

**Memorandum of Understanding
between
EL DORADO COUNTY
and
STATE OF CALIFORNIA
CALIFORNIA TAHOE CONSERVANCY
for the
SOUTH TAHOE GREENWAY SHARED USE TRAIL PHASE 1b & 2 PROJECT**

This Memorandum of Understanding (“MOU”) for the South Tahoe Greenway Shared Use Trail Phase 1b & 2 Project (“PROJECT”), as more specifically described in Exhibit 1, is entered into this ____ day of _____, 2018 (“Effective Date”), among the California Tahoe Conservancy (“CONSERVANCY”), a State Agency, and the County of El Dorado (“COUNTY”), as may also be referred to throughout this MOU (singularly as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, the Lake Tahoe Bikeway Partnership partners have committed to working together in order to realize the significant benefits of a connected network of bicycle and pedestrian facilities within the Lake Tahoe Basin; and

WHEREAS, the Lake Tahoe Bikeway project is a core component of the Lake Tahoe Region’s transportation improvement strategy, and bikeway partners have prioritized trail segments based on the enhanced safety and quality-of-life benefits they offer the Lake Tahoe Region; and

WHEREAS, the CONSERVANCY, COUNTY, and City of South Lake Tahoe (City), all agencies participating in the Lake Tahoe Bikeway Partnership, have partnered on the delivery of fifteen bikeway projects on Lake Tahoe’s south shore since 1986; and

WHEREAS, the PROJECT includes one mile of proposed paved shared use trail to be constructed on lands within the boundaries of the City and COUNTY, in the State of California; and

WHEREAS, the PROJECT is included as one of the priority infrastructure projects for the Lake Tahoe Bikeway in order to enhance connectivity, increase trail use and attractiveness, and improve user safety of the regional bike trail system; and

WHEREAS, it is the intent of the Parties to continue to further their respective agency missions and the transportation goals of the Lake Tahoe Region and the Lake Tahoe Bikeway Partnership for the public good through the construction and maintenance of the PROJECT; and

WHEREAS, the COUNTY participates with the City and Tahoe Paradise Recreation and Parks District on the South Lake Tahoe Recreation Facilities Joint Powers Authority (JPA), a Mello-Roos Community Facilities District (CFD) formed to enhance the recreational facilities within the Lake Tahoe Region portion of the COUNTY, including providing maintenance funding (\$5,000/year per mile) for new Class I bicycle paths within the CFD boundary; and

WHEREAS, the CONSERVANCY, the City, and the Lake Tahoe Community College District (District) have negotiated an agreement to formalize coordination between partners, define land management roles, and facilitate maintenance of the entire 3.86-mile South Tahoe Greenway Shared Use Trail; and

WHEREAS, the CONSERVANCY secured \$1,928,000 in Federal Active Transportation Program (ATP) funding from California Department of Transportation (Caltrans), \$650,000 from the District, and \$390,000 from the Tahoe Transportation District (TTD) Congestion Mitigation and Air Quality Funds; and the CONSERVANCY shall grant the remaining funding needed to complete the PROJECT; and

WHEREAS, the COUNTY's expertise in bike trail design and construction makes it the appropriate entity to accept leadership of the PROJECT and the CONSERVANCY seeks to transfer funding to the COUNTY so that the COUNTY may complete implementation of the PROJECT; and

WHEREAS, per the 2019 ATP Guidelines–Final Draft, dated January 2018, when a project funded by ATP funds is to be implemented by an agency other than the agency that was awarded the ATP funds, a copy of the Memorandum of Understanding between the Parties must be submitted with the first request for allocation; and

WHEREAS, on September 15, 2011, the CONSERVANCY's Governing Board adopted the South Tahoe Greenway Shared Use Trail Mitigated Negative Declaration (MND) for the PROJECT (Resolution 11-09-07), and on March 17, 2016, the CONSERVANCY's Governing Board adopted an MND supplement that evaluated PROJECT trail modifications and a land exchange between the City, the District, and the CONSERVANCY (Resolution 16-03-04); and

WHEREAS, on February 21, 2018 Caltrans determined that the PROJECT has no significant impacts on the environment as defined by the National Environmental Policy Act (NEPA), that there are no unusual circumstances as described in 23 C.F.R. § 771.117(b), and that the PROJECT is categorically exempt from the requirement to prepare an Environmental Assessment or Environmental Impact Statement under NEPA; and

WHEREAS, the CONSERVANCY's Governing Board and the COUNTY Board of Supervisors duly authorize this MOU for the purposes of defining ownership, implementation, and operation/maintenance responsibilities of the PROJECT as reflected in the following actions: CONSERVANCY Resolutions _____, 17-03-03, 17-01-01, 16-03-04, 14-05-06, 13-06-08, 11-09-07; COUNTY Board of Supervisors action to approve this

MOU at their regular meeting on _____, 2018; and

WHEREAS, the Parties desire to formalize their continuing commitment to implement the PROJECT through signing this MOU.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants, and conditions of the Parties as hereinafter set forth, the Parties agree to take the following actions for the purposes of implementation of the PROJECT.

