

**FIRST AMENDMENT TO ROAD IMPROVEMENT AGREEMENT FOR
DUROCK ROAD/BUSINESS DRIVE
BETWEEN THE COUNTY AND THE DEVELOPER**

AGMT #04-601

THIS FIRST AMENDMENT TO ROAD IMPROVEMENT AGREEMENT, hereinafter called "Amendment" to that certain Road Improvement Agreement For Durock Road/Business Drive Between The County and the Developer, Agreement #04-601, made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, hereinafter "County," and **KFRD INVESTMENTS, INC.**, a corporation duly qualified to conduct business in the State of California, whose principal place of business is 681 Main Street, Suite 204C, Placerville, California 95667, hereinafter "Developer," concerning the construction of a traffic signal at Durock Road and Business Drive, various intersection improvements and road improvements on Durock Road, is hereby amended as follows:

Section 1 is hereby amended to read as follows:

SECTION 1. THE WORK

Developer will, at his own cost and his expense, in a workmanlike manner, faithfully and fully prepare plans and specifications for the traffic signal at the intersection of Durock Road and Business Drive to include a westbound left-turn lane at this intersection and an eastbound right-turn only lane and will perform the requirements of this Agreement in accordance with the plans, change orders, and itemized cost estimates approved by Director, entitled **DUROCK ROAD & BUSINESS DRIVE TRAFFIC SIGNAL & INTERSECTION WIDENING – CONTRACT NO. 73354**, dated April 12, 2007, prepared by Robert E. Scarborough registered engineer, and hereby made a part of this Agreement for all purposes as if fully incorporated herein (the "Project").

This Durock Road/Business Drive improvement project is identified as Project Number 73354 in County's Proposed Capital Improvement Program and is being advanced, in part, by Developer and, therefore, some or all of the costs may be eligible for reimbursement from County's traffic impact mitigation fee program. For that portion of the work that would be eligible for reimbursement under the "Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects," Developer acknowledges that performance of this agreement must be done in accordance with all applicable state and local rules, regulations, and ordinances, including but not limited to, Public Contract Code and County bidding requirements, Labor Code requirements inclusive of prevailing wage, and State licensing regulations and County guidelines and policies. The share of costs eligible for reimbursement and the terms of reimbursement will be specified in a reimbursement agreement between County and Developer.

County will require Developer to make such alterations, deviations, additions to or deletions from the improvements shown and described on the plans, specifications, and cost estimates as may be reasonably deemed by the County Engineer for the Department of Transportation to be necessary or advisable for the proper completion or construction of the whole work contemplated.

Section 2 is hereby amended to read as follows:

SECTION 2. TRAFFIC CONTROL is amended to read as follows:

A Traffic Control Plan shall be prepared by a Registered Civil Engineer and submitted to the Department for review and approval.

Section 3 is hereby amended to read as follows:

SECTION 3. TIME

Developer shall cause the commencement of items of work after receiving a Notice to Proceed from the Department and shall complete the Project no later than **15 November 2007**.

Section 4 is deleted in its entirety and the replaced with the following section:

SECTION 4. ASSIGNMENT AND ASSUMPTION OF PLANS AND SPECIFICATIONS

As of the Effective Date of this Agreement, Developer assigns to County all of its right, title and interest in, to and under the Plans and Specifications signed and stamped by Robert E. Scarborough, a licensed registered engineer employed by Carlton Engineering, Inc., entitled DUROCK ROAD & BUSINESS DRIVE TRAFFIC SIGNAL & INTERSECTION WIDENING – CONTRACT NO. 73354 (hereinafter referred to "Assigned Plans and Specifications"). Upon approval of this Agreement by County, County accepts this assignment of ownership of the Assigned Plans and Specifications. Nothing by way of this Agreement obligates County to provide payment or compensation to Carlton Engineering, Inc., rather, that payment obligation lies solely with Developer.

Section 5 is hereby amended to read as follows:

SECTION 5. PERFORMANCE BOND

Developer has delivered to Department a performance bond issued by Developer's surety company, acceptable to County, naming County as obligee. The performance bond required by this Section is a condition precedent of County entering into this Agreement.

Section 9 is hereby amended to read as follows:

SECTION 9. RESPONSIBILITY OF ENGINEER

Developer shall employ an engineer, at his sole expense, to provide all design engineering construction support services. County shall be notified in advance of terminating the services of the engineer. Developer shall be responsible for any errors or omissions in the design work. This responsibility of Developer is not a reimbursable cost of Developer.

Section 11 shall be amended to read as follows:

SECTION 11. RECORD DRAWINGS

Developer shall submit signed and sealed improvement plans in hard copy reproducible and electronic "AutoCAD" formats. The County will prepare Record Drawings and will transmit an electronic copy to the engineer upon completion of the Project.

Section 13 is hereby amended to read as follows:

SECTION 13. PUBLIC UTILITIES

Developer shall investigate and determine if existing public and private utilities conflict with the construction of the Project. Developer shall cooperate with County to make all necessary arrangements with the owners of such utilities for their protection, relocation or removal.

Section 14 is deleted in its entirety and replaced with the following provision:

SECTION 14. RIGHT-OF-WAY CLEARANCE

Developer shall provide, at no cost to the County, any easement rights for the Project, or for temporary use of Shingle Lime Mine Road, Dividend Drive, or any property owned or controlled by Developer, as a temporary detour during the construction period for the Project,. Developer shall also provide assistance to the County in securing any temporary easement rights for the temporary detour from any other property owner who has ownership of the underlying fee interest where Shingle Lime Mine Road is located. Furthermore, Developer shall provide any and all legal descriptions and depictions for any fee acquisitions, slope and drainage easements, temporary construction easements or public utility easements that will be necessary to accommodate all cuts, fills and appurtenances which are included in the Project and are, where applicable, to be accepted for maintenance by the County.

Upon delivery and acceptance by County of the temporary roadway easements for the detour on Shingle Lime Mine Road, and the legal descriptions and depictions of any land rights necessary to construct the Project as identified above, County will proceed with the valuations and acquisitions of said land rights from any other third-party property owner.

Section 15 is amended to change the County's Contract Administrator and to read as follows:

SECTION 15. ADMINISTRATION AND ACCEPTANCE

The County Officer or employee with responsibility for administering this Agreement is Russ Nygaard, Deputy Director, Department of Transportation, or successor. Upon completion of the construction of the Project by County and upon receipt by the County Board of Supervisors of a certification from the Department that all work has been completed and the conditions of this Agreement fulfilled, the Board of Supervisors will accept the road improvements constructed in accordance with this Agreement.

Section 16 is deleted in its entirety.

Section 18 is amended to change the person to whom County notices shall be addressed to, and to read as follows:

SECTION 18. 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: Russ Nygaard

With a Copy to:
County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667
Contract Services Officer

or to such other locations as County directs.

To Developer:
KFRD Investments, Inc.
P.O. Box 1983
Placerville, CA 95667
Attn: Kenneth Wilkinson

Except as herein amended, all other terms and conditions of this Road Improvement Agreement, Agreement #04-601, remain unchanged and are in full force and effect.

Requesting Department Concurrence:

By: _____ Dated: _____
Richard Shepard
Director of Department of Transportation

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

COUNTY OF EL DORADO

By: _____ Dated: _____
Board of Supervisors
"County"

Attest:

Cindy Keck,
Clerk of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

KFRD INVESTMENTS, INC.

By: _____
Fred W. Wilkinson
President
"Developer"

Dated: _____

By: _____
Roxana M Hupcey
Secretary
"Developer"

Dated: _____

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(s) 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 Owner

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