

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL
Meeting of October 31, 2006**

AGENDA TITLE: Green Valley Road/Deer Valley Road Turn Lanes Project #66114; Agreement for Funding and Reimbursement of Right of Way Acquisition Costs; Silver Springs, LLC, a California Limited Liability company

DEPARTMENT: Transportation	DEPT SIGNOFF:	CAO USE ONLY: C
CONTACT: Pete Feild		10/19/06
DATE: 10/6/06	PHONE: 7666/5962	

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:
 The Department of Transportation (DOT) recommends the Board of Supervisors:

1. Approve the Agreement for Funding and Reimbursement of Right of Way Acquisition Costs for reimbursement to the County for obtaining fee title or easements for right-of-way purposes for the Project.
2. Authorize Chairman of the Board to execute the Agreement for Funding and Reimbursement of Right of Way Acquisition Costs.
3. Authorize the Chairman to sign the Budget Transfer.

CAO RECOMMENDATIONS: *Recommend approval. Laura A. Gill 10/20/06*

Financial impact? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Funding Source: <input type="checkbox"/> Gen Fund <input checked="" type="checkbox"/> Other
BUDGET SUMMARY:	Other: <i>Developer Funds</i>
Total Est. Cost \$198,935.00	CAO Office Use Only:
Funding	4/5's Vote Required <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Budgeted 0	Change in Policy <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
New Funding \$198,935	New Personnel <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Savings _____	CONCURRENCES:
Other _____	Risk Management <i>N/A</i>
Total Funding \$198,935.00	County Counsel <input checked="" type="checkbox"/>
Change in Net County Cost 0	Other _____

***Explain**

BOARD ACTIONS:

Vote: Unanimous _____ Or _____ Ayes: Noes: Abstentions: Absent: Rev. 04/05	I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors Date: _____ Attest: Cindy Keck, Board of Supervisors Clerk By: _____
--	--

COUNTY OF EL DORADO

DEPARTMENT OF TRANSPORTATION



El Dorado Hills Office:
4950 Hillisdale Circle
El Dorado Hills, CA 95762
Phone: (530) 621-5988
Fax: (916) 941-8910

RICHARD W. SHEPARD, P.E.
Director of Transportation

Internet Web Site:
<http://co.el-dorado.ca.us/dot>

MAIN OFFICE:
2850 Fairlane Court
Placerville CA 95667
Phone: (530) 621-5900
Fax: (530) 626-0387



October 6, 2006

Board of Supervisors
330 Fair Lane
Placerville, California 95667

**Title: Green Valley Road/Deer Valley Road Turn Lanes Project #66114:
Agreement for Funding and Reimbursement of Right of Way Acquisition
Costs;
Silver Springs, LLC, a California Limited Liability company**

Meeting Date: October 31, 2006

District/Supervisor: Districts I & IV / Supervisor Rusty Dupray

Dear Members of the Board:

Recommendation:

The Department of Transportation (DOT) recommends the Board of Supervisors:

1. Approve the Agreement for Funding and Reimbursement of Right of Way Acquisition Costs for reimbursement to the County for obtaining fee title or easements for right-of-way purposes for the Project.
2. Authorize Chairman of the Board to execute the Agreement for Funding and Reimbursement of Right of Way Acquisition Costs.
3. Authorize the Chairman to sign the Budget Transfer.

Reason for Recommendation:

Pursuant to the Road Improvement Agreement For Intersection and Traffic Signals at Green Valley Road and Silver Springs Parkway, and Green Valley Road and Deer Valley Road, between the County and the Developer, County agreed, on behalf of Developer, to obtain fee title, or easements where appropriate, for right-of-way purposes for the Project.

County's agreement to obtain fee title or easements for right-of-way purposes for the Project is conditioned upon Developer's agreement to advance funding for all costs, attorneys' fees, and expenses incurred or expended by the County for acquisition, recording, administration, and all work performed concerning right-of-way for the Project.

