

**REIMBURSEMENT AGREEMENT FOR THE ONSITE AND OFFSITE ROAD  
IMPROVEMENTS FOR SILVER SPRINGS DEVELOPMENT 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 **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, CA 94597; (hereinafter referred to as "Developer"), concerning the funding, reimbursement and/or credit for certain improvements described herein.

**RECITALS**

**WHEREAS**, Developer obtained approval for Tentative Map 97-1330 in the Bass Lake Area of El Dorado County on Assessor's Parcel Numbers 115-370-01, 115-370-02, 115-370-03, 115-370-04, 115-370-07, and 115-370-11 (hereinafter referred to as "Approved Tentative Map");

**WHEREAS**, original Conditions of Approval of the Approved Tentative Map required Developer to construct traffic signals and road improvements on Green Valley Road at the Realigned Bass Lake Road (subsequently named Silver Springs Parkway) Intersection, to construct road improvements on Green Valley Road at its intersection with Green Springs Road and Deer Valley Road, to construct on-site Realigned Bass Lake Road (Silver Springs Parkway), to construct or to provide advance funding to construct the off-site portion of Realigned Bass Lake Road (Silver Springs Parkway), and to make improvements to existing Bass Lake Road;

**WHEREAS**, on September 26, 2006, Developer and County entered into Agreement to Make Subdivision Improvements for Class I Subdivision Between County and Silver Springs LLC, AGMT 06-1060, (hereinafter referred to as "SIA") which more fully describes the project and responsibilities of parties related to Silver Springs Parkway Realignment Onsite Phase 2;

**WHEREAS**, on October 31, 2006, Developer and County entered into 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 County and Silver Springs, LLC, AGMT 06-1111, (hereinafter referred to as "RIA") along with the Agreement for Funding and Reimbursement of Right of Way Acquisition Costs Silver Springs LLC (hereinafter referred to as "Funding Agreement") which more fully describes the projects and responsibilities of parties related to Green Valley Road/Silver Springs Parkway Intersection and Green Valley Road/Deer Valley Road Turn Lanes;

**WHEREAS**, the improvements required by the Conditions of Approval have been included in the County of El Dorado Department of Transportation's adopted 2010 Capital Improvement Program (hereinafter referred to as "CIP") as: #76107 (plans titled "Project 66106 Green Valley Road / Silver Springs Parkway Intersection" and "Project 66107 Silver

Springs Parkway Realignment Onsite Phase - 2”), #66108 (plans titled “Project 66108 Silver Springs Parkway, Offsite; Bass Lake Road, Offsite (South & East)”) and #76114 (plans titled “Project 66114 Green Valley Road/Deer Valley Road Turn Lanes”), additionally, there is work described on the plan sheets for the utility trenching (plans titled “Joint Trench Composite Drawing for Silver Springs Unit #1”) that is not a CIP project but will be constructed contemporaneously with Project 76107 (collectively known as “County Road Improvements”);

**WHEREAS**, as certain of these projects are included within the County’s Department of Transportation’s Adopted 2010 Capital Improvement Program (CIP), scheduled for construction in the five-year CIP; certain costs associated with the projects may be eligible for reimbursement from the TIM Fund;

**WHEREAS**, the RIA is contemporaneously amended to describe condition modifications for Project #76107, Project #76114 and the Joint Trench Project and to provide, alternatively that County shall construct all of the aforementioned County Road Improvements conditioned upon, and the Developer shall advance the total funding for such County Road Improvements;

**WHEREAS**, the Developer and County will contemporaneously herewith enter into a Road Improvement Agreement which will more fully describe the Project and responsibilities of parties related to Project #66108;

