

Conservancy License Agreement Number 2007-LT-34
El Dorado County License Agreement Number 2007-05-19A

El Dorado County Assessor Parcel Numbers 033-592-03, 033-601-04, 033-603-01, 033-603-02, 033-603-03, 033-603-06, 034-392-05

LICENSE AGREEMENT

This License Agreement is made this 15th day of May, 2007, by and between the California Tahoe Conservancy, an agency of the State of California (hereinafter "Licensor") and the County of El Dorado (hereinafter "Licensee").

RECITALS

WHEREAS, Licensor is the owner of that certain real property located in the County of El Dorado, State of California, identified as El Dorado County Assessor Parcels numbered 033-592-03 (more particularly described in "Exhibit A"), 033-601-04, 033-603-01, 033-603-02, 033-603-03, 033-603-06 (more particularly described in "Exhibit B-1"), and 034-392-05 (more particularly described in "Exhibit B-2"). Said El Dorado County Assessor Parcels shall hereinafter be referred to collectively as the "Property;"

WHEREAS, Licensor and Licensee have agreed that it would be in their mutual best interest for Licensor to grant Licensee permission to construct and operate a Class I bike trail over the area identified in Exhibit A as "Bike Trail." Said area, together with an adjacent area reasonably necessary to perform the activities permitted under this License Agreement, shall hereinafter be referred to as "License Area A;"

WHEREAS, Licensor and Licensee have agreed that it would be in their mutual best interest for Licensor to grant Licensee permission to perform revegetation and restoration work over the area identified in Exhibits B-1 and B-2 as "Revegetate." Said area, together with an adjacent area reasonably necessary to perform the activities permitted under this License Agreement, shall hereinafter be referred to as "License Areas B-1 and B-2;"

WHEREAS, License Area A and License Areas B-1 and B-2 shall hereinafter be referred to, if together, as "License Areas;"

WHEREAS, on December 16, 2005, Licensor and Licensee entered into an Agreement for the funding of the Sawmill 1 Bike Path Project (Contract Number CTA-05015). Said Agreement is hereby incorporated into and made a part of this License Agreement;

WHEREAS, pursuant to Government Code Section 66907.8 and Conservancy Resolution Number 06-05-02, Licensor is authorized to grant Licensee permission to use the License Areas.

NOW THEREFORE, for valuable, adequate, and sufficient consideration, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants, conditions, and restrictions hereinafter set forth, Licensor grants Licensee permission to use the License Areas on the terms and subject to the limitations set forth herein.

Term of License Agreement

The term of this License Agreement is 20 years, beginning on May 15, 2007. Unless terminated earlier, this License Agreement shall terminate on May 15, 2027.

Description and Purpose of License Agreement

Licensee, its employees, agents, consultants and contractors, shall have the right to use License Area A to plan, design, construct, operate, and maintain a Class I bike trail for public use (hereinafter, the "Bike Trail").

Licensee, its employees, agents, consultants and contractors, shall have the right to use License Areas B-1 and B-2 to plan, design, perform, and maintain revegetation and restoration work (hereinafter, the "Revegetation Work").

Licensee may enter and use the License Areas solely for the purposes set forth above.

Reserved Rights

In addition to the right to use the License Areas for all other purposes not inconsistent with this License Agreement, Licensor reserves the following rights:

1. The right to approve alterations to the land and construction of improvements within the License Areas.
2. All development rights, building allocations and allowable land coverage recognized by the Tahoe Regional Planning Agency ("TRPA"), and any other regulatory agency having jurisdiction over the Property.
3. The right to perform activities within the License Areas, provided such activities do not impair Licensee's reasonable exercise of its rights under this License Agreement.

Restrictions on Licensee's Rights

1. With the exception of modifications necessary to perform the activities authorized by this License Agreement, Licensee shall maintain the terrain of the License Areas in its present condition.

2. Licensee shall not dump debris, trash, ashes, garbage, waste or other unsightly or offensive materials within the License Areas.
3. Except as necessary to perform the activities authorized by this License Agreement, Licensee shall not remove, destroy, or cut trees, shrubs, or other vegetation within the License Areas.
4. Except as necessary to perform the activities permitted under this License Agreement, Licensee shall not store building materials or equipment in the License Areas.
5. Except as necessary to perform the activities permitted under this License Agreement, or to carry out fire protection, Licensee shall not permit motor vehicles in the License Areas.
6. Licensee shall not use the License Areas for the display of signs and notices, other than those used in connection with the activities contemplated by this License Agreement.
7. Licensee's right to use the License Areas is non-exclusive, and Licensee shall not bar any other uses which are compatible with general public access. Licensee may construct temporary fences or gates to protect the general public or the equipment used in the performance of the activities permitted under this License Agreement.

Maintenance

Licensee shall at its own expense operate and maintain the License Areas, and shall maintain any improvements, including trails, fences, signs, drainage devices and vegetation, in a good and safe condition, which shall include the removal of hazardous conditions and the construction of erosion control improvements, as required by this License Agreement.

