

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY OF EL DORADO
AND
THE CITY OF SOUTH LAKE TAHOE
FOR THE CONSTRUCTION OF IMPROVEMENTS AT
EL DORADO BEACH, LAKEVIEW COMMONS
(PHASE 1)**

This Memorandum of Understanding (“MOU”) is made and entered into on _____, 2009 (the “Effective Date”) by and between the County of El Dorado, a political subdivision of the State of California (“County”) and the City of South Lake Tahoe (“City”). For purposes of this MOU, the County and the City are each a “Party” and are sometimes referred to as the “Parties.

I. BACKGROUND AND PURPOSE OF THIS MOU

A. The Lakeview Commons Project, formerly known as the “56-Acre Project” (hereinafter “the Project”), is an existing site of approximately 56 acres located where Highway 50 meets Lake Tahoe in an area also known as the “South Lake Tahoe-El Dorado Recreation Area.” The property is currently used for public recreation and other civic activities. The property includes El Dorado Beach and Boat Ramp, the El Dorado County South Lake Tahoe Branch Library, the Lodge, South Lake Tahoe Recreation Complex, the Campground by the Lake, the Senior Center, Art Center, Historical Society Museum and South Lake Tahoe Chamber of Commerce.

B. The Project is a cooperative effort among the City of South Lake Tahoe, El Dorado County, and the California Tahoe Conservancy, with the mutual objective of enhancing public recreational opportunities in the area by promoting the ideals of sustainability, public accessibility, and cultural activity in a conceptual plan for landscape and building improvements, and creating a gathering place for the local community as well as visitors.

C. The Parties entered a Memorandum of Understanding in May of 2006 for the cooperative assessment of alternative concepts for the 56-acre area, followed by planning and design efforts supported by funding from the California Tahoe Conservancy. Under the prior Memorandum of Understanding, the City was designated as the lead entity with the primary responsibility for satisfying administrative grant requirements, with oversight by the County. The Parties jointly assumed the responsibility of day-to-day project management during the planning and design phase.

D. Project planning and design for improvements at the El Dorado Beach portion of the Project, referred to as “Phase 1: Waterfront,” have been completed pursuant to a grant by the California Tahoe Conservancy. The purpose of this MOU is to define the mutual understanding of the County and the City regarding the construction and implementation of Phase 1.

II. PHASE 1 DESCRIPTION

A. Phase 1 will improve an existing day use recreation area in a portion of the Project located in APN 026-050-06 between US Hwy 50 and the south shore of Lake Tahoe known as El Dorado Beach. A map depicting the location of Phase 1 is attached hereto, identified as “Attachment 1” and incorporated herein by reference.

- B. The Parties have identified the following objectives for Phase 1:
- 1) Improvement recreational characteristics through reconstruction of existing uses to meet current building codes.
 - 2) Improve environmental quality of a degraded landscape and planting areas.
 - 3) Enhance the sense of community for the City and County by improving the built quality of the waterfront.
 - 4) Make the site ADA accessible.

C. Phase 1 will involve the implementation of water quality measures and improvements to recreational features of the waterfront area in accordance with a conceptual plan as presented to the Board of Supervisors and City Council on January 29, 2008 and updated in a presentation to the Board of Supervisors on August 26, 2008 (“Phase 1 Conceptual Plan”). A map depicting Phase 1 improvements is attached hereto, identified as “Attachment 2” and incorporated herein by reference. Phase 1 improvements shall include, but are not limited to, storm-water infiltration areas, pervious paving, stabilization of the bluff to reduce erosion at the lake edge, terraced seating areas for lake viewing, ADA accessible viewing areas, improved picnic and barbeque areas, a small building with concessions for food, a small building for non-motorized water crafts, a cantilevered lake overlook, an upgraded Class I bike path, and a new waterfront plaza for community recreation.

III. COMPLIANCE WITH LEASE AGREEMENT AND COUNTY CONSENT FOR IMPLEMENTATION OF PHASE 1 IMPROVEMENTS

A. Phase 1 is located on property owned by the County and leased by the City in accordance with an agreement effective July 1, 1968 (“1968 Lease Agreement”) for a term of 55 years (“Leased Property”).

B. The 1968 Lease Agreement contemplates the development of the Leased Property in accordance with a master plan approved by the Parties. The Parties agree to execute an amendment to the 1968 Lease Agreement providing for the implementation of Phase 1 in accordance with the Phase 1 Conceptual Plan.