**WHEREAS**, Developer has obtained financing of certain public capital improvements through the California Statewide Communities Development Authority Statewide Community Infrastructure Program (“SCIP”) for improvements to include those being reimbursed from the 2004 General Plan Traffic Impact Mitigation Fee Program – Zone 1-7 fund (hereinafter referred to as “TIM Fund”) fees, or other funds only as noted in Section 1.02(b). The SCIP financing has been completed and the funds have been deposited into the Silver Springs Improvements Subaccount, and the parties have contemporaneously hereto entered into the California Statewide Communities Development Authority Statewide Community Infrastructure Program Requisition and Shortfall Agreement By and Among County of El Dorado, California Statewide Communities Development Authority, and Silver Springs, LLC (“SCIP Agreement”). The SCIP advance funding is not a reimbursement but is an advance obtained through debt secured by Developer’s property for the purpose of providing funding for construction of public improvements including the County Road Improvements;

**WHEREAS**, the County acknowledges that due to actions taken by both the Developer and the County, there have been excessive County design-related charges (for plan-checking, design review, etc.) billed to the Developer between 2005 and June 30, 2009. Therefore, in order to represent the County’s share of responsibilities, Developer will not be responsible for such design-related costs that remain unpaid for the period up to June 30, 2009, and for all such design-related costs incurred by the County after July 1, 2009, in association with the County Road Improvements. Developer is still responsible for funding any construction-related costs incurred by the County for the County Road Improvements;

**WHEREAS**, Developer and County have agreed that in exchange for Developer accepting a reduced reimbursement of sixty-one percent (61%) of the eligible costs of construction of Project #66108, County will reimburse Developer's actual soft costs up to twenty percent (20%) of the eligible costs of construction of Project #66108 on a schedule which is accelerated from the conditioned reimbursement schedule;

**WHEREAS**, Developer and County have agreed that in exchange for Developer accepting a reduced reimbursement of fifty percent (50%) of the eligible costs of construction of Project #76114. County will reimburse Developer this fifty percent (50%) of construction and soft costs for Project #76114 on a schedule which is accelerated from the conditioned reimbursement schedule.

**WHEREAS**, County has adopted County of El Dorado Department of Transportation Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects (hereinafter referred to as "Guidelines") 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 of El Dorado Department of Transportation's main office located at 2850 Fairlane Court, Placerville, California 95667, and is incorporated herein and made a part hereof as though fully set forth;

**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 CRITERIA AND TERMS**

### **SECTION 1.01 ELIGIBILITY CRITERIA**

Developer acknowledges and agrees that to be eligible for credits or reimbursements per County's Guidelines, the design and construction of the improvements must be done in accordance with the specifications, change orders and itemized cost estimates approved by County, all construction work shall be 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 and County policies, and 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. Eligible construction costs shall include the actual cost of the construction of the reimbursable portions of the County Road Improvements (hereinafter referred to as "Eligible Construction Costs"). Eligible non-construction soft costs shall include the actual project specific non-construction soft costs as allowed in the Guidelines (excluding Developer's final share of construction management as defined in the SCIP Agreement), up to 20% of the Project's Eligible Construction Costs, unless otherwise provided herein (hereinafter referred to as "Eligible Soft Costs"). Design or construction of County Road Improvements performed exclusively by the County, but funded by the Developer (either directly or through a funding mechanism such as the SCIP program) shall be deemed to meet these

requirements and shall be eligible for credits or reimbursements per Guidelines. Sidewalks, landscaping, and utility improvements are not considered a part of Eligible Construction Costs for purposes of this Agreement.

**SECTION 1.02 TERMS FOR REIMBURSEMENT BY PROJECT**

Terms for reimbursement are unique to each County Road Improvement project described below and as depicted on Exhibit A. County and Developer acknowledge and agree that the provisions of this section modify, to the extent set forth herein, the reimbursement terms set forth in Section 8 of the Department of Transportation – Road Improvements Conditions, Subsections A – E, in the Conditions of Approval for Tentative Map 97-1330, and as amended.

