of the estimated cost of said Maintenance Work is set forth in Exhibit A, marked "Schedule of Work and Cost Estimate" which is attached hereto and incorporated by reference herein.

County will require Association to make such alterations, deviations, additions to or deletions from the work shown and described on the plans, specifications, and cost estimates as may be reasonably deemed by the Director to be necessary or advisable for the proper completion or construction of the whole work contemplated. Association shall be responsible for all design and engineering services of the Maintenance Work, at the location and as generally depicted in the plans and special provisions ultimately approved by the County, and Association shall arrange for the complete assignment of ownership of all specifications to the benefit of County. The design shall be prepared in accordance with all applicable laws, statutes, orders, map conditions, and with County standards for the Project.

The parties acknowledge that Association has prepared the necessary specifications for the Maintenance Work and by entering into this Agreement assign all rights of ownership to same.

Association, and its contractor, shall apply for and obtain a County encroachment permit prior to issuing a notice to proceed for the Maintenance Work, and shall comply with all conditions thereto.

SECTION 2. TRAFFIC CONTROL

A Traffic Control Plan as required by the Special Provisions shall be prepared and submitted to the Department for review and approval by the Director or his designee prior to the start of work on the Maintenance Work. County shall have a minimum of five (5) working days to review and approve or reject the traffic control plan. Should the plan be rejected, the County shall have five (5) working days to review the plan for each subsequent submittal.

The Traffic Control Plan shall address access to adjacent properties and the safe and convenient passage of public traffic through the work area.

SECTION 3. TIME

Association shall cause the commencement of items of work after approval of the plans for the Project by the Director, and after completion of the public utility work performed by El Dorado Irrigation District (“EID”) as set forth in Section 13 herein, and shall complete the Project no later than 180 calendar days from the date of approval of the plans, subject to extensions approved by the Director. Construction activities shall be as allowed by the Special Provisions unless otherwise approved in advance by the Director.

SECTION 4. WARRANTY

Association warrants the materials and workmanship utilized on this Maintenance Work for a period of one (1) year from the date of County’s acceptance of the work and shall make such replacements and repairs during such one (1) year period, at its sole cost and expense, as are necessary due to defects. Contractor shall maintain a Performance Bond for one (1) year following acceptance of the work by County, naming County as obligee, to secure the repair of any hidden defects in workmanship or materials which may appear.

SECTION 5. PERFORMANCE AND LABORERS AND MATERIALMENS BONDS

Association shall, prior to issuing a notice to proceed, deliver to Department a Performance Bond in the name of Association or its contractor, as principal(s), issued by a surety company acceptable to County, naming County as obligee, in the sum of 100% of the contract amount conditioned upon the faithful performance of Association and its contractor’s obligation for the full construction of Maintenance Work referred to as the Serrano-Silva Valley Parkway Slurry-Striping Project as required under this Agreement on or before the completion date specified above, and in the form approved by County.

Association shall, prior to issuing a notice to proceed, deliver to Department a Laborers and Materialmens Bond in the name of Association or its contractor, as principal(s), issued by a surety company acceptable to County, naming County as obligee, in the sum) 100% of the contract amount conditioned upon the faithful performance of Association and its contractor’s obligation for the full construction of the Maintenance Work referred to as the Serrano-Silva Valley Parkway Slurry-Striping Project as required under this Agreement on or before the completion date specified above, and in the form approved by County.

The Bonds required by this Section are a condition precedent to County entering into this Agreement. Association shall include a one (1) year warranty provision in the Performance Bond against defects in materials and workmanship as set forth in Section 4 hereinabove. The forms shall be County’s approved forms and have been included in the approved plans and specifications. After contract award, but prior to issuing a notice to proceed, the Association shall submit for County Counsel’s review and approval the executed bonds together with the certificates of insurance required herein naming County of El Dorado as an additional named insured.