Fiscal Impact:

The right of way costs advanced by the Developer are eligible for reimbursement from the TIM fee program and will be included in a subsequent agreement.

Attached is a Budget Transfer Request increasing appropriations and revenue to allow for payment to acquire the right of way, pursuant to the Agreement.

Net County Cost:

There is no net County cost.

Action to be Taken Following Approval:

1. The Chairman of the Board will execute said agreement with Silver Springs, LLC on behalf of the County of El Dorado.
2. The Chairman of the Board to execute the Budget Transfer.
3. Board Clerk to retain one fully executed original and return the second fully executed original to DOT RW Unit staff, to be forwarded to Silver Springs, LLC.

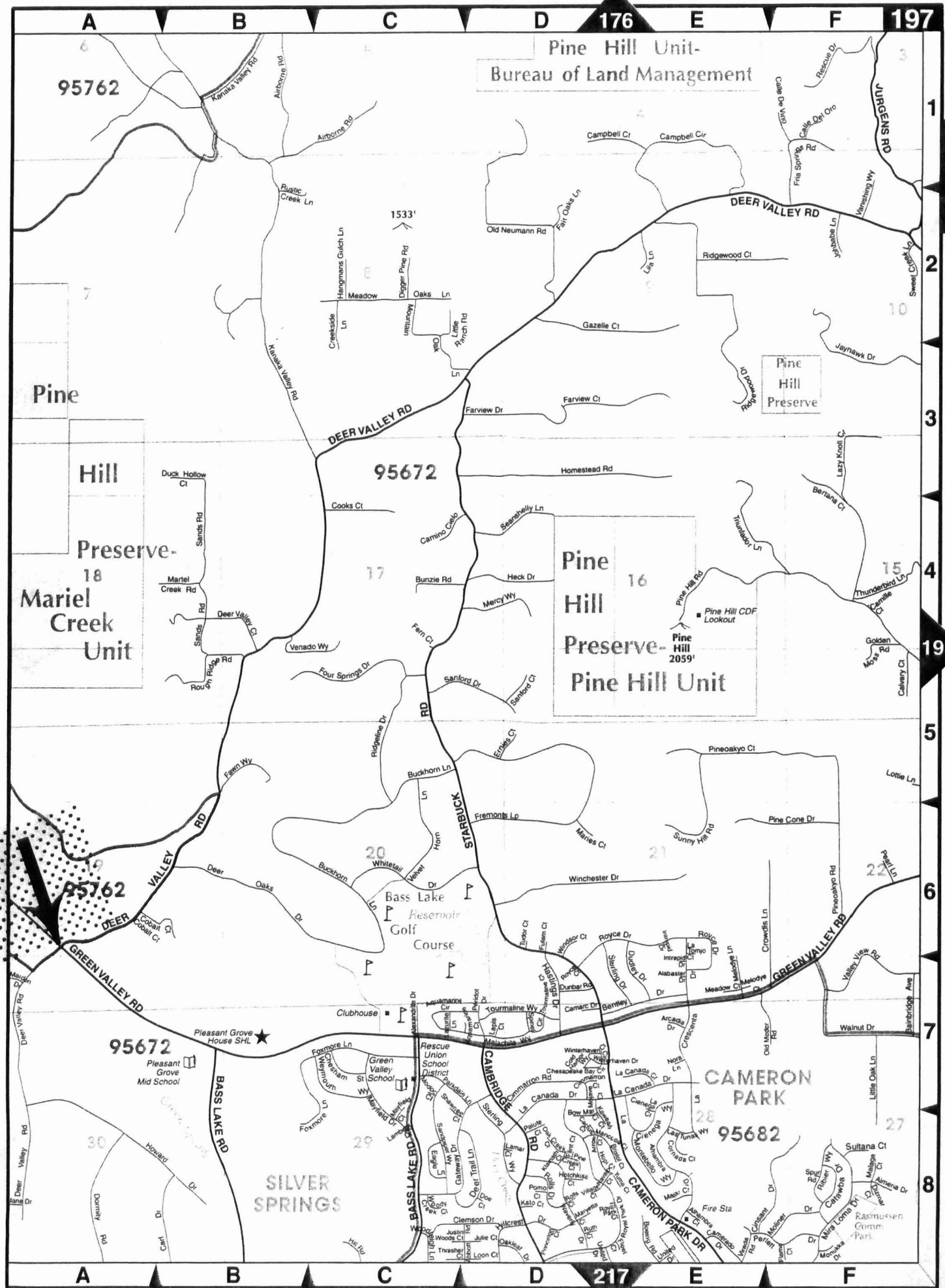
Sincerely,



Richard W. Shepard, P.E.
Director of Transportation

RWS/PF: dg

Attachments: Vicinity Map
Agreement (2 Original Agreements)
Budget Transfer Request



Pine Hill Unit-
Bureau of Land Management

Pine Hill
Preserve-18
Mariel Creek
Unit

Pine Hill
Preserve-16
Pine Hill Unit
Pine Hill CDF
Lookout
Pine Hill 2059'

CAMERON
PARK
95682

SILVER
SPRINGS

95672
Pleasant Grove
Mid School

Green Valley
School District

EL DORADO
COUNTY

See Page
198

Contract #: 06-1130

Green Valley Road/Deer Valley Road Turn lanes Project #66114: Agreement For Funding and Reimbursement of Right of Way Acquisition Costs

CONTRACT ROUTING SHEET

PROCESSING DEPARTMENT:

Department: Transportation
Dept. Contact: Pete Feild, RW Manager
Phone: 621-7666
Department Head Signature: [Handwritten Signature]

CONTRACTOR:

Name: Silver Springs, LLC
William C. Scott, CI
Address: 2999 Oak Road, Suite 200
Walnut Creek, CA 94597