Developer shall be reimbursed as follows:

**(A) Project #76107 Green Valley Road/Silver Springs Parkway Intersection, (including overlay and signal interconnect improvements) and Silver Springs Parkway Realignment Onsite Phase-2**

- (i) Fifty percent (50%) (“50% Reimbursement Amount”) of the Eligible Construction Costs and Eligible Soft Costs for Project #76107, excluding overlay and signal interconnect improvements, shall be eligible for reimbursement as follows: up to fifty percent (50%) of the eligible reimbursement amount may be taken in fee credits with any balance to be reimbursed from the TIM Fund. The schedule for reimbursement will be pursuant to Section 8c of the Conditions of Approval for the Approved Tentative Map which modified Section 7.4a of the Guidelines. Reimbursement will be at twenty percent (20%) per year for five years, beginning five years after completion and acceptance of Project #66108 by County (hereinafter referred to as “Five Year Plan”).
- (ii) For the overlay and signal interconnect improvements of Project #76107, one hundred percent (100%) of the Eligible Construction Costs and Eligible Soft Costs shall be eligible for reimbursement from the TIM Fund upon Project completion, acceptance of Project #76107 by the County Board of Supervisors and completion of the acquisition process as described in Guidelines. The County will use its best efforts to complete such acceptance as soon as practically possible.

**(B) Project #76114 Green Valley Road/Deer Valley Road Turn Lanes, (including overlay improvements)**

- (i) In exchange for Developer accepting a reduced reimbursement of fifty percent (50%) of the Eligible Construction Costs and Eligible Soft Costs of Project #76114 (which represents the TIM Fee Program’s portion of the intersection) excluding the overlay improvements, County agrees to accelerate reimbursement as follows: Fifty percent (50%) of the Eligible Construction Costs and Eligible Soft Costs for Project #76114, excluding overlay improvements, shall be eligible for reimbursement from the TIM Fund upon Project completion, acceptance of Project #76114 by County, and completion of the acquisition process as described

in Guidelines.

- (ii) For the overlay improvements of Project #76114, one hundred percent (100%) of the Eligible Construction Costs and Eligible Soft Costs shall be eligible for reimbursement from the Department of Transportation's Road Fund upon Project completion, acceptance of Project #76114 by County, and completion of the acquisition process as described in Guidelines.

**(C) Joint Trench Composite Drawing for Silver Springs Unit #1**

The parties acknowledge and agree that Developer is not eligible for reimbursement for any costs incurred for the improvements described in joint trench composite drawings for Silver Springs Unit 1, as these improvements are not eligible for reimbursement under the Guidelines. All costs of this improvement, including, but not limited to, contract administration costs, utility company fees and inspection costs, and any Contractor's claims resulting from this work shall be at the sole expense of the Developer.

**(D) Project #66108 Silver Springs Parkway, Offsite; Bass Lake Road, Offsite (South & East), (consisting of the Offsite Silver Springs Parkway Improvements and the Madera Right Turn Lane Improvements)**

(i) Silver Springs Parkway Offsite Right-of-Way:

- (1) Cost of Right-of-Way. County will advance from County's TIM Fund the first One Million Dollars (\$1,000,000.00) in right-of-way costs and costs incurred to update the Final Environmental Impact Report entitled "Bass Lake Road Realignment" (State Clearinghouse #90021120) (hereinafter collectively referred to as "Initial Right-of-Way Costs") pursuant to the terms and conditions set forth in the Road Improvement Agreement for Silver Springs Parkway, Offsite Between the County and the Developer ("Offsite RIA"). Upon notice from the County that the Initial Right-of-Way costs have been advanced, Developer shall advance the remaining costs of right-of-way acquisition in accordance with the terms and conditions of the Offsite RIA (hereinafter referred to as the "Excess Right-of-Way Costs").
- (2) Reimbursement of Developer Expenses. One hundred percent (100%) of the funding advanced by Developer for Excess Right-of-Way Costs, if any, are eligible for reimbursement: up to fifty percent (50%) of the eligible reimbursement amount may be taken in fee credits with any balance to be reimbursed from the TIM Fund pursuant to the Five-Year Plan.

(ii) Silver Springs Parkway Offsite Design, Construction Management and Construction Costs:

- (1) Up to sixty-one percent (61%) of the Eligible Construction Costs for Project #66108 will be eligible for reimbursement; Developer's Eligible Soft Costs for Project #66108 will be reimbursable pursuant to the terms described in (2)

below. Up to fifty percent (50%) of the sixty-one percent (61%) reimbursement amount may be taken in fee credits with the remaining balance reimbursed from the TIM Fund pursuant to the Five-Year Plan.

