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REQUISITION AND SHORTFALL AGREEMENT

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CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY  
STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM

**REQUISITION AND SHORTFALL AGREEMENT**

BY AND AMONG

THE COUNTY OF EL DORADO,

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

AND

SILVER SPRINGS, LLC

Dated as of \_\_\_\_\_, 2012

REQUISITION AND SHORTFALL AGREEMENT

Recitals

A. The parties to this Requisition and Shortfall Agreement (the “Agreement”) are the County of El Dorado, a political subdivision of the State of California (the “County”), the California Statewide Communities Development Authority, a California joint-exercise of powers authority duly organized under the laws of the State of California (the “Authority”), and Silver Springs, LLC, a California limited liability company (the “Developer”).

B. The effective date of this Agreement is \_\_\_\_\_, 2012.

C. The Developer has applied for financing of certain public capital improvements described in Exhibit A attached hereto (the “Improvements”) through the Statewide Community Infrastructure Program (“SCIP”) administered by the Authority and such application has been approved by the County.

D. Under SCIP, the Authority has issued bonds (the “2007A Bonds”) pursuant to a Trust Agreement dated as of June 1, 2007 (the “Trust Agreement”) to fund, among other things, all or a portion of the costs of the Improvements, and the portion of the proceeds of such bonds allocable to the cost of the Improvements to be constructed and installed by the County, together with interest earned thereon prior to such construction, is referred to herein as the “Available Amount”.

E. SCIP is providing financing for the construction by the County of a certain portion of the Improvements, namely \$9,277,610.00, which has been deposited in the Silver Springs Improvements Subaccount of the County of El Dorado Custody Account (the “Silver Springs Subaccount”) which has been established under the Trust Agreement for the Bonds and is being held and administered by Wells Fargo Bank, National Association, as Trustee for the Bonds, to finance the direct construction and installation by the Local Agency of the work described on the plan sheets of County Road Capital Improvement Program (the “CIP”) projects numbered 76107 (described on plans titled “Project 66106 Green Valley Road / Silver Springs Parkway Intersection” and “Project 66107 Silver Springs Parkway Realignment Onsite Phase - 2”), 66108 (described on plans titled “Project 66108 Silver Springs Parkway, Offsite; Bass Lake Road, Offsite (South & East)”) and 76114 (described on plans titled “Project 66114 Green Valley Road/Deer Valley Road Turn Lanes”) ; including work described on the plan sheets for the utility trenching (described on plans titled “Joint Trench Composite Drawing for Silver Springs Unit #1” (collectively the “County Road Improvements”) and the payment of the cost of the County Road Improvements from the Available Amount.

F. The administration of the contracts for the construction and installation of the County Road Improvements, and the inspection of, acceptance of, and payment for the County Road Improvements, is agreed to be governed by the normal public contracting procedures of the County, in accordance with the Uniform Public Construction Cost Accounting Act of the California Public Contract Code. The administration and use of the Available Amount for payment of the cost of the County Road Improvements shall be as provided herein.

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G. SCIP currently holds the Available Amount in the Silver Springs Improvements Subaccount of the Custody Account under the Trust Agreement solely for the purpose of funding the cost of public improvements and fees including the County Road Improvements; and SCIP, under the Trust Agreement and for federal tax law reasons, will continue to hold those funds in that subaccount until they are used to make payments to the County for reimbursement for payments to contractors building the County Road Improvements (inclusive of costs such as, but not limited to, utility relocation, geotechnical engineering consultants, or any other construction-related cost required in the course of constructing the County Road Improvements), and for reimbursement of the Developer's responsible share of the County's expenses for construction management incurred with respect to the construction and installation of County Road Improvements. The parties desire to establish a procedure whereby the County may submit requisitions to the Authority to reimburse the County for payments made to the contractors building the County Road Improvements that are required under the County's public works contracts up to the full Available Amount, and to reimburse the County for Developer's responsible share of construction management costs expended in the process of making the County Road Improvements.

H. Any and all monetary obligations of the County arising out of this Agreement are the special and limited obligations of the County payable only from the Available Amount, and no other funds whatsoever of the County shall be obligated therefor.

I. In consideration of Recitals A through H, inclusive, and the mutual covenants, undertakings and obligations set forth below, the County and the Authority agree as stated below.

### **AGREEMENT**

1. SCIP Requisition. Upon a determination by the County Director of Transportation (the "Director") to reimburse the County for payment(s) to a contractor for work performed and materials supplied in constructing and providing the County Road Improvements, the Director shall cause a SCIP Requisition substantially in the form attached hereto as Exhibit B (the "SCIP Requisition") to be submitted to Bond Logistix LLC (the "Program Administrator"). Additionally, Director shall monthly cause a SCIP Requisition to be submitted to the Program Administrator to reimburse County for the Developer's responsible share of County's expenses for construction management incurred with respect to the construction and installation of County Road Improvements (the "County Expenses"). The Program Administrator will review the SCIP Requisition and forward it with instructions to the trustee under the Trust Agreement (the "SCIP Trustee"), and the SCIP Trustee shall make payment to the County of such amount pursuant to the Trust Agreement.

