

**REIMBURSEMENT AGREEMENT FOR MISSOURI FLAT AREA
MASTER CIRCULATION & FUNDING PLAN (“MC&FP”) IMPROVEMENTS
AGMT# 22-55037**

THIS REIMBURSEMENT AGREEMENT is made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, and **LLL & A, LLC**, a California Limited Liability Company duly qualified to conduct business in the State of California, whose principal place of business is 1488 Broadway, Placerville, California 95667. This Agreement concerns the construction and acquisition of improvements necessary for the development of the Crossings Planned Development, PD97-0011 project within the Missouri Flat Area Master Circulation and Financing Plan (the “MC&FP”).

RECITALS

WHEREAS, Developer is the owner of certain real properties under development within the MC&FP for the development of the Project; and

WHEREAS, as required for the Crossings Planned Development (formerly known as Sundance Plaza) (PD97-001) and as provided in the Development Agreement between the parties dated December 15, 1998, Mitigation Measures 4.4-1 and 4.4-2 for the Project require Developer to construct or cause to be constructed the Facilities; and

WHEREAS, portions of the Project are scheduled within the County’s Capital Improvement Program as Project No. 36105066 “Missouri Flat Widening from Plaza Drive to Headington Road” (formerly Project No. 71374); and

WHEREAS, the Project’s Mitigation Measures establish that the Facilities are reimbursable by funds from the MC&FP, pursuant to the execution of a reimbursement agreement; and

WHEREAS, Developer has entered into the Offsite Road Improvement Agreement for The Crossings at El Dorado, Missouri Flat Road and Crossings Road, PD97-0011 Between The County And The Developer, Agreement #21-54981, dated August 30, 2022; and

WHEREAS, Developer has prepared and County has approved those certain improvement plans entitled “Road Widening Improvement Plans for The Crossings at El Dorado Missouri Flat and Crossings Road APN:327-130-001, 327-130-002 El Dorado County CIP# 71374,” prepared by RSC Engineering, Inc., James H. Vanderpost, P.E., Registered Civil Engineer; and

WHEREAS, County and Developer desire to enter into an agreement to provide for allowable reimbursement for the Project by the County to Developer for the Eligible Facility Costs incurred by Developer for the design, construction and funding of the Facilities that are allowable under the MC&FP and MC&FP Reimbursement Guidelines, all in accordance with the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, County and Developer do hereby agree as follows:

SECTION 1. DEFINITIONS

All capitalized terms not otherwise defined herein, shall have the meaning assigned thereto in the MC&FP Reimbursement Guidelines. For purposes of this Agreement:

- (1) *Agreement* means this Agreement.
- (2) *Board* means the Board of Supervisors of the County of El Dorado.
- (3) *CIP* means the El Dorado County Capital Improvement Program.
- (4) *County* means the County of El Dorado.
- (5) *Developer* means L L L & A, LLC.
- (6) *Development Agreement* means the Development Agreement By and Between The County of El Dorado, Prospect Investment Company, El Dorado Land, Ltd., and Sundance Missouri Flat, LLC, relative to the Development Known as Sundance Plaza, entered into on December 15, 1998 and recorded with the El Dorado County Recorder-Clerk as Instrument No. 99-0035271.
- (7) *Director* means the Director of Transportation for the County Department of Transportation, or designee.
- (8) *Estimated Eligible Facility Cost* means the estimated cost of the Facilities based on the cost estimate set forth in Exhibit B, attached hereto and incorporated herein by reference.
- (9) *Eligible Facility Costs* means the actual costs for the Facilities that the County determines are eligible for reimbursement consistent with Section 7 below.
- (10) *Facilities* or *Facility* means those public facilities and improvements shown and described in Exhibit B attached hereto, and identified as MC&FP Improvements.
- (11) *MC&FP* means the Missouri Flat Area Master Circulation and Financing Plan as adopted by the Board of Supervisors on December 15, 1998.
- (12) *MC&FP Account(s)* means those certain accounts within the County's Treasury in which the County annually deposits the MC&FP Tax Increment, or any successor or similar account(s) that the County deposits revenue to be used for MC&FP Improvements.
- (13) *MC&FP Reimbursement* means the Eligible Facility Costs payable to the Developer, after completion of the provisions in Section 7 below.
- (14) *MC&FP Reimbursement Guidelines* means the County's Missouri Flat Area Master Circulation & Funding Plan Reimbursement Guidelines as adopted by the Board of Supervisors on August 15, 2023, in Resolution 105-2023.
- (15) *Project* means the Crossings Planned Development, PD97-0011, also known as Sundance Plaza and Crossings at El Dorado, Phase 1, as shown in Exhibit A attached hereto and incorporated herein by this reference.

