

License for Access to Stage for Construction of Bike Path
2008 ST – No. 41
APN 033-180-16

THIS LICENSE AGREEMENT, made this 16th day of May, 2008, by and between the California Tahoe Conservancy, (hereinafter called "Licensor") and El Dorado County, (hereinafter called "Licensee");

W I T N E S S E T H:

1. License.

Subject to the provisions hereof, Licensor hereby grants a License to Licensee for:

Access onto El Dorado County Assessor Parcel Number 033-180-16 (hereinafter "the License Area") for the purpose of construction staging (storage of materials and equipment) necessary for the construction of the Sawmill 1B Bike Path Project (Project), as more particularly shown on Exhibit A, in addition to removal and restoration of existing impervious coverage (old pavement of Incline Road). All materials and equipment shall be removed upon completion of this License.

Licensee shall be responsible for repairing and restoring disturbed portions of the License Area to a condition equal or superior to that in existence at the commencement of this License.

2. Term.

The term of this License is from May 16, 2008 through December 1, 2008. The term of this License may be extended upon mutual written consent of the parties hereto.

3. License Fee.

In lieu of a fee from Licensee, Licensee shall remove and properly dispose of the impervious concrete-asphalt as shown on Exhibit A and shall revegetate the area (6,020 square feet), in addition to any additionally disturbed areas within the License Area that become disturbed due to construction and staging activities. All revegetation activities shall be performed in accordance with the construction documentation issued by Licensee for the Project. Licensor shall approve the revegetation techniques, materials and seed mixtures to be used within the License Area.

4. Expenses of Licensee.

Licensee shall pay the costs and expenses listed below:

a. Taxes.

Licensee shall pay, before they become delinquent, all charges, fees, taxes and assessments imposed on the premises by reason of Licensee's activities. Licensor may pay such charges, fees, taxes or assessments, and such payment will be repaid by Licensee on demand.

b. Other Expenses.

In addition to the taxes and unless otherwise specified herein, Licensee shall bear the sole risk and pay all costs and expenses of whatever kind and nature which arise from this License.

c. Reimbursement to Licensor.

If Licensor shall have made payments on behalf of Licensee for any costs or expenses incurred herein, Licensee shall reimburse Licensor within forty-five (45) days from the date the amounts for such costs or expenses were incurred.

5. Use.

a. Qualification on Use.

Licensee shall neither use nor permit any use of the premises for any purpose other than that set forth in Section 1 hereof.

This License is subject to all easements, leases, liens, conditions, restrictions, encumbrances and claims of title which may affect the License Area. Licensee accepts the License Area (including, without limitation, Licensor-owned improvements, if any) in their present condition and without any representation or warranty by Licensor as to the condition of such License Area or improvements, and Licensor shall not be responsible for any defect or change of conditions in the License Area or such improvements, any damage occurring thereto or for the existence of any violation of any municipal, County, State, or Federal law, order, rule, regulation or ordinance. Licensee shall not (1) explore for, mine, extract or remove any minerals of any kind or character, including without limitation oil, natural gas, hydrocarbon substances, geothermal steam, brines or minerals in solution, quarry or stone, sand or gravel, (2) commit any waste thereon, (3) remove any earth or soil beyond that permitted by this License, (4) destroy, cut or remove any timber, trees or firewood standing or lying thereon, or (5) permit others to commit any of said acts. Licensee shall not do or suffer to be done in or upon said License Area any act or thing which is or may be a nuisance. Licensee shall not use or permit others to use the License Area for any unlawful or immoral purposes.

The License Area shall not be used for displaying signs and notices other than those connected with the use of the License Area contemplated by this License.

Licensee shall, at its expense and to the satisfaction of Licensor, keep and maintain the License Area in good order and repair and in a neat and safe condition.

b. The Work and Liens.

(i) All of the activity permitted by this License shall be done in a good and workmanlike manner. All soil barriers and all unnatural material placed on the License Area by Licensee shall be removed from the License Area and the License Area left in a clean and neat condition before the end of the term of this License. Upon completion of all activity permitted under this License, Licensee and Licensor shall inspect the License Area jointly and Licensor shall determine at that time if any site restoration work must be performed by Licensee on the License Area. Licensor shall give Licensee written notification of any work to be performed and terms under which the work shall be performed.

(ii) Licensor has the right to post notices of nonresponsibility upon the License Area, and to otherwise notify, actually or constructively, any entity or persons applying services or materials to the License Area that Licensor is not responsible for the the cost thereof. Licensee covenants and agrees to hold Licensor and the License Area harmless from any mechanic's or materialmen's liens claimed by any person, firm or corporation employed by or on behalf of Licensee. In the event of the filing of any such lien, Licensee shall cause such lien to be released within five (5) days after Licensor's written notice to do so. Licensee shall indemnify and defend Licensor against all liability, cost and expense (including attorney's fees) incurred by Licensor as a result of any such lien.

6. Indemnification.

a. General.