C. The 1968 Lease Agreement contains the following limitations on improvements and use of the Leased Property:

- 1) The beach area located North and West of Highway 50 is to be maintained by Lessee as a free public beach.” 1968 Lease Agreement, § 9.
- 2) “Any buildings constructed in the area lying North and West of Highway 50 shall be constructed so as not to interfere with the view of Lake Tahoe.” 1968 Lease Agreement, § 10.
- 3) “The use of all beach, picnic, parking and toilet facilities shall be free of charge.” 1968 Lease Agreement, § 11.
- 4) “Any charges made by Lessee for the use of ... facilities where charges are not expressly prohibited by the terms of this lease, shall be reasonably related to the cost of maintenance of said facilities, and shall be retained by Lessee.” 1968 Lease Agreement, § 12.
- 5) “No building, with the exception of a tourist information center, and a Scout Hall, not to exceed Three Thousand (3,000) square feet each in size, shall be constructed or placed on the subject property within seven hundred fifty (750) feet of the center line of Highway 50, South and East of Highway 50.” 1968 Lease Agreement, § 13.

The Phase 1 Conceptual Plan and proposed use of the improvements constructed in Phase 1 are compliant with each of the above requirements. To the extent that any implementation of an improvement in Phase 1 is inconsistent with section 5 of the 1968 Lease Agreement, the Parties agree to execute an amendment to the 1968 Lease Agreement to allow the improvement unless the improvement is prohibited by a local ordinance or code.

D. The County approves and hereby consents to the construction of improvements on the leased property in accordance with the Phase 1 Conceptual Plan on the condition that pursuant to the terms of the 1968 Lease Agreement, ownership of all improvements constructed or placed upon the property shall vest in the County upon termination of the lease for any reason, or upon its expiration (1968 Lease Agreement, § 22) and also on the condition that the implementation of Phase 1 improvements and all construction methods are consistent with applicable portions of the Tahoe Regional Planning Agency Code of Ordinances, City of South Lake Tahoe Codes and the Bijou/Al Tahoe Community Plan.

E. Pursuant to the 1968 Lease Agreement, the City shall remain solely responsible for the financing, maintenance, and execution of all improvements and the City shall maintain all improvements at no cost to the County for the full term of the lease and any extended period of time required by the grant or funding received for the Project. 1968 Lease Agreement, § 17. The City’s maintenance obligations shall survive the Lease Agreement and this MOU as provided in Article VI herein.

F. Pursuant to the 1968 Lease Agreement, the City shall remain responsible for the cost of all services and utilities provided to the Leased Property and all improvements thereon. 1968 Lease Agreement, § 24.

G. All liabilities and obligations between the Parties with respect to the leased property shall remain as provided in the 1968 Lease Agreement except where modified herein.

IV. COOPERATIVE APPLICATION FOR FUNDING AND GRANT ADMINISTRATION RESPONSIBILITIES

A. The Parties agree to work together to obtain the requisite funding or grants to complete the construction and implementation of Phase 1. The County agrees to accept any funds or grants provided by the California Tahoe Conservancy for this purpose and to make those funds available for the construction and implementation of Phase 1 improvements.

B. The City shall have sole responsibility for satisfying any administrative grant or funding requirements, including but not limited to, fiscal control, accounting, record keeping, invoice preparation and approval, and other administrative tasks.

C. Except for the conveyance of grant proceeds or funding received by the County in accordance with this MOU for the purpose of implementing Phase 1, County shall have no obligation to fund any activity related to this MOU or the Project.

V. PHASE 1 IMPLEMENTATION, PROJECT MANAGEMENT AND THIRD PARTY CONTRACT REQUIREMENTS

A. The City shall have sole responsibility for the implementation of Phase 1 and the day-to-day management of the construction of all Phase 1 improvements.

B. The City shall have sole responsibility for obtaining and maintaining all permits and approvals necessary for the implementation of Phase 1, including all applicable federal, state, and local environmental laws and regulations.

C. The City shall have sole responsibility for fiscal management of the implementation and construction of Phase 1, including but not limited to the payment of third parties performing any services or work in connection with Phase 1.

D. The Parties agree that the performance of any work by third parties in connection with Phase I shall be accomplished pursuant to a written agreement with the City specifying, among other details, the scope of the work to be performed, the maximum cost of the work that shall not be exceeded, and a requirement that the work be performed in compliance with all applicable federal and state laws, regulations and licensing requirements, in addition to any applicable local regulations, ordinances, building codes or permits. The Parties agree that no third parties will be allowed to perform any work without first executing a written agreement meeting the requirements of this MOU.

E. The Parties agree that prior to commencing any work, all third parties performing any work in connection with Phase 1 shall be required to execute and furnish to the City a payment bond, and a performance bond guaranteeing the faithful performance by the third party for the express benefit of the City and the County as obligees. Both the payment bond and performance bond shall be in an amount equal to one hundred percent (100%) of the total contract price payable for the work to be performed by the third party.

F. The Parties agree that before any third party may perform any work in connection with Phase 1, the City shall require such third parties to agree in writing to defend and indemnify the City and the County from all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, City or County employees and the public, or damage to property or any economic or consequential losses which are claimed to or in any way arise out of or are connected with the third party's services, operations or performance, or design defects if design was required as part of the work, regardless of the existence or degree of fault or negligence on the part of the City, the County, the third party contractor or consultant, subcontractor(s) and employee(s) or any of these, except as expressly prescribed by statute.

