

**REIMBURSEMENT AGREEMENT FOR THE INTERSECTION IMPROVEMENTS
AT DUROCK ROAD AND BUSINESS DRIVE BETWEEN
THE COUNTY AND THE DEVELOPER**

THIS REIMBURSEMENT 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 **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 220, Placerville, CA 95667, (hereinafter referred to as "Developer"), concerning the Durock Road and Business Drive traffic signal and intersection widening;

RECITALS

WHEREAS, the Findings/Conditions for Parcel Map P99-13, Mitigation Measures No. 18, require Developer to design and construct a traffic signal at the intersection of Durock Road and Business Drive and other improvements inclusive of Durock Road to include a westbound left-turn lane at this intersection, and an eastbound right-turn only lane (hereinafter collectively "the Project"), and provides that said improvements may be eligible for reimbursement from the County's West Slope Traffic Impact Mitigation (TIM) fee program and/or from the Durock Road Fee; and

WHEREAS, in accordance with Findings/Conditions for Parcel Map P99-13, Conditions of Approval No. 14, the County and Developer entered into Road Improvement Agreement for Durock Road/Business Drive Between The County And The Developer, Agreement # 04-601 (hereinafter "RIA #04-601"), for the construction of the Project in accordance with improvement plans and cost estimates entitled BARNETT BUSINESS PARK UNIT II, DUROCK ROAD IMPROVEMENTS (CARLTON ENGINEERING) FROM STATION 468+00 TO STATION 478+00 (DUROCK ROAD) AND STATION 10+00 TO STATION 13+00 (BUSINESS DRIVE); and

WHEREAS, the original scope for the Project was subsequently changed in scope and design as more fully described and consistent with final improvement plans, specifications and estimates entitled DUROCK ROAD & BUSINESS DRIVE TRAFFIC SIGNAL AND INTERSECTION WIDENING – CONTRACT NO. 73354, signed by Robert E. Scarborough, engineer for Carlton Engineering, and submitted on April 12, 2007, (hereinafter referred to as "Revised Project") by Developer to County's Department of Transportation engineering staff to better meet the needs of Parcel Map P99-13 and the County; and

WHEREAS, County's Department of Transportation subsequently added the Revised Project to the County's Department of Transportation Proposed Five-Year Capital Improvement Program, 2007 ("County's CIP"), as Project No. 73354 and the Revised Project is scheduled for construction within the initial five year period of the County's CIP; and

WHEREAS, County and Developer agree that it is in the best interests of both parties for the Developer to complete the final design of the Revised Project as a condition to Parcel Map P99-13, and have County construct the Revised Project as a part of the County's CIP, and on October 30, 2007 County's Board of Supervisors approved a first amendment to the road improvement agreement, Agreement #04-601, to reflect same; and

WHEREAS, County has adopted "County of El Dorado Department of Transportation Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects" that identify requirements for pre-construction procedures, bid/proposal procedures, project award, construction, reimbursement and cost reimbursement policies, a copy of which is on file and available at the County's Department of Transportation main office located at 2850 Fairlane Court, Placerville, California 95667, and is incorporated herein and made a part hereof as though fully set forth; and

WHEREAS, County has further maintained Durock Road Fees within the Durock Road Account to provide reimbursement for certain designated design and construction costs associated with the Project. Pursuant to the Agreement to Acknowledge Termination of Agreements of Barnett Business Park Fee Between KFRD Investments, Inc. and Joe Vicini, Inc., dated June 22, 2004, (herein referred to as the "Termination Agreement"), the parties agreed to apply those Durock Road funds to reimbursements for payment of design and construction of improvements which are inclusive of the Project (previously referred to in said agreement as the "Barnett Business Park, Off-site Durock Road Improvements (Carlton Engineering), from Station 10+00.00 to Station 18+50.00"); and pursuant to the First Amendment to the Termination Agreement those Durock Road Funds are therefore available to provide for reimbursement of allowable costs of eligible work for the Revised Project;

NOW, THEREFORE, it is the intent of the parties hereto that the performance of this Agreement shall be in conformity with all applicable state and local laws, rules and regulations and the parties hereto in consideration of the recitals, terms, and conditions herein, do hereby agree as follows:

ARTICLE I: REIMBURSEMENT

- A.** County agrees to reimburse Developer for eligible reimbursable costs pursuant to County of El Dorado Department of Transportation Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects ("Guidelines") with the exception that the 20% limit for engineering costs will not apply. Final reimbursement amounts will be determined upon receipt of supporting documentation as outlined in sections 6.0 – 6.6 of the Guidelines (hereinafter referred to as "Eligible Reimbursement Costs"), but in no event shall the Eligible Reimbursable Costs exceed the maximum amounts listed on the Schedule of Reimbursement, attached hereto as Exhibit "A" and incorporated by reference herein as though fully set forth. Timing, priority of payees and sources of funding for the reimbursement payments shall be in accordance with Exhibit "A".