SECTION 6. INDEMNIFICATION

To the fullest extent allowed by law, Association shall defend, indemnify and hold County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' 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 Association and/or its contractor's work, design, operation, construction of the Maintenance Work, or performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of County, Association, any Contractor(s), Subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Association to indemnify and hold County harmless includes the duties to defend set forth in California Civil Code Section 2778.

This duty to indemnify is separate and apart from the insurance requirements herein and shall not be limited thereto.

SECTION 7. INSURANCE

GENERAL INSURANCE REQUIREMENTS: Association shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Management Division and documentation evidencing that Association, and its contractor, maintains insurance that meets the following requirements.

1. Full Workers' Compensation and Employers' Liability Insurance covering all employees performing work under this Agreement as required by law in the State of California.
2. Commercial General Liability Insurance of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverages: premises, personal injury, operations, products and completed operations, blanket contractual and independent contractors liability.
3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by Association in performance of the Agreement.
4. In the event Association or its agent(s) are licensed professionals and are performing professional services under this contract, Professional Liability Insurance is required, with a limit of liability of not less than One Million Dollars (\$1,000,000).
5. Explosion, Collapse, and Underground (XCU) coverage is required when the scope of work includes XCU exposure.

PROOF OF INSURANCE REQUIREMENTS:

1. Association shall furnish proof of coverage satisfactory to County's Risk Management Division as evidence that the insurance required herein is being maintained. The insurance will

be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

2. The County of El Dorado, its officers, officials, employees, and volunteers shall be included as additional insured, but only insofar as the operations under this Agreement inclusive of the obligation to design and construct the Maintenance Work are concerned. This provision shall apply to all general and excess liability insurance policies. Proof that County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to the insurance policies naming County an additional insured.

3. In the event Association cannot provide an occurrence policy, Association shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

4. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or Association shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

INSURANCE NOTIFICATION REQUIREMENTS:

1. The insurance required herein shall provide that no cancellation or material change in any policy shall become effective except upon thirty (30) days prior written notice to County at the office of the Department of Transportation, 2850 Fairlane Court, Placerville, CA 95667.

2. Association agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Association shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Association fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of the Risk Management Division, and Association agrees that no work or services shall be performed prior to the giving of such approval.

ADDITIONAL STANDARDS: Certificates shall meet such additional standards as may be determined by Department, either independently or in consultation with the Risk Management Division, as essential for protection of County.

COMMENCEMENT OF PERFORMANCE: Association shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance provisions is achieved.

MATERIAL BREACH: Failure of Association to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement.

REPORTING PROVISIONS: Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.

PRIMARY COVERAGE: Association's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of Association's insurance and shall not contribute with it.

PREMIUM PAYMENTS: The insurance companies shall have no recourse against the County of El Dorado, its officers, agents, employees, or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

ASSOCIATION'S OBLIGATIONS: Association's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement.

SECTION 8. RESPONSIBILITY OF ENGINEER

Association shall employ a project manager acceptable to the County to administer the construction of the Maintenance Work, which includes, but is not limited to, construction staking, preparing and approving change orders, and keeping abreast of the various construction activities. County's Department of Transportation shall be notified in advance of terminating the services of the engineer. Stakes or marks shall be set by the engineer in accordance with the requirements of the Department in order to complete the work as specified in this Agreement. Changes in the work shall be described by change orders, drawings, and written descriptions, which shall be prepared by the engineer and approved by Department. Association shall employ an individual or firm acceptable to Department to manage the construction of the Maintenance Work contemplated herein. The individual or firm so employed shall act as Association's representative to ensure full compliance with the terms and conditions set forth in the plans, specifications, all permits and any other agreements, notices or directives related to the Project and entered into or issued by other agencies, utilities or firms. The Department shall have full access to the engineer and the improvement plans to ensure that the Maintenance Work is being constructed in accordance with the approved plans and County specifications. The cost associated with County's utilization of the engineer shall be a project cost for which Association is responsible in accordance with this Agreement.