G. The Parties agree that prior to commencement of any work by third parties, such parties shall be required to obtain and provide proof of insurance sufficient to cover all risk applicable to the type of work to be performed, whether performed by the third party or a subcontractor or any individual or entity for whose acts they may be liable, including but not limited to the following:

- 1) Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- 2) Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- 3) Automobile Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.

H. The City agrees to require third parties performing any work in connection with Phase 1 to name the County as an additional insured for all losses relating to the third party's performance of the work.

I. The Parties agree that the Contractor's insurance required pursuant to a written agreement with the City shall be the primary insurance for all losses relating to the third party's performance of the work. As between the City and the County, the City's insurance shall be the primary insurance for all losses relating to the implementation and construction of Phase 1 that are in excess of any applicable coverage provided by a third party. Any insurance or self-insurance maintained by the County, its

officers, officials, employees or volunteers shall be in excess of the third party's insurance and the City's insurance and shall not contribute with it.

VI. TERM

A. This MOU will be effective upon full execution by the Parties and will remain in effect for the period of time required by the grant or funding received for the Project. The maintenance and indemnity obligations of the City under this MOU shall survive this MOU and the expiration of any period of time required by the grant or funding received pursuant to this MOU.

B. Prior to the commencement of work in connection with Phase 1, this MOU may be terminated for any reason by either Party upon thirty (30) days written notice. This MOU may not be terminated after the commencement of any work in connection with Phase 1.

C. All contracts with third party contractors for the construction or performance of any work in connection with Phase 1 shall contain a provision allowing termination of the contract upon termination of this MOU for any reason.

D. The time period for this MOU may be extended by mutual agreement in writing signed by both Parties.

VII. RELATIONSHIP OF THE PARTIES

A. This MOU relates only to the cooperative efforts of the County and the City described herein in connection with the construction and implementation of Phase 1.

B. This MOU is not intended to create or constitute any joint venture, partnership, joint powers agency, or other formal organization of any kind.

C. Nothing herein shall be interpreted to require the City or the County to exercise its discretion in any particular way or to require the City or the County to take any future action regarding the Project.

D. Neither Party is authorized herein to act as the agent of the other.

E. This MOU is not intended to create any benefits, rights or entitlements for persons or entities not a party to this MOU.

VIII. LIMITATION OF LIABILITY AND INDEMNITY

A. The City shall defend and indemnify the County from any claims, judgments, damages, liens or losses of any kind whatsoever arising out of or in connection with claims by third parties for compensation relating to services, operations or performance of any work on the Project.

B. The City agrees to indemnify and defend County against any claims, liabilities, losses, expenses or damages, including without limitation restoration expenses, attorneys' fees, fines and penalties, arising from the City's failure to obtain in a timely manner, or to maintain, any necessary permits or approvals for the implementation of Phase 1.

C. The City assumes all risk of injury or damage to persons or property resulting from or occurring in connection with the implementation and construction of Phase 1, and the City agrees to defend and indemnify the County against all claims, liabilities, losses, expenses or damages of every kind and character, including indirect or consequential losses, arising out of or in connection with the implementation and construction of Phase 1. This obligation of the City is consistent with and supplemental to the City's existing indemnity obligations under the 1968 Lease Agreement. This obligation shall not be construed as any limitation of the City's existing obligations under the existing 1968 Lease Agreement.

IX. PUBLICITY

Any news release, public announcement, advertisement or publicity proposed to be released by the County or the City regarding this MOU shall be subject to the approval of the other Party prior to release. The Parties agree that such approval shall not be unreasonably withheld.

X. POINTS OF CONTACT

The Parties' have identified the following individuals as point persons for all communication and coordination in connection with the construction and implementation of Phase 1. Any notice required hereunder shall be provided in writing.

County:	Bob Slater Department of Transportation Construction Division 2850 Fair Lane Court, Placerville, CA 95667 bslater@co.el-dorado.ca.us (530) 621-5918	Jim Ware, Director Department of Transportation 2850 Fair Lane Court, Placerville, CA 95667 jim.ware@co.el-dorado.ca.us (530) 621-7533
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City:	Debbie Vreeland Project Manager deb@vreelandworks.com 530.577.1777	David Jinkens City Manager 1901 Airport Rd., Ste. 203 South Lake Tahoe, CA 96150 530.542.6045
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XI. AUTHORITY AND EXECUTION

A. Each Party represents that it has the authority to enter into this MOU and to perform the functions stated herein, and that the persons executing this MOU on their respective behalf are authorized by law, resolution or other requisite action of the Party's governing body.

B. This MOU may be executed in duplicate and counterparts and each duplicate and counterpart shall be deemed an original.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Ron Briggs, Chairman
Board of Supervisors
"County"

ATTEST:
Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

-- CITY OF SOUTH LAKE TAHOE --

Dated: _____

By: _____

Jerry Birdwell, Mayor
"City"

ATTEST:
Susan Alessi, City Clerk

By: _____