(16) *Uncommitted MC&FP* means the funds remaining in the MC&FP Account after accounting for prior set-asides and priority reimbursement commitments documented in agreements approved by the County Board of Supervisors prior to this Agreement.

SECTION 2. ELIGIBILITY CRITERIA

Developer shall comply with all requirements set out in the MC&FP Reimbursement Guidelines. This includes that Developer shall design and construct the Facilities done in accordance with the specifications, change orders, and itemized cost estimates approved by County. Developer shall ensure that all construction work for the Facilities be done in accordance with all applicable state and local rules, regulations, and ordinances, including, but not limited to, the applicable provisions of the California Public Contract Code, the California Labor Code prevailing wage requirements, County competitive bidding requirements, state licensing regulations, California Air Resource Board diesel vehicle regulations, and County policies. Developer shall ensure that all right-of-way activities, inclusive of negotiation and acquisition, shall conform to all federal and state laws, regulations and policies, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Failure to comply with this Section will result in denial of all or a portion of the applicable credits or reimbursement, or in the refunding of credits.

SECTION 3. PERMITS

Developer shall be responsible for obtaining all necessary permits.

SECTION 4. BEFORE COMMENCEMENT OF WORK

Before commencement of work on the Facilities, Developer shall comply with all of the following:

(1) Obtain pre-approval from County of Developer's construction documents and advertise and award the work consistent with Section 6 of the MC&FP Reimbursement Guidelines.

(2) Cause its contractor to obtain an encroachment permit, or any other necessary permits, from County before commencement of construction activities in County's right of way (and adjacent thereto), if needed.

(3) Cause its contractor to provide insurance and related documentation to County in accordance with the County's insurance requirements under its then-applicable road improvement agreement.

SECTION 5. WARRANTY

Developer hereby warrants the Facilities as to materials, design and workmanship, and should any failure of the Facilities or any parts thereof occur within a period of one (1) year after acceptance by the County as complete, Developer shall promptly cause the needed repairs to be made without any expense or cost to the County. Acceptance shall be deemed to have occurred under this Agreement when the Facilities have been accepted by the Board as complete and may be placed into service. County shall provide written notification to Developer of acceptance and

the initiation of the warranty period.

County is hereby authorized to make repairs if Developer fails to make, or undertake with due diligence, the aforesaid repairs within twenty (20) calendar days after it is given written notice of such failure. In case of emergency, where, in the opinion of the Director, delay may cause serious hazard to the public, the necessary repairs may be made by the County without prior notice to Developer. In all cases of failure within the warranty period where the County has taken action in accordance with this paragraph, Developer shall reimburse County for any and all costs or expenses, direct or indirect, incurred by the County.

The Developer and County entered into Road Improvement Agreement #21-54981 on August 30, 2022, which includes Performance and Laborers & Materialsman's Bonds for the work. This Warranty provision is not intended to be interpreted as a requirement for additional bonding beyond what is provided for under the existing Road Improvement Agreement.

County shall provide written notification to Developer of the completion of the warranty period and release of any bonds held.

SECTION 6. ELIGIBLE FACILITY COSTS

The total costs eligible for a reimbursement shall equal the actual cost of the Facilities. Eligible Facility Costs shall be determined consistent with Section 4 of the MC&FP Reimbursement Guidelines, and can include construction costs and non-construction costs.

SECTION 7. REVIEW OF ELIGIBLE COST FOR REIMBURSEMENT

Upon acceptance of the Facilities as complete by the County, the Developer shall provide to County documentation that is acceptable to the County Engineer demonstrating the actual Eligible Facility Costs of the Facilities. The County will review that documentation and reach a decision on the final determination of the actual Eligible Facility Costs of the Facilities consistent with Section 6 of the MC&FP Reimbursement Guidelines.

SECTION 8. MC&FP REIMBURSEMENT

County agrees to reimburse Developer for actual costs incurred related to the Project pursuant to the MC&FP Reimbursement Guidelines. Upon completion of the Facilities by Developer and acceptance thereof by the County as complete, and after completion of the County reviewing and determining Eligible Facility Cost, Developer shall be reimbursed by the County from the MC&FP Account(s).