Following construction of the Bike Trail, Licensee shall restore and revegetate all areas temporarily disturbed by the construction. Best Management Practices (BMPs) will be installed as specified in Licensee's approved permits.

In the event Licensee fails to perform its maintenance obligations in a satisfactory manner, Licensor shall give Licensee thirty (30) days written notice to cure. If Licensee fails to cure following said notice, Licensor shall have the right to take action necessary to correct the failure, and Licensee agrees to reimburse Licensor for its reasonable costs and expenses.

Permits

Prior to the construction of the improvements, and prior to making any alterations or repairs to the improvements, Licensee shall obtain and comply with all required approvals and permits, and shall furnish evidence of such compliance to Licensor.

Hazardous Materials

Hazardous materials are those substances listed in Title 22, Division 4.5, Chapter 11 of the California Code of Regulations, as well as any other substance which may pose a hazard to health or the environment.

Except as otherwise permitted in this License Agreement, Licensee shall not use, create, store, deposit, or allow any hazardous substances within the License Areas. Licensee may keep products necessary for routine cleaning or to perform the activities permitted under this License Agreement in the License Areas in quantities reasonable for immediate needs.

Should Licensee or its employees, agents, or contractors cause any leakage, spillage, or pollution of any hazardous materials within the License Areas, Licensee, at its expense, shall clean and decontaminate the affected area to the satisfaction of Licensor and any governmental agencies having jurisdiction thereover.

Licensee shall promptly and fully reimburse and indemnify Licensor should the Licensor suffer or incur any fine, penalty, cost, or charge due to leakage, spillage, or pollution within the License Areas that is caused by Licensee, its agents, employees, or contractors.

Licensee shall bear all expenses of compliance with Federal, State or local environmental laws, including any fines and judgments levied against Licensor or Licensee arising from Licensee's construction, revegetation and maintenance in the License Areas.

Liability and Indemnification

Licensee agrees to indemnify, protect, defend, and hold harmless Licensor, and Licensee waives all right to recourse against Licensor, including the right to contribution or indemnification, for any and all claims, demands, costs, expenses, liabilities, and losses arising out of any damage or injury to any person or persons, including Licensor, or property of any kind whatsoever and to whomsoever belonging, including Licensor, from any cause or causes arising from Licensee's construction, revegetation and maintenance in the License Areas, except for matters arising out of the sole or active negligence of Licensor or its agents.

Insurance

Licensee represents that it has made provisions to meet future tort liabilities by establishing a self-insurance reserve fund, and that the Licensee's Board of Supervisors expects the amount of said fund to be sufficient, for the foreseeable future, to meet all foreseeable risks of liability to Licensee arising out of the Licensee's rights and obligations set forth in this License Agreement.

In the event that Licensee enters into an agreement with an independent contractor or other third party other than an agency of the State of California for construction in the License Areas, such agreement shall include a mandatory insurance provision requiring such contractor to maintain throughout the period of construction a comprehensive property damage and general liability insurance policy with a combined general liability, bodily injury and property damage limit of

\$1,000,000, insuring against all liability of Licensee and its authorized representatives and contractors arising out of and in connection with Licensee's or Licensee's contractor's use or occupancy of the License Areas, or Licensee's or Licensee's contractor's use, operation or maintenance of any adjacent property.

All such policies of insurance shall be primary insurance, shall name the Licensor, its members, officers and employees as additional insureds, shall contain an endorsement requiring 30 days' written notice from the insurance company to the Licensor before canceling or changing the coverage, scope or amount of the policy, and shall provide that any right of subrogation against the Licensor is waived.

Fees, Taxes, Liens and Assessments

Licensee covenants and agrees to keep the License Areas free from any mechanic's or material men's liens related to work or services performed under this License Agreement. In the event of the filing of any such lien, Licensee shall cause such lien to be released within five (5) days after the Licensor's written notice to do so. Licensee shall indemnify and defend the Licensor against any and all liability, cost, and expense, including attorney's fees, incurred by the Licensor as a result of any such lien.

Licensee agrees to pay or cause to be paid all taxes and other assessments levied or assessed against the License Areas, resulting from Licensee's use thereof.

Utilities

Licensee shall pay for all water, sewer, electrical and any other utility service supplied to the License Areas. Licensee shall have the right to grant franchises or licenses, or enter into other related agreements necessary for the installation of such utilities as may be reasonably necessary for the operation and maintenance of the improvements contemplated under this License Agreement.

Prior Encumbrances

This Agreement is subject to all easements, leases, liens, conditions, restrictions, encumbrances and claims of title that may affect the License Areas. Licensee accepts the License Areas (including, without limitation, Licensor-owned improvements, if any) without representation or warranty as to their condition, or the condition of improvements thereupon, or for the existence of any violation of any municipal, County, State or Federal law, order, rule, regulation or ordinance.