B. Eligible Reimbursable Costs include:

1. Department of Transportation plan check and inspection fees billed to the Developer for the Project and Revised Project up to the day of the execution of this Agreement.
2. Engineering fees billed to the Developer by Carlton Engineering for design of Project and Revised Project.
3. Engineering fees billed to the Developer by Keith Flaherty for design of Project and Revised Project.

C. Reimbursement of the Eligible Reimbursable Cost to the Developer shall be reduced by the amount due to County on the day of the execution of this Agreement related to Developer's commercial grading and parcel map permit accounts (CG147618, CG154395, PM05-0002 and PM99-0013). The funds deducted shall be used to satisfy the commercial grading and parcel map permits' outstanding account balances. Any future charges to these accounts will be the sole responsibility of the Developer.

D. That portion of the reimbursement of the Eligible Reimbursable Cost attributable to invoices billed to Developer from Carlton Engineering and not paid by KFRD for this Project and Revised Project pursuant to their original contract will be satisfied in the following manner: County will issue a joint check for those Eligible Reimbursable Costs attributable to said work through the period ending May 31, 2007, naming the Developer and Carlton Engineering as joint payees.

E. Payment of the outstanding obligation of Developer to County for Department of Transportation time and materials billings for plan checking efforts in the amount of \$53,918.00, account #66105, will be paid in accordance with Exhibit "A".

F. The remaining Eligible Reimbursable Costs shall be paid to Developer as follows: as set forth in the Schedule of Reimbursement attached hereto as Exhibit "A" and incorporated by reference herein Reimbursements shall be made first from the available funds in the Durock Road Account with the remaining balance, if any, to be made from the County's West Slope Traffic Impact Mitigation Fee (TIM) fund. Developer acknowledges and agrees that the sole source of funds that Developer shall look to for the repayment of the Eligible Reimbursable Costs shall be the Durock Road Account and where applicable, the TIM fund as provided in this Agreement, and that the County shall not be required to fund the Eligible Reimbursable Costs from any other funds or revenues, including but not limited to, the County General Fund. Nothing contained herein shall affect the County's ability to modify the TIM Fee Programs as required by law, or as required in conjunction with other land use decisions.

Notwithstanding any other provision to the contrary, in no event shall Developer be entitled to accelerate any payment or payments under this Agreement, whether for insufficient funds or otherwise.

ARTICLE II: 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.

ARTICLE III: 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 of 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.

ARTICLE IV: 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.

ARTICLE V: 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 VI: 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.: Diana Buckley,
Deputy Director of Administration

With a Copy to:

County Of El Dorado
Department Of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn.: Tim Prudhel,
Contract Services Officer

or to such other location as County directs.

Notices to KFRD Investments, Inc. shall be addressed as follows:

KFRD Investments, Inc

KFRD INVESTMENTS, INC.

P.O. Box 1983
Placerville, CA 95667
Attn: Kenneth Wilkinson

or to such other location as directed.

ARTICLE VII: CONTRACT ADMINISTRATOR

The County officer or employee with responsibility for administering this Agreement is Diana Buckley, Deputy Director of Administration, Department of Transportation, or successor.

ARTICLE VIII: ASSIGNMENT

This Agreement, or any part thereof, or any monies due or to become due hereunder may not be assigned by Developer without the approval of County.

ARTICLE IX: 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.

ARTICLE X: 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.

Requesting Department Concurrence:

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

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 EL DORADO

By: _____ Dated: _____
Chairman
BOARD OF SUPERVISORS

Attest:

Cindy Keck
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

KFRD INVESTMENTS, INC.