The Estimated Eligible Facility Costs have been calculated and agreed to by the parties and is shown in the list attached hereto as Exhibit B. The estimated total Eligible Facility Costs are **Two Million One Hundred Ninety-Five Thousand Four Hundred Forty-Four Dollars and Forty-Four Cents (\$2,195,444.44)**. The parties agree that this is an estimate only, and reimbursement shall be based on the actual Eligible Facility Cost determined in accordance with Section 7 above.

County shall pay the MC&FP Reimbursement as follows:

- (1) No earlier than the completion of the warranty period as in Section 5 and within thirty (30) days of the County reviewing and approving the submitted Eligible Facility Cost consistent with Section 7 above, whichever is later, County shall make the first annual

MC&FP Reimbursement payment, subject to availability of funds from the MC&FP Account(s) at the time such payment is due. Subsequent payments shall be made on the anniversary of the first payment date.

- (2) The balance of the MC&FP Reimbursement shall be paid to Developer in six (6) installments. Five annual payments shall be made in an amount equal to fifteen percent (15%) of the total MC&FP Reimbursement, projected to be **Three Hundred Twenty-Nine Thousand Three Hundred Sixteen Dollars and Sixty-six Cents (\$329,316.66)**. The sixth and final annual payment shall equal the remaining balance, projected to be **Five Hundred Forty-Eight Thousand Eight Hundred Sixty-One Dollars and Fourteen Cents (\$548,861.14)**.

The ability of County to fully reimburse the Cash Reimbursement is dependent upon the amount of funds available in the MC&FP Account(s), or its successor, and the available amount of the Uncommitted MC&FP. Developer acknowledges and agrees that the sole source of funds that Developer shall look to for the reimbursement shall be the Uncommitted MC&FP and that the County shall not be obligated to fund the reimbursement from any other funds or revenues, including but not limited to, the County General Fund. If in any given year there are insufficient funds in the Uncommitted MC&FP to make payment, the County shall make quarterly payments thereafter as funds are available in the Uncommitted MC&FP for an additional twenty (20) years after such regularly scheduled payment until final payment is received in full.

The MC&FP Reimbursement obligation arising from this Agreement is not a debt of the County, nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues, and is payable only from the MC&FP Account(s).

SECTION 9. ASSIGNMENT OF REIMBURSEMENTS

MC&FP Reimbursements granted to Developer pursuant to this Agreement may be assigned to other owners, builders, or developers of projects located within the MC&FP area. To request such a transfer, Developer shall submit a completed form to the County in substantially the same format as set forth in **Exhibit C** that will (i) reference this Agreement; (ii) identify the Developer and assignee if MC&FP Reimbursements are being assigned to a builder or other party; and (iii) identify the MC&FP Reimbursement balance before and after the assignment. The form must be signed by the Developer, its Assignee, and the County, and an executed copy of the form shall be kept on file.

SECTION 10. VENUE

This Agreement has been executed in California and shall be governed by and construed in accordance with the laws of the State of California.

SECTION 11. WAIVER

Waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of such matters in the future or any other covenant, condition, or promise hereunder. Any waiver, to be effective, shall be expressed and in writing and shall be delivered to the other party.

SECTION 12. CONSTRUCTION

This Agreement shall be construed as a whole, the captions being for the convenience of the parties only and not intended to describe or define the provisions in the portions of the Agreement to which they pertain. Each party hereto acknowledges and agrees that each has had independent counsel and review and participated in the drafting of this Agreement, and each hereby fully waives the application of any law, statute or rule of construction or interpretation to the effect that any ambiguities are to be resolved against the drafting party.

SECTION 13. 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.

SECTION 14. 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: Rafael Martinez
Director of Transportation

With a Copy to:

County Of El Dorado
Chief Administrative Office
2850 Fairlane Court
Placerville, CA 95667
Attn: Becky Morton
Agency Chief Fiscal Officer

or to such other location as County directs in writing.

Notices to Developer shall be addressed as follows:

LLL & A, LLC
1488 Broadway
Placerville, CA 95667
Attn.: Leonard Grado

With a copy to such other location as Developer directs in writing.