Licensee agrees to release, hold harmless, indemnify and defend (with counsel approved by Licensor) Licensor from and against all liability, cost and expense (including, without limitation, attorney's fees, in addition to costs of suit and judgment) for loss of or damage to any property or loss of the use thereof or for injury to or death of any person when arising or resulting from:

(i) The use of the License Area by Licensee, its agents, employees, or contractors (other than an agent, employee or invitee of Licensor), or

(ii) Licensee's breach of any provision of this License, whether or not caused or contributed to by the negligence, active or passive, of Licensor, its employees, agents, or invitees.

b. Environmental Impairment.

Licensee, at its expense, shall comply with all applicable laws, regulations, rules, orders and permits, with respect to the use of the License Area, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of Licensor.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the License Area due to Licensee's use and occupancy thereof, Licensee, at its

expense, shall be obligated to clean all the property affected thereby, whether owned or controlled by Licensor or any third person, to the satisfaction of Licensor (insofar as the property owned or controlled by Licensor is concerned) and any governmental body having jurisdiction thereover.

Licensee shall indemnify, hold harmless and defend Licensor against all liability, cost and expense (including, without limitation, any fines, penalties, judgments, litigation costs and attorney's fees) incurred by Licensor as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises before, during, or after the License term, unless such liability, cost or expense is proximately caused solely by the active negligence of Licensor.

Licensee shall pay all amounts to Licensor, within forty-five (45) days after any such amounts become due.

c. Licensor.

The term "Licensor", as used in this License, includes Licensor (California Tahoe Conservancy), its member(s), officer(s), agent(s) or employee(s), and the successors and assigns of any of them.

7. Permits.

This License is not a permit. Licensee will obtain all necessary permits or evidence of agency approvals and will furnish Licensor with copies thereof prior to use of the License Area.

8. Termination or Expiration.

a. General.

Termination, revocation or expiration of this License shall not release either party from liability resulting from an event which occurred prior to such termination, revocation or expiration.

b. Surrender of License.

Upon termination, revocation or expiration of this License, Licensee shall discontinue the use of the License Area and remove all other property of Licensee from the License Area. Licensee shall restore the License Area as nearly as possible to the condition in which it existed prior to the use of the License Area and shall perform any additional restoration required by this License. Property of Licensee not removed from the License Area within sixty (60) days after the termination, revocation or expiration of this License shall, at the option of Licensor, become the property of the Licensor. Licensee agrees to reimburse Licensor for the cost and expense incurred by Licensor in restoration of the License Area and disposing of said property of Licensee not so removed. If Licensee fails to terminate Licensee's use of the License Area upon termination or revocation of this License (or expiration if Licensor does not consent to holdover), Licensor shall have the right, to the

extent permitted by law, to re-enter the License Area and remove Licensee and any person or entity claiming through Licensee from the License Area.

9. Default.

Licensee shall be in default under this License if Licensee fails or refuses to perform any covenant or condition of this License.

If Licensee fails to cure a default within fifteen (15) days after notice from Licensor to do so, Licensor shall have the right, without further notice and in addition to any other remedies Licensor may have at law or equity, to revoke this License forthwith and to terminate Licensee's use of the License Area.

10. Nonwaiver.

Licensor's failure to enforce or exercise its rights under any term, condition or covenant of this License shall not be construed as a waiver of such rights or such term, covenant or condition.

11. Personal Nature of License.

This License is personal to Licensee. As such, Licensee has no right to assign this License in whole or in part or sublicense the License Area in whole or in part.

12. Notices.

Any demands, notices or statements herein requested or required to be given by one party to the other shall be in writing. Delivery of such written notice, demand or statement shall be conclusively taken as sufficient if and when delivered in person or deposited in the United States mail, registered or certified, postage fully prepaid, addressed, if to Licensor at 1061 Third Street, South Lake Tahoe, CA 96150, and, if to Licensee at 924B Emerald Bay Road, South Lake Tahoe, CA 96150. Either party hereto may by written notice change the address to which such demands, notices or statements may be sent. All payments from Licensee to Licensor shall be made to Licensor at Licensor's address for notices unless Licensor gives Licensee notice of another address for making payments. Licensor may change by written notice the address where payments to Licensor shall be made.

Licensee shall notify Licensor (Peter Eichar, Project Coordinator, 530-543-6046) in writing or by telephone 48 hours prior to work commencing on the License Area.

13. Contract Administrator.

The County Officer or employee with responsibility for administering this Agreement is Robert S. Slater, Deputy Director, Engineering, Department of Transportation, or successor.

14. Time is of the essence of this License.

Time is of the essence of this Agreement.

15. Entire Agreement.

The contents of this License are the entire Agreement between the parties, and supersede all written and oral communication between the parties prior to its execution, all understanding and negotiations regarding the same having been merged herein, it being their intention that this be an integrated agreement.

This License shall not be modified except by the written Agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first herein written.

CALIFORNIA TAHOE CONSERVANCY

LICENSOR

By: _____
Patrick Wright
Executive Officer

EL DORADO COUNTY

LICENSEE

By: _____
Chairman, Board of Supervisors

Date: _____

ATTEST:
Cindy Keck
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Date: _____