Default

Licensee shall be in default under this License Agreement if Licensee fails or refuses to perform any of its covenants or conditions. Any act or any conveyance, contract, or authorization by Licensee, whether written or oral, which uses, causes to be used, or permits use of the License Areas contrary to the terms of this License Agreement shall be deemed a breach thereof.

If Licensee fails to cure a default within sixty (60) working 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 in equity, to cancel this License Agreement and to retake possession of the License Areas.

Enforcement

Licensor may bring any action in court necessary to enforce this License Agreement, either at law or in equity, including, but not limited to, an action for mandatory or prohibitory injunctive relief to correct, terminate, or prevent a breaching or probable breaching activity, and/or to enforce the terms and provisions hereof by specific performance. The type of action brought shall be at Licensor's discretion.

Should Licensee be in default under this License Agreement, Licensee agrees to pay any and all costs incurred in monitoring compliance with its terms. Any costs incurred by the violation of the terms of this License Agreement by Licensee or its employees, agents, representatives, or contractors, shall be born by Licensee, or by its employees, agents, representatives, or contractors against whom a judgment may be entered, or, in the event that Licensor secures redress without a completed judicial proceeding, by Licensee or those of its employees, agents, representatives, or contractors who are otherwise determined to be responsible for the unauthorized activity. In the event that either party brings an action to enforce the terms of this Agreement and proceeds to judgment, the prevailing party shall be entitled to recover from the non-prevailing party, without limitation, all costs of suit including attorney's fees.

Right of Entry

Licensor or its agents may at any time enter and inspect the License Areas for the purpose of ascertaining whether Licensee is complying with the terms of this License Agreement. This may include taking samples of substances and materials for testing.

Casualty Loss

If the Bike Trail should be totally or partially destroyed, rendering it totally or partially inaccessible or unusable for the purposes set forth in this License Agreement, Licensee may either restore the Bike Trail to substantially the same condition which existed immediately before destruction, or if the Licensee elects not to restore the Bike Trail, Licensee shall restore the land to the condition existing immediately prior to the execution of this License Agreement and this License Agreement shall terminate.

Compliance with Laws

Licensee shall comply with all laws, ordinances, governmental rules and regulations, and shall furnish evidence of such compliance upon request. Any modifications or improvements to the License Areas required by such laws shall be the responsibility of the Licensee. Licensee shall comply with all required permits and approvals of the Licensor or any governmental entity having jurisdiction over the Property. Licensee agrees to indemnify Licensor against any and all

liability, cost, expense, fines or penalties which the Licensor may incur due to Licensee's failure to comply therewith.

Abandonment or Surrender of License Areas

Upon the termination, abandonment or surrender of its rights under this License Agreement, Licensee shall without further notice execute a Quit Claim Deed or other suitable instrument relinquishing all of Licensee's right, title, and interest in the License Areas to Licensor.

If requested by Licensor, Licensee shall remove any personal property from the License Areas, and Licensee shall perform all restoration made necessary by the removal of its improvements or personal property, or of any authorized or unauthorized alterations, and shall, to the extent feasible, restore the License Areas to the condition which existed immediately prior to the construction of the improvements. Upon Licensee's failure or refusal to make all necessary restorations and remove from the License Areas said improvements and personal property, said improvements and personal property shall, at the option of the Licensor, become Licensor's sole property; or if the Licensor so elects, it may remove from the License Areas said improvements and personal property, and Licensor may restore the land to substantially the same condition which existed at the time Licensee commenced use thereof, the cost of which Licensee hereby agrees to pay to the Licensor upon demand.

Forbearance Not a Waiver

Any forbearance on the part of either party hereto to enforce the terms and provisions of this License Agreement shall not be deemed a waiver of that party's legal rights with respect to any current or subsequent violation or breach.

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 demands, notices, or statements 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, and addressed, if to Licensor, at 1061 Third Street, South Lake Tahoe, CA 96150, and if to Licensee, at 924 B 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.

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.

Severability

The provisions of this License Agreement are intended to be severable, separate, and distinct from each other. If any provision hereof is determined to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

Captions

The captions on the paragraphs of this Agreement are for convenience only and shall be of no force and affect whatsoever in interpreting the obligations or rights of the parties hereunder.

Entire Agreement

This License Agreement contains the entire agreement between Licensor and Licensee, relating to the rights granted and the obligations assumed herein. Any oral representations or modifications of this License Agreement shall be of no force and effect unless embodied in a subsequent modification in writing signed by the party to be charged.

Effective Date

This Agreement shall become effective on the 15th day of May 2007.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first set forth above.

LICENSOR
California Tahoe Conservancy
1061 Third Street
South Lake Tahoe, CA 96150

LICENSEE
El Dorado County

By: _____
Patrick Wright
Executive Officer

By: _____
Chairman, Board of Supervisors

ATTEST:
Cindy Keck
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Date: _____