Based on the eligible reimbursable percentage established for the County Road Improvements, the County and Developer will fund their appropriate share of the County Expenses. To this end, the Developer's responsible shares of expenses for construction management to be reimbursed to County by SCIP are based on the following percentages:

Project 76114 shall have a Developer's responsible share of:

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- Fifty percent (50%) of total construction management costs for the traffic impact mitigation (“TIM”) fee reimbursable construction costs of the project,
- Zero percent (0%) of total construction management costs for the Road Fund reimbursable construction costs of the project related to the added overlay work;

Project 76107 shall have a Developer’s responsible share of:

- Fifty percent (50%) of total construction management costs for the TIM fee reimbursable construction costs of the project (exclusive of the construction costs related to the added overlay and signal interconnect work),
- Zero percent (0%) of total construction management costs for the construction cost related to the added overlay and signal interconnect work,
- One-hundred percent (100%) of total construction management costs for the non-TIM fee reimbursable construction costs of the project (i.e. non-reimbursable EID related work, non-reimbursable minor-concrete work outside of the roadway, non-reimbursable joint trench construction, etc.);

Project 66108 shall have a Developer’s responsible share of:

- Zero percent (0%) of total construction management costs for the project.

(hereinafter referred to as the “Developer’s Responsible Share of Construction Management”).

With respect to County CIP Project 66108, to the extent not otherwise reimbursed from the County’s traffic impact mitigation fees, if sufficient Available Amount remains upon completion of all County Road Improvements inclusive of resolution of any and all construction claims and reimbursement of Developer’s Responsible Share of Construction Management for all County Road Improvements, Director shall cause a SCIP Requisition to be submitted for Developer’s actual expenses incurred in connection with designing and engineering of the final plans and for any County imposed fees and costs paid by Developer in connection therewith. The Program Administrator will review the SCIP Requisition and forward it with instructions to the SCIP Trustee, and the SCIP Trustee shall make payment to the Developer of such amount pursuant to the Trust Agreement. The parties acknowledge and agree that the SCIP Trustee shall make payment strictly in accordance with the SCIP Requisition and shall not be required to determine whether the portion of the County Road Improvements being paid for has been completed or what the actual costs may be with respect to such portion. The SCIP Trustee shall be entitled to rely on the SCIP Requisition on its face without any further duty of investigation.

2. Overage. Upon completion of all of the County Road Improvements and the payment of all Actual Costs thereof as well as the reimbursement to County for Developer’s Responsible Share of Construction Management, the remaining funds in the Silver Springs Improvements Subaccount (less any amount determined by the County as necessary to reserve for claims against such account) shall be applied, as designated by the Developer, to pay the costs of any additional improvements eligible for acquisition with respect to the Project as approved by the Authority and/or pay for water and sewer fees and any other improvements or fees allowable by

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the SCIP program and, to the extent not so used, shall be applied by the Authority as provided in Section 10427.1 of the Streets and Highways Code of the State of California to pay a portion of the assessments levied on the Project property in the Assessment District.

3. Shortfall. If for any reason the Available Amount is not sufficient to complete the County Road Improvements as well as reimburse County for Developer's Responsible Share of Construction Management, the County shall notify the Developer that the Available Amount has been exhausted or that the Available Amount will not be sufficient to complete the payments for the County Road Improvements and reimbursement of Developer's Responsible Share of Construction Management. The Developer shall within ten calendar days of each request, provide to the County in the form of a cashier's check or electronic funds transfer, the amounts necessary to make the County's payments on the contracts for the construction and provision of the County Road Improvements and the reimbursement of Developer's Responsible Share of Construction Management ("Advanced Funds"). The Advanced Funds shall be deposited in a segregated, interest bearing account and inclusive of interest thereon, shall be used by County to make progress payments to the contractor awarded the contract or to reimburse the County for staff time related to the Developer's Responsible Share of Construction Management as needed.

4. Indemnification and Hold Harmless. The Developer hereby assumes the defense of, and indemnifies and saves harmless the County, the Authority, and each of its respective officers, directors, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from or alleged to have resulted from the acts or omissions of the Developer or its agents and employees in the performance of this Agreement, or arising out of any contract for the design, engineering and construction of the County Road Improvements or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the Authority's underwriter, financial advisor, appraiser, district engineer or bond counsel or regarding the Developer, its proposed developments, its property ownership and its contractual arrangements contained in the official statement relating to the 2007A Bonds (provided that the Developer shall have been furnished a copy of such official statement and shall not have objected thereto); and provided, further, that nothing in this Section 4 shall limit in any manner the County's rights against any of the Developer's architects, engineers, contractors or other consultants. Except as set forth in this Section 4, no provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer, its agents and employees. Nothing in this Section 4 shall be understood or construed to mean that the Developer agrees to indemnify the County, the Authority or any of their respective officers, directors, employees or agents, for any intentional acts or active negligence of the County, the Authority or any of their respective officers, employees, agents or any consultants or contractors. The indemnity set forth herein shall expire four (4) years after completion and acceptance by the County of all County Road Improvements.

5. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer or the County from any condition of development or requirement imposed by any other agreement between the County and the Developer, and, in the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by the County and the Developer.