Phone: 925-933-1405

CONTRACTING DEPARTMENT: Transportation

Compliance with Human Resources requirements? Yes: No: X
Compliance verified by:

COUNTY COUNSEL: (must approve all contracts and MOUs)

Approved: [checked] Disapproved: Date: 4/14/06 By: [Handwritten Signature]
Approved: Disapproved: Date: By:

ASSIGNMENT

DATE: 05/04/2006
ATTORNEY: [Handwritten]
DEPT. INDEX NO.: 306370
BY: [Handwritten]

- Conditional approval - names need to be cleaned up
- need corporate showing approval of all members for signature by developer

- 1) Revised Agreement received 8/1/06 w/ corrected signature block/names
2) Corporate Resolution received - in project file [Handwritten Signature] 8/2/06

Please forward to Risk Management upon approval. N/A

Index Code: 306370 User Code: 66114

RISK MANAGEMENT: (All contracts and MOUs except boilerplate grant funding agreements)

Approved: Disapproved: Date: By:
Approved: Disapproved: Date: By:

OTHER APPROVAL (Specify department(s) participating or directly affected by this contract).

Department(s):
Approved: Disapproved: Date: By:
Approved: Disapproved: Date: By:

FOR ADO COUNTY COUNSEL
MAY 26 AM 9:42
[Handwritten Signature]

RECEIVED
DOT
2006 JUN 14 PM 1:59

**AGREEMENT FOR FUNDING AND REIMBURSEMENT OF
RIGHT OF WAY ACQUISITION COSTS**
SILVER SPRINGS LLC

THIS AGREEMENT FOR FUNDING AND REIMBURSEMENT OF RIGHT OF WAY ACQUISITION COSTS is entered on the date set forth below by the **COUNTY OF EL DORADO**, a political subdivision of the State of California ("County") and **SILVER SPRINGS LLC**, a California limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 2999 Oak Road, Suite 400, Walnut Creek, California, 94597, (Owner and "Developer").