- (2) Up to twenty percent (20%) of the Eligible Construction Costs for Project #66108 for Eligible Soft Costs incurred by the Developer in connection with the design, engineering, County fees and costs (paid by Developer) and wetlands permitting for Project #66108 improvements will be reimbursable on the following terms:
  - (a) Eligible Soft Costs for Project #66108 will be reimbursed at the sum of 10 percent (10%) of the lowest responsive construction bid for Project #66108 after the Board of Supervisor's approval of said lowest responsive construction bid, provided that there exists an executed Assignment and Assumption Agreement that assigns all plans and specifications for Project #66108 to the County.
  - (b) Upon completion and Board of Supervisor acceptance of Project #66108 and completion of the acquisition process as described in Guidelines, the remaining Eligible Soft Costs for Project #66108 will be reimbursed up to a total of twenty percent (20%) of the actual Eligible Construction Costs for Project #66108, less the amount of reimbursement made to the Developer in section (a) above.
- (3) At the time the Department of Transportation requests permission to advertise Project #66108 for bids, in the event that the SCIP Sub-account is not sufficient to advance the full costs of construction of the Project, and Developer fails to provide additional funds or other sufficient security to guarantee completion of the Project, the County, in its sole discretion, may construct Project improvements using the Developer's portion of the TIM Fees reserved for reimbursement, together with any remaining funds within the SCIP Sub-account. In that event, Developer, on behalf of itself, its successors and assigns, irrevocably waives any claim for or entitlement to reimbursement for any funds so utilized by County

(iii) Madera Right Turn Lane

One hundred percent (100%) of the Eligible Construction Costs and Eligible Soft Costs for the Madera Right Turn Lane improvements incorporated into the Silver Springs Parkway Offsite plans and specifications shall be eligible for reimbursement as follows: the Eligible Construction Costs and Eligible Soft Costs shall be reimbursed from the TIM Fund upon Project completion, acceptance of Project #66108 by County, and completion of the acquisition process as described in Guidelines.

**SECTION 1.03      GENERAL TERMS OF REIMBURSEMENT**

**(A) TIM Fund Credits**

The election to utilize reimbursements as fee credits shall be made by Developer at the time a request for reimbursement is made to the County. Such election to utilize credits will identify the amount of the credit which shall be applicable to each unit of the Silver Springs Subdivision or other land owned or controlled by Developer (within TIM Zones 1-7) at the time of such election. The fee credits shall not lock in the rate at which Traffic Impact Mitigation Fees are imposed at the time of the building permit application; rather, the fee imposed shall be at the rate then in effect on the date a building permit is issued, and the amount of credit available will be reduced as utilized.

Fee credits are applicable to the TIM Fee local component only. The County shall continue to collect the Highway 50 TIM at the time of issuance of building permit.

**(B) Source of Funds**

Developer acknowledges and agrees that the sole source of funds that Developer shall look to for the repayment of the Eligible Costs shall be the unobligated TIM Fund, except as indicated in Section 1.02(B), and that the County shall not be obligated to fund the Eligible Costs from any other funds or revenues, including but not limited to, the County General Fund. The ability of County to fully reimburse Eligible Costs is dependent upon the amount of uncommitted funds available in the TIM Fund. If in any given year there are insufficient funds in the TIM Fund to make the scheduled payment, less the amount applied toward fee credits, any unpaid residual for that year shall bear interest at the Treasurer's pooled rate of funds, compounded annually for a period limited to ten years, at which time interest will cease to accrue. In the event that fees generated within the TIM Fund are insufficient to fully fund the reimbursements contemplated herein, such insufficiency alone shall not be deemed an event of default by the County hereunder and shall not entitle Developer to accelerate any payment or payments under this Agreement. 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.