PURPOSE

The purpose of this MOU is to define the terms and conditions under which the Parties will cooperate and coordinate on delivery of all PROJECT activities, as described further below. Specifically, in order to coordinate the approach to planning and implementation for optimal effectiveness of PROJECT delivery, this MOU transfers certain PROJECT delivery responsibilities under the various funding sources from the CONSERVANCY to the COUNTY.

RESPONSIBILITIES OF PARTIES

CONSERVANCY

The CONSERVANCY shall enter into a separate PROJECT grant agreement (Grant Agreement) with the COUNTY in order to transfer the funding required to complete delivery of the PROJECT through the construction phase (\$3,182,000).

The CONSERVANCY agrees to work with the COUNTY and all permitting agencies to successfully transfer the permittee role for the PROJECT to the COUNTY to enable successful PROJECT delivery.

The CONSERVANCY shall acquire and furnish all right of way necessary to complete the design and construction, and in compliance with the current version of the Caltrans Right of Way Manual.

COUNTY

The COUNTY shall assume the lead role for remaining PROJECT activities, excluding right of way activities as described above, including PROJECT implementation and trail planning, consistent with applicable grant funding requirements.

The COUNTY shall coordinate, obtain, implement, renew, and amend all required permits from environmental regulatory agencies, including but not limited to the United States Army Corps of Engineers, Lahontan Regional Water Quality Control Board, Tahoe Regional

Planning Agency, and California Department of Fish and Wildlife.

The COUNTY, in its role as a Responsible Agency pursuant to the California Environmental Quality Act (CEQA), shall adopt and implement all mitigation measures and perform all monitoring required by CEQA and NEPA.

The COUNTY shall prepare plans, specifications, and estimates for the PROJECT in accordance with the current version of the Caltrans Local Assistance Procedures Manual.

The COUNTY shall certify to Caltrans that legal and physical control of right of way ready for PROJECT construction has been obtained and that all right of way was acquired in accordance with applicable State and Federal laws and regulations.

The COUNTY shall advertise, award, and administer the construction contract for the PROJECT in accordance with the Caltrans Local Assistance Procedures Manual.

The COUNTY and the City may execute a future agreement that assigns the City's maintenance responsibilities for Phases 1b and/or 2 of the PROJECT to the COUNTY.

The COUNTY shall assume the grantee role for all funding sources for PROJECT delivery, with the exception of the funding coming from the District, which will be administered through the CONSERVANCY's Grant Agreement.

MISCELLANEOUS PROVISIONS

Subsequent Agreements and Approvals.

The Parties recognize that certain activities and responsibilities described in this MOU will require the execution of separate agreements, including but not limited to grant agreements and issuance of a license or access rights to real property owned by the CONSERVANCY. These separate agreements may be contingent upon subsequent approval from the CONSERVANCY'S Governing Board and State oversight agencies, including but not limited to the Department of Finance and the Department of General Services. The Parties mutually agree that in the event any necessary approval from the CONSERVANCY'S Governing Board or any State oversight agency is denied or otherwise withheld, this MOU shall be non-binding with respect to future obligations, and the CONSERVANCY shall have no liability to pay any funds whatsoever or to furnish any other considerations under this MOU.

Budget Contingency.

It is mutually agreed that if the California State Budget Act (Budget Act) of the current year or any subsequent years covered under this MOU does not appropriate sufficient funds for the PROJECT or activity, this MOU shall be non-binding with respect to future obligations, and the CONSERVANCY shall have no liability to pay any funds whatsoever or to furnish any other considerations under this MOU.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this PROJECT or activity, either Party shall have the option to either cancel this MOU without liability, or offer an amendment to reflect the reduced amount.

No Funding Obligation.

Specific work projects or activities that involve the transfer of funds, services, or interests in real property among the signatories to this MOU and other agencies/entities will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

Insufficient Funds to Complete.

If, at any time prior to construction contract award, either or both Parties determine that there are insufficient funds to complete their financial obligations made pursuant to this MOU, the Parties will agree to either delay PROJECT completion until sufficient funds exist or to terminate this MOU by written notice to the other Party. Any subsequent modification or termination of the Grant Agreement shall be governed solely by the terms of that Grant Agreement.