WHEREAS, the Developer has applied for a subdivision of certain property described as Silver Springs Subdivision Unit No. 1, located in El Dorado County, the "site", for residential development; and

WHEREAS, the County approved Tentative Map, TM 97-1330 to allow such subdivision; and

WHEREAS, Condition No. 56 thereof required Developer to improve a certain off-site intersection on Green Valley Road; and

WHEREAS, Condition No. 32 of TM 97-1330 provides that if Developer does not have or cannot obtain certain interests in property necessary to allow Developer to make required off-site improvements, the County may acquire the necessary rights by negotiation or through other proceedings, including eminent domain; and

WHEREAS, California Government Code Section 66462.5 authorizes acquisition of such off-site rights by a County to permit completion of required off-site improvements;

WHEREAS, Developer may be unable to acquire the necessary property interests to complete road improvements pursuant Condition No. 56 of TM 97-1330, and in that event has requested the County to acquire such rights and to initiate eminent domain proceedings, if required; and

WHEREAS, the County has considered the request of Developer and finds that the completion of the referenced off-site improvements and the acquisition of the necessary real property interests would be in the public interest.

NOW THEREFORE, Developer and the County hereby agree as follows:

1. Developer may request the County to initiate proceedings to acquire the necessary property interests over and across the parcels set forth on Exhibit A hereto in accordance with Condition No. 32 of TM 97-1330 and Government Code Section 66462.5.
2. The parties acknowledge that in order to exercise its power of eminent domain, County will be required to take certain action and make certain findings as prescribed by law. The County's commitment pursuant to this Agreement is to commence and prosecute the acquisition of the required property rights, if necessary. Nothing in this Agreement shall be deemed to restrict the County in carrying out its legal obligations, nor shall anything herein be deemed to require the County to exercise its discretion of judgement in any particular manner, other than in conformance with law, or to take any actions unless all legally required findings can be made and actions taken pursuant to the independent exercise of judgement by the County.
3. The parties acknowledge that in order to complete the required off-site improvements, it will be necessary to obtain slope easements or other property interests herein from more than one property owner. Developer contemplates being able to acquire all necessary rights through negotiation. The County shall not be obligated to commence any eminent domain proceeding, nor to acquire any property, unless it has received evidence, satisfactory to County, that all other required property rights have been obtained, or will be obtained concurrent with any acquisition by County. Nothing in the foregoing sentence shall be construed to limit the respective rights and obligations of the parties under Government Code Section 66462.5. The County will not be required to initiate any eminent domain proceedings unless it is determined by the County that the proposed acquisition is consistent with Condition No. 56 of TM 97-1330 and is consistent with proposed circulation plans for the area and the requirements of the County's Department of Transportation.
4. Developer shall provide to the County an accurate and sufficient legal description prepared by a civil engineer or land surveyor of all rights of way, easements or other property interests needed to construct the intersection improvement contemplated by the approval of TM 97-1330. Each legal description shall be accompanied by a map showing the property to be acquired. To the extent applicable, separate legal descriptions shall be provided for rights of way which fall within any currently existing, non-exclusive road easement and for rights of way which fall outside any such easement of record.

5. Developer shall be responsible for payment of all costs reasonably incurred by the County in acquiring the required interests, including, but not limited to, all costs reasonably incurred by County in each eminent domain action filed by the County pursuant to Developer's request. Such costs shall be deemed to include all costs incurred by the County to acquire the necessary rights of way pursuant to Title 7, Part III of the Code of Civil Procedure, commencing with Section 1230.010 and shall include, but not be limited to, survey costs, costs of appraisal, costs for title search and guarantee, expert fees, attorneys fees, court costs, costs for preparation of acquisition agreement and other documents in the event eminent domain is not necessary for any right of way, costs of public notice, costs of purchase of the property itself and interest thereon, and any other costs ordered by the court to be borne by the County in the acquisition of the property, including any property owner's attorney's fees, if awarded.