Nothing contained herein shall affect the County's ability to modify the 2004 General Plan Traffic Mitigation Fee Program as required by law, or as required in conjunction with other land use decisions such as modification of the General Plan. The foregoing shall not be construed as obligating the County to, or precluding the County in its sole discretion from, increasing, decreasing, or adjusting the amounts of its fee programs.

**ARTICLE II. OFFER OF DEDICATION**

Developer is required to provide right-of-way and easements to include, but not limited to those listed in the SIA, RIA, Offsite RIA as well as on Exhibit B, *Property Owners and Land Rights Table* with the following provisions:

- (a) Pursuant to Conditions of Approval for Tentative Map 97-1330, Department Of Transportation – Road Improvements, Developer shall on or before the effective date of this Agreement irrevocably dedicate in fee to the County the following: (i) On-site portions of Silver Springs Parkway, with necessary easements (hereinafter referred to as “Developer’s IODs”). Developer’s IODs are not eligible for reimbursement.
- (b) For right-of-way and easements necessary for the construction of Project #66108, Developer shall be required to provide legal descriptions and plats and County will secure all necessary right-of-way and easements.

**ARTICLE III. ASSIGNMENT AND ASSUMPTION OF PLANS AND SPECIFICATIONS**

For Projects constructed by Developer, preceding the County Board of Supervisor’s acceptance of the Projects and prior to a Project being deemed complete for reimbursement purposes, Developer will execute an Assignment and Assumption of Plans and Specifications and will assign to County all of Developer’s right, title and interest in, to and under the Plans and Specifications for Projects, and will obtain Developer’s Engineer’s consent to said assignment. For Projects which the County elects to construct, prior to advertising a request for construction bids, Developer will execute an Assignment and Assumption of Plans and Specifications and will assign to County all of Developer’s right, title and interest in, to and under the Plans and Specifications for Projects, and will obtain Developer’s Engineer’s consent to said assignment. Nothing by way of this Agreement or this assignment will obligate County to provide payment or compensation to Developer’s Engineer.

**ARTICLE IV. 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 V. 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 VI. 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 VII. 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 VIII. 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:

With a Copy to:

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

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

Attn.: Ruth Young  
Chief Fiscal Officer

Attn.: Janel Gifford, P.E.  
Office Engineer/Contract Services Unit

or to such other location as County directs.

Notices to Silver Springs, LLC shall be addressed as follows:

Silver Springs, LLC  
c/o The Cambay Group  
2999 Oak Road, Suite 400  
Walnut Creek, CA 94597

Attn: William C. Scott, Jr., Chief Financial Officer

or to such other location as directed.

**ARTICLE IX. CONTRACT ADMINISTRATOR**

The County officer or employee with responsibility for administering this Agreement is Ruth Young, Chief Fiscal Officer, or successor.

**ARTICLE X. 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 successors-in-interest to the property within the Approved Tentative Map without the prior written consent of the County.

**ARTICLE XI. 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 XII. 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.

**ARTICLE XIII. RECORD DRAWINGS**

Developer shall have an Engineer prepare Record Drawings describing the finished work. The Record Drawings shall be submitted to Department of Transportation at the completion of the work.

**Contract Administrator Concurrence:**

By: \_\_\_\_\_  
Ruth Young  
Chief Fiscal Officer

Dated: \_\_\_\_\_

**Requesting Department Concurrence:**

By: \_\_\_\_\_  
Kimberly A. Kerr, Interim Director  
Department of Transportation

Dated: \_\_\_\_\_

DRAFT

**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: \_\_\_\_\_

Board of Supervisors  
"County"

Attest:  
Terri Daly  
Acting Clerk of the Board of Supervisors

By: \_\_\_\_\_ Dated: \_\_\_\_\_

Deputy Clerk

**SILVER SPRINGS, LLC**  
A California limited liability company

By: Sorrento, Inc., a California corporation  
Its managing member

By: \_\_\_\_\_ Dated: \_\_\_\_\_

William C. Scott, Jr.  
Chief Financial Officer

## SILVER SPRINGS, LLC

### ACKNOWLEDGMENT

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)