Revising Environmental Documents.

If, during preparation of plans, specifications, and estimates, during performance of right of way activities, or during PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA, the Parties will cooperate to amend this MOU to include completion of those tasks by the COUNTY.

Additional Requirements.

In addition to CONSERVANCY local assistance grant funding, the PROJECT is funded in part through the Caltrans federally funded Active Transportation Program, the District, and the TTD Congestion Mitigation and Air Quality program, and as such may be subject to additional requirements, including but not limited to compliance with the Caltrans Local Assistance Procedures Manual, Caltrans Environmental Handbooks, and the Caltrans Right of Way Manual.

Information Sharing, Inspection, & Reporting.

The Parties will collectively meet to provide and share data and information on the status of the PROJECT periodically, consistent with standard grantee requirements.

Effective Date.

This MOU shall be effective upon execution by both Parties.

Amendment.

This MOU may be amended as necessary by mutual consent of both Parties by execution of a written amendment signed and dated by both Parties.

Termination.

Either Party may terminate its participation in this MOU by providing sixty (60) day written notice to the other Party.

Other Related Agreements.

This MOU in no way restricts the Parties from participating in similar understandings or activities with other public or private agencies.

Public Documents.

Information provided to any government agency pursuant to this MOU may be subject to State law, including but not limited to the Public Records Act (Government Code section 6250 et seq.).

Indemnification.

To the furthest extent allowed under State law, each Party shall defend, indemnify, and hold harmless each of the other Parties, their officers, employees, and agents from any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this MOU but only in proportion to and to the extent such liability, loss expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions by the indemnifying Parties. This provision shall survive the termination or expiration of this MOU.

Liability for the acts of the Parties shall be controlled by the provisions of Government Code Title 1, division 3.6, Part 2 et seq., and Part 7 et seq., relating to indemnification of public employees and the defense of actions arising out of any act or omission occurring in the scope of their employment.

Counterparts.

This MOU may be executed in one or more counterparts, each of which shall be deemed an original.

Resolution of Disputes.

If a dispute arises relating to this MOU, the Parties shall first attempt to resolve it through informal discussions involving both Parties. Either Party may convene such discussions by written notice, and each Party shall reasonably accommodate the other Party with respect to scheduling. If the dispute is not resolved in this manner within thirty (30) days from the date one Party first contacts the other to commence informal discussions hereunder, either Party may submit the matter to mediation by providing written notice to the other Party. The cost of such mediation shall be borne equally by the Parties.

Governing Law.

This MOU must be construed according to its fair meaning and as if prepared by both Parties. This MOU must be construed in accordance with the laws of the State of California in effect on the Effective Date. Any action or proceeding seeking any relief under or with respect to this MOU shall be brought solely in the Superior Court of the State of California for the County of El Dorado.

Notices.

Any notice permitted or required pursuant to this MOU shall be in writing, delivered to the appropriate persons listed below. Notices may be delivered by mail, electronic mail, or other electronic means. In the event that a Party is unresponsive to a notice delivered by electronic means the notice will be delivered personally or shall be deemed to be given fifteen (15) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed to the persons listed below, or at such other address as either Party may from time to time specify to the other Party in writing. Notices shall be transmitted so that they are received within the specified deadlines.

TO THE COUNTY:

El Dorado County Department of Transportation
Attn: John Kahling, Deputy Director, Engineering
2441 Headington Road
Placerville, CA 95667
Email: john.kahling@edcgov.us
Phone: 530-642-4974

With copy to:
El Dorado County Counsel
Attn: David A. Livingston, Chief Assistant County Counsel
330 Fair Lane
Placerville, CA 95667
Email: david.livingston@edcgov.us
Phone: 530-621-5770

TO THE CONSERVANCY:

California Tahoe Conservancy
Attn: Patrick Wright, Executive Director
1061 Third Street
South Lake Tahoe, CA 96150
Email: Patrick.Wright@tahoe.ca.gov
Phone: 530-543-6002

with copy to:

Michael Steeves, Staff Counsel
1061 Third Street
South Lake Tahoe, CA 96150
Email: Michael.Steeves@tahoe.ca.gov
Phone: 530-543-6023

Contract Administrator.

The COUNTY officer or employee with responsibility for administering this MOU is John Kahling, P.E., Deputy Director, Engineering, Department of Transportation, or successor.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed on the date first written above.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
James S. Mitrisin
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- CALIFORNIA TAHOE CONSERVANCY --

By: _____
Patrick Wright
Executive