6. The County shall be entitled, at its sole discretion, to utilize attorneys in the Office of the County Counsel or to retain outside counsel to perform the acquisition legal work. To the extent the County utilizes County attorneys, the County shall be reimbursed at the rate of \$126.60 per hour for attorneys and \$86.43 per hour for paralegals for work performed. Each month, County shall provide Developer with a written record of all hours worked and tasks performed by County attorneys and paralegals in connection with the acquisition legal work; except that County shall not be required to provide such detail as may constitute a waiver of the attorney-client privilege or attorney work product doctrine if, in the option of counsel, to do so would prejudice the County in litigation. In the event the County determines to retain outside counsel, the County shall first consult with Developer regarding the selection of counsel and shall provide Developer the opportunity to comment thereon.

Developer has represented to County that Developer is in the process of acquiring through negotiation the easements necessary for the off-site improvements and is confident that such easements will be obtained. However, to ensure the availability of funds necessary to acquire the easements should Developer fail, Developer shall deposit, concurrently with the execution of this Agreement, with County the sum of One Hundred Ninety Eight Thousand Nine Hundred and Thirty-Five Dollars (\$198,935.00) for use by the County to commence eminent domain proceedings, if necessary, and for any and all costs as shown in the attached Exhibit "A". Said sum shall be deposited in a special account to be used solely for the purpose of defraying the County costs of eminent domain. In the event that eminent domain proceedings are necessary, the County shall provide Developer with regular accounting of the expenditures from said accounts. County shall notify Developer if the deposited sums are exhausted and Developer shall pay to the County an additional deposit based on

the estimated cost of completing the proceedings. In the event Developer fails to deposit the necessary monies in a timely manner, the County may cease prosecution of any action affected thereby until it receives the necessary funds. Developer shall be entitled to the return of any funds remaining in any account upon completion of the acquisition and payment of all costs incurred therein. In the event, the County fails to obtain the necessary rights of way for any reason whatsoever, Developer shall not be entitled to the return of any monies required to be paid hereunder except for the return of any unused deposits.

Nothing in this paragraph shall be deemed to limit Developer's obligation pursuant to paragraph 5 to be responsible for all costs reasonable incurred by County. If costs are incurred in excess of deposits made hereunder, Developer shall reimburse such costs to County upon notice thereof.

7. The County shall be solely responsible for the prosecution of the eminent domain actions and shall make all decisions regarding the manner to proceed therein. If, in the opinion of the County, it becomes legally impractical or infeasible to proceed with any such action or the continuation of any such action is not in the best interests of the County, the County shall so notify Developer, and the County may thereafter take any action thereon which it deems fit. Any decision not to proceed, or adverse judicial ruling, shall not affect Developer's obligations pursuant to paragraph 5; including obligations to assume any costs incurred as the result of any abandonment of any eminent domain actions.

8. The County does not represent or warrant by execution hereof any particular final result of any action filed by it, but simply that it will exercise its lawful authority and power in a fair and reasonable manner to accomplish the purpose of this agreement, considering all of the circumstances.

9. This Agreement shall not be deemed to supersede any of the conditions of approval of TM 97-1330, specifically not condition 56. This Agreement shall not relieve Developer of the obligation to construct any and all improvements on the rights of way to be acquired hereunder which may be required by TM 97-1330.

10. Developer shall defend, indemnify, and hold the County, its officers, agents, and employees, harmless from any and all claims, liability, lawsuit, and damages arising out of any counterclaim or independent action filed by any property owner against whom an action is commenced by the County under this Agreement.

11. This Agreement incorporates the entire agreement between the parties with respect to the acquisition of rights of way pursuant to TM 89-1159. Any amendment hereto shall be in writing and duly executed by the board of Supervisors.