SECTION 9. INSPECTION

An authorized representative of County will perform construction inspection and material testing in accordance with the State of California, Department of Transportation, Standard Specifications, dated July 2002. All testing shall be accomplished to the reasonable satisfaction of County.

SECTION 10. FEES AND SIGNAGE

County hereby waives its fees for plan checking, inspections, testing and permits related to the Maintenance Work. County is contributing these services in recognition of the repairs and maintenance being made to the public streets under this Agreement. Further, County hereby agrees to reimburse

Association the sum of \$ 1,244.05 exactly, as contribution for the signage recognizing the parties' joint contribution herein. The signage is in the form and depicted in Exhibit "B".

SECTION 11. PUBLIC UTILITIES

The County has made arrangements with EID for the adjustment of their manholes and vaults necessary to conform to pavement grades. The costs associated with the EID adjustments shall not be the responsibility of the Association. Association shall not issue a notice to proceed until EID has completed their work.

With regard to all other utility work, Association shall investigate and determine if existing public and private utilities conflict with the construction of the Project. Association shall make all necessary arrangements with the owners of such utilities for their protection, relocation, or removal. Except as provided herein, Association shall pay all costs, if any, of protection, relocation, or removal of utilities as a result of Maintenance Work.

SECTION 12. RIGHT-OF-WAY CLEARANCE

Association shall obtain agreements of entry from adjacent property owners for any work that will be performed outside County road right-of-way, such as conforming to existing driveways or to stage construction.

SECTION 13. NO ASSOCIATION REIMBURSEMENT

The Parties agree and acknowledge that the costs associated with the Maintenance Work contemplated herein are not eligible for reimbursement under County's traffic impact fee programs, or any other funding source, and except as expressly provided herein, all costs associated with this Maintenance Work shall be borne solely by Association.

SECTION 14. CONTRACT ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Richard W. Shepard, P.E., Director of Transportation, Department of Transportation, or successor.

SECTION 15. ACCEPTANCE

Upon completion of the Maintenance Work and upon receipt by County's Board of Supervisors of a certification from Department that all work has been completed and that the conditions of this Agreement have been fulfilled, the Board of Supervisors will accept the Maintenance Work.

SECTION 16. THE PROJECT/ ASSOCIATION STATUS

In constructing and completing, and/or providing funding for the Maintenance Work described herein, Association, and its contractor, are acting as independent agents and not as an agent or agents of County.

SECTION 17. 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 in duplicate and addressed as follows:

To County:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Attn: Richard W. Shepard,
Director of Transportation

With a Copy to:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Attn: Tim C. Prudhel,
Contract Services Officer

or to such other location as County directs.

Notices to Association shall be in duplicate and addressed as follows:

To Association:

Serrano El Dorado Owners' Association
4525 Serrano Parkway
El Dorado Hills, CA 95762

Attn:
John Bowman
Association Manager

With a Copy to:

Parker Development Company
4525 Serrano Parkway
El Dorado Hills, CA 95762

Attn:
Tom Howard
Project Manager

or to such other location as Association directs.

SECTION 18. AUTHORIZED SIGNATURES

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

Requesting Department Concurrence:

By: _____
Richard W. Shepard, P.E.
Director of Transportation

Dated: _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF ELDORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:

Cindy Keck,
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

-- SERRANO EL DORADO OWNERS' ASSOCIATION --

SERRANO EL DORADO OWNERS' ASSOCIATION
a California non profit, mutual benefit corporation

By: _____

Dated: _____

Thomas M. Howard
Vice President

By: _____

Dated: _____

Kirk G. Bone
Secretary

STATE OF CALIFORNIA)

(

COUNTY OF _____)

On this _____ day of _____, 200_, before me, _____, a Notary Public, personally appeared _____,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said County and State

Address of Association:

SERRANO EL DORADO OWNER'S ASSOCIATION
4525 Serrano Parkway
El Dorado Hills, CA 95762