SECTION 15. CONTRACT ADMINISTRATOR

The County officer or employee with responsibility for administering this Agreement is Becky Morton, Agency Chief Fiscal Officer, Chief Administrative Office, Community Development Finance & Administration Division, or successor.

SECTION 16. SUCCESSORS AND ASSIGNS

This Agreement is binding upon the heirs, assigns, and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to owners of "Project".

SECTION 17. INDEMNIFICATION

To the fullest extent permitted by law, Developer shall defend at its own expense, indemnify, and hold harmless County and its elected representatives, officers, employees, agents, consultants, and volunteers (the "Indemnitees"), from and against all liabilities, actions, damages, claims, losses, or expenses of every type and description, including attorneys' and consultants' fees and expenses (collectively, "Liabilities"), to which they may be subjected or put, by reason of or resulting from the design, construction, or installation of the Facilities, except to the extent the Liabilities arise from the sole, active negligence, or willful misconduct of County and/or the Indemnitees, or as expressly prescribed by statute. The duty of Developer to indemnify and hold County harmless includes the duties to defend set forth in Civil Code section 2778. This indemnification shall extend to Liabilities occurring after this Agreement is terminated as well as while it is in force. Notwithstanding the foregoing, following the acceptance of the improvements by County, or if there is an applicable warranty, following the end of any applicable warranty period, the Developer shall not be obligated to indemnify the Indemnitees for Liabilities to the extent that such Liabilities arise from Indemnitees' active or passive negligence. The defense and indemnity obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. The parties intend that this provision shall be broadly construed.

SECTION 18. THIRD PARTY LIABILITY

County does not assume any liability, duty or obligation to Developer's contractors, subcontractors or agents by execution or performance of this Agreement and no contractors, subcontractors, agents or any parties are third party beneficiaries of this Agreement.

SECTION 19. 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.

SECTION 20. SEVERABILITY

If any term of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 21. EXHIBITS

The Exhibits attached hereto are hereby incorporated herein by this reference. In the event of any conflict between this Agreement and its Exhibits, the provisions of this Agreement shall govern.

SECTION 22. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the parties regarding the subject matter hereof. The Agreement may be amended only by writing executed by both parties.

Requesting Contract Administrator Concurrence:

By: _____
Becky Morton
Agency Chief Fiscal Officer
Chief Administrative Office,
Community Development Finance
& Administration Division

Dated: _____

Requesting Department Concurrence:

By: _____
Rafael Martinez, Director
Department of Transportation

Dated: _____

IN WITNESS WHEREOF, the parties hereto 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 EL DORADO --

By: _____
Board of Supervisors
"County"

Dated: _____

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- LLL & A, LLC --
a California Limited Liability Company

By: _____
Leonard Grado
Managing Member
LLL & A, LLC
"Developer"

Dated: _____

Notary Acknowledgement Attached

DEVELOPER

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

On _____ before me, _____,
(here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

PROJECT LOCATION MAP
MC&FP PROGRAM

(LLL & A, LLC)
(Crossings Planned Development Project)