Date: _____

COUNTY OF EL DORADO

By: _____

_____, Chairman
Board of Supervisors

ATTEST:

Date: _____

Cindy Keck
Clerk of the Board of Supervisors

By: _____
Deputy

SILVER SPRINGS, LLC
a California limited liability company
By: Sorrento, Inc., a California
Corporation, Its Managing
Member

Date: 8-1-06

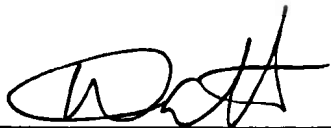
By: 
William C. Scott, Jr.
Its: Chief Financial Officer

EXHIBIT A

**Silver Springs Subdivision Offsite Improvements
Green Valley Road/Deer Valley Road Intersection Project
Estimated Right of Way Acquisition Costs**

Item #	Item	Type/Quantity	Estimated Costs
1.	Compensation to Owner(s): 1.1) APN 115-080-02 Crystal Family Trust of 12/27/90 1.2) APN 102-220-04 Crystal Family Trust of 12/27/90 1.3) APN 115-051-07 Colwell Trust of 7/18/89 1.4) APN 102-220-07 Greenhalgh Family Trust of 3/27/97 1.5) APN 115-010-30 Springs Equestrian Center, Inc. 1.6) APN 102-220-06 El Dorado County	Slope Easement & Temp. Const. Esmnt. SE .05 & TCE .06 SE .009 & TCE .03 SE .13 & TCE .06 SE .14 & TCE .10 SE .26 & TCE .13 SE .02 & TCE .02	\$ 18,700. 6,000. 36,200. 43,600. 73,600. <u>0.</u> \$ 178,100.
2.	County Staff Time	10 hrs. ea. X 6 = 60 hours 60 hours x \$105 = \$6,300	\$ 6,300.
3.	Appraisal Costs (County Staff Preliminary Estimates)	1 hr. ea. X 5 = 5 hours 5 hours x \$105 =	\$ 525.
4.	Title & Escrow Fees	5 @ \$500. = \$2,500 1 @ \$0 = \$0	\$ 2,500.
5.	Consultant Service Fees	None	
6.	Legal Fees/Court Costs for Condemnation (Initiation Fee/Deposit) (See Note #1 Below)	\$10,000 base cost x 50%= \$5,000 Initiation Fee/Deposit	\$ 5,000.
7.	County Counsel Staff Time (See Note #1 Below)	5 hrs. ea. X 6 = 30 hours 30 hours x \$217 = \$6,510	\$ 6,510.
	Total Estimated Costs (See Note #2 Below)		\$ 198,935.

Notes:

General Note: SE calculated at \$5.00 psf and TCE calculated at \$3.00 psf, based on preliminary review of current comparable sales data; final calculations may vary based on further refinements and calculations.

#1. The amount of this deposit is being reduced to reflect the minor amount of actual r/w acquisition costs for each subject parcel. In the event condemnation would be required, the deposit would be immediately increased to \$10,000, per each condemnation case.

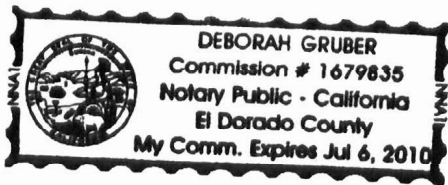
#2 The Total Estimated Costs are estimates only, and costs may vary requiring additional deposits as set forth in the Agreement For Reimbursement of Road Acquisition Costs, Silver Springs LLC.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of El Dorado } ss.

On August 1, 2006 before me, DEBORAH GRUBER
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared William Charles Scott Jr. NOTARY PUBLIC
Name(s) of Signer(s)

- personally known to me
- 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/hor/their authorized capacity(ies), and that by his/hor/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.

Deborah Gruber
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement for Funding & Reimbursement OF RIGHT OF WAY ACQUISITION COSTS
Document Date: August 1, 2006 Number of Pages: 5 + Encl. A

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: William C. Scott Jr.

- Individual
- Corporate Officer — Title(s): CFO
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: Silver Springs LLC, a California limited liability company