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6. Notices \_\_\_\_\_. All notices relating to this Agreement shall be mailed to:

If to the Authority:

SCIP Program Manager  
California Statewide Communities Development Authority  
2033 North Main Street, Suite 700  
Walnut Creek, CA 94596

If to the County:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Ruth Young, Chief Fiscal Officer

With

with a copy to:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Janel Gifford, Office Engineer/  
Contract Services Unit

If to the Developer:

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

Any party may change its address by giving notice in writing to the other party.

7. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

8. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

10. 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 SCIP Assessment District 07-01 for El Dorado County, without the prior written consent of the County.

11. Remedies in General. It is acknowledged by the parties that the County and the Authority would not have entered into this Agreement if either were to be liable in damages under or with respect to this Agreement or the application thereof, other than for moneys that are misappropriated or improperly obtained, withheld or applied by that party. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any

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provision of this Agreement, except that neither the County nor the Authority shall not be liable in damages to the Developer, or to any assignee or transferee of the Developer other than for the cause specified in the preceding paragraph. Subject to the foregoing, the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement.

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

**Contract Administrator Concurrence:**

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

**Requesting Department Concurrence:**

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

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

COUNTY OF EL DORADO

By \_\_\_\_\_

Board of Supervisors  
"County"

Attest:  
Terri Daly  
Acting Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

CALIFORNIA STATEWIDE COMMUNITIES  
DEVELOPMENT AUTHORITY

By \_\_\_\_\_

\_\_\_\_\_  
(print name)

SILVER SPRINGS, LLC,  
a California limited liability company  
By: Sorrento, Inc., a California corporation  
Its managing member

By \_\_\_\_\_  
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)

**Exhibit A to Requisition and Shortfall Agreement**

DESCRIPTION OF IMPROVEMENTS

1. Street Improvements – Funding for capital improvements including but not limited to streets, roads, highways and public ways, as well as supporting improvements and related facilities such as construction and installation of grading, paving, curbs, gutters, sidewalks, landscaping, street name signs and survey monuments, within the intract and onsite areas of the Silver Springs development and along offsite areas of Silver Springs Parkway, Green Valley Road and Bass Lake Road, within the unincorporated area of the County of El Dorado.
2. Storm Drain Improvements – Funding for capital improvements including but not limited to facilities for the collection and disposal of storm waters and for flood control purposes, as well as supporting improvements and related facilities such as construction and installation of storm drains and water pipes and mains, within the intract and onsite areas of the Silver Springs development and along offsite areas of Silver Springs Parkway, Green Valley Road and Bass Lake Road, within the unincorporated area of the County of El Dorado.
3. Sanitary Sewer Improvements – Funding for capital improvements including but not limited to facilities for the collection, treatment, reclamation and disposal of sewage, as well as supporting improvements and related facilities such as construction and installation of gravity sewers and force mains, within the intract and onsite areas of the Silver Springs development and along offsite areas of Silver Springs Parkway, Green Valley Road and Bass Lake Road, within the unincorporated area of the County of El Dorado.
4. Water Improvements – Funding for capital improvements including but not limited to facilities for the water system such as construction and installation of water pipes and mains, as well as supporting improvements and related facilities, within the intract and onsite areas of the Silver Springs development and along offsite areas of Silver Springs Parkway, Green Valley Road and Bass Lake Road, within the unincorporated area of the County of El Dorado.
5. Incidental Costs – Funding of Incidental Costs associated with the capital improvements including Engineering and Construction Management.

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**Exhibit B to Requisition and Shortfall Agreement**

FORM OF SCIP REQUISITION

To: Bond Logistix LLC  
SCIP Program Administrator  
777 S. Figueroa St., Suite 3200  
Los Angeles, California 90017  
Attention: Daniel Chang  
Fax: 213-612-2499

Re: Statewide Community Infrastructure Program

The undersigned, the Director of the Department of Transportation of the County of El Dorado hereby requests a withdrawal from the SILVER SPRINGS IMPROVEMENTS SUBACCOUNT OF THE CUSTODY ACCOUNT UNDER THE TRUST AGREEMENT FOR SCIP 2007A dated June 1, 2007, as follows:

Request Date: [Insert Request Date of Request]

Withdrawal Amount: [Insert Amount]

Improvements: [Insert Description of Improvements]

Payment Instructions: [Insert Wire Instructions or Payment Address]

The undersigned hereby certifies as follows:

1. The Withdrawal is being made in accordance with a permitted use of such monies pursuant to the Requisition and Shortfall Agreement dated \_\_\_\_\_, 20\_\_, by and among CSCDA, the County of El Dorado and Silver Springs, LLC, and the Withdrawal is not being made for the purpose of reinvestment.
2. None of the items for which payment is requested have been reimbursed previously from other sources of funds.
3. If the Withdrawal Amount is greater than the funds held in the Silver Springs Improvements Subaccount, the SCIP Program Administrator is authorized to amend the amount requested to be equal to the remaining amount of such funds.

COUNTY OF EL DORADO

By : \_\_\_\_\_  
Title: Director, Department of Transportation