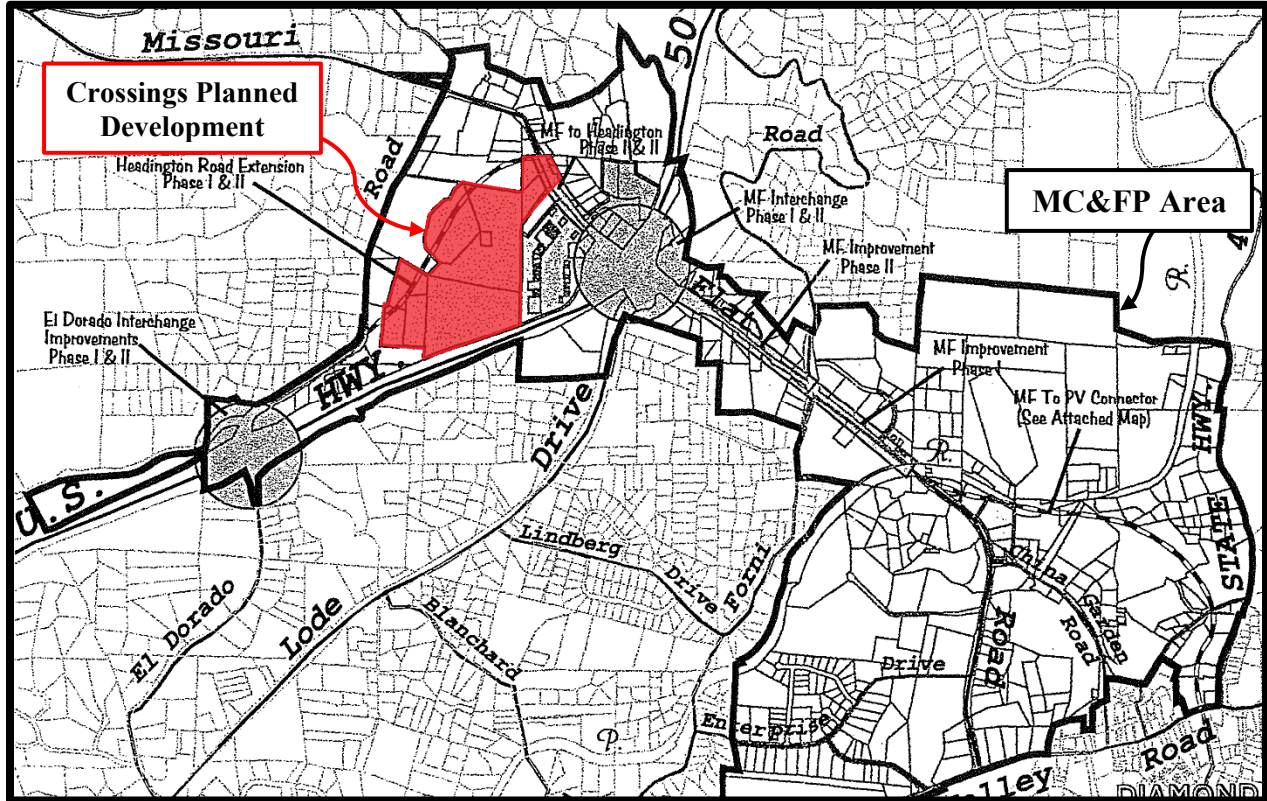


EXHIBIT B

**ESTIMATED ELIGIBLE FACILITY COSTS
MC&FP PROGRAM**

(LLL & A, LLC)
(Crossings Planned Development Project)

This Exhibit provides a detailed cost estimate of the Facilities subject to the MC&FP that are the subject of this Agreement.

Missouri Flat Road Improvements

Site Preparation / Earthwork	\$190,678.37
Demolition	\$5,805.00
AC Paving and Aggregate Base	\$454,376.42
Site Concrete	\$26,875.00
Striping and Signage	\$25,710.00
Storm Drainage	\$49,843.00
Mobilization, Bond Enforcement Costs, Construction Staking, Construction Management and Inspection, and Contingency	\$233,519.21
Total Estimated Missouri Flat Road Costs	\$986,807.00

Crossings Road Improvements

Site Preparation / Earthwork	\$20,030.00
AC Paving and Aggregate Base	\$83,497.50
Site Concrete	\$16,211.50
Striping and Signage	\$6,715.00
Storm Drainage	\$46,170.00
Traffic Signal	\$750,000.00
Mobilization, Bond Enforcement Costs, Construction Staking, Construction Management and Inspection, and Contingency	\$286,013.44
Total Estimated Crossings Road Costs	\$1,208,637.44

TOTAL ESTIMATED ELIGIBLE FACILITY COSTS **\$2,195,444.44**

EXHIBIT C

**FORM OF CERTIFICATE OF
ASSIGNMENT AND TRANSFER OF MC&FP REIMBURSEMENTS**

The undersigned Developer, as the holder of certain MC&FP Reimbursements related to the Reimbursement Agreement between Developer and the County of El Dorado, dated _____, 20__ (the "Agreement"), hereby assigns, transfers and conveys to the undersigned Assignee the amount of MC&FP Reimbursements as indicated below:

Developer's Legal Name: _____

Assignee's Legal Name: _____

PFFP Fee Credits:

Amount of Actual or Estimated MC&FP Reimbursements:	\$ _____
Reimbursements Available under Agreement Before Transfer:	\$ _____
Reimbursements Available under Agreement After Transfer:	\$ _____

APPROVED: DOT Director: _____

DEVELOPER:

ASSIGNEE:

a _____

a _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Developer Contact:

Assignee Contact:

Name: _____
Address: _____

Telephone: _____
E-Mail: _____

Name: _____
Address: _____

Telephone: _____
E-Mail: _____