By: _____
Fred W. Wilkinson,

President
"Developer"

Dated: _____

By: _____
Roxana 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:

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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Exhibit A

Option 1

Schedule of Reimbursement

(Amounts shown are for illustrative purposes only and represent not-to-exceed amounts)
 (Actual Reimbursement Amount will be determined in accordance with the Guidelines)

Detail	Eligible Project Cost (3)	Reduction to Eligible Project Cost	Net Reimbursement	Payee	Payment Timing and Amount (2)				
					30 day	1 year	2 year	3 year	Total
Payment Amount from Durock Road Account					227,654				227,654
Payment Amount from TIM					35,293	35,294	35,294	35,294	141,175
Total Payment					262,947	35,294	35,294	35,294	368,829
DOT Fees - Paid by KFRD	31,613		31,613	DOT	31,613				31,613
DOT Fees - Not Paid	53,916		53,916	DOT	53,916				53,916
DOT Fees - Off Site - see detail (1) below	-	44,617	44,617	DOT	44,617				44,617
Carlton Engineering - Not Paid	131,900		131,900	Joint KFRD & Carlton	26,018	35,294	35,294	35,294	131,900
Carlton Engineering - Paid by KFRD	142,800	(44,617)	98,183	KFRD	98,183				98,183
Other Paid by KFRD	8,600		8,600	KFRD	8,600				8,600
Total	\$368,829	\$0	\$368,829		\$262,947	\$35,294	\$35,294	\$35,294	\$368,829
(1) Detail for Unpaid Billings to KFRD for Off-Site Plan Review and Inspection					Payment Timing Notes				
Commercial Grading (CG 147618)	42,908				Initial payment to be made within 30 days of approval of reimbursement agreement and or submittal of a complete reimbursement package and approval of plans and specifications by the County				
Commercial Grading (CG 154395)	878				Payment to be made on 1 year anniversary of initial payment				
Parcel Map 05-0002	514				Payment to be made on 2 year anniversary of initial payment				
Parcel Map 99-001	317				Payment to be made on 3 year anniversary of initial payment				
Total Outstanding Billings *	\$44,617								
<i>* amount may increase due to ongoing work efforts of DOT staff</i>					Miscellaneous Notes				
(2) The payment timing presented here departs from the Guidelines in that the initial payment per the Guidelines is to be made within 90 days of acceptance of the improvement by County.									
(3) Late fees charged by Carlton for non payment are included in amounts shown but ineligible for reimbursement									

Exhibit A

Option 2

Schedule of Reimbursement

(Amounts shown are for illustrative purposes only and represent not-to-exceed amounts)
 (Actual Reimbursement Amount will be determined in accordance with the Guidelines)

Detail	Eligible Project Cost (3)	Reduction to Eligible Project Cost	Net Reimbursement	Payee	Payment Timing and Amount (2)				
					30 day	1 year	2 year	3 year	Total
Payment Amount from Durock Road Account					227,654	-	-	-	227,654
Payment Amount from TIM					141,175	-	-	-	141,175
Total Payment					368,829	-	-	-	368,829
DOT Fees - Paid by KFRD	31,613		31,613	DOT	31,613				31,613
DOT Fees - Not Paid	53,916		53,916	DOT	53,916				53,916
DOT Fees - Off Site - see detail (1) below	-	44,617	44,617	DOT	44,617				44,617
Carlton Engineering - Not Paid	131,900		131,900	Joint KFRD & Carlton	131,900				131,900
Carlton Engineering - Paid by KFRD	142,800	(44,617)	98,183	KFRD	98,183				98,183
Other Paid by KFRD	8,600		8,600	KFRD	8,600				8,600
Total	\$368,829	\$0	\$368,829		\$368,829	\$0	\$368,829	\$0	\$368,829
(1) Detail for Unpaid Billings to KFRD for Off-Site Plan Review and Inspection					Payment Timing Notes				
Commercial Grading (CG 147618)	42,908				Initial payment to be made within 30 days of approval of reimbursement agreement and or submittal of a complete reimbursement package and approval of plans and specifications by the County				
Commercial Grading (CG 154395)	878				Payment to be made on 1 year anniversary of initial payment				
Parcel Map 05-0002	514				Payment to be made on 2 year anniversary of initial payment				
Parcel Map 99-001	317				Payment to be made on 3 year anniversary of initial payment				
Total Outstanding Billings *	\$44,617								
<i>* amount may increase due to ongoing work efforts of DOT staff</i>					Miscellaneous Notes				
(2) The payment timing presented here departs from the Guidelines in that the initial 25% payment per the Guidelines is to be made within 90 days of acceptance of the improvement by County with three subsequent annual payments of 25% each.									
(3) Late fees charged by Carlton for non payment are included but ineligible for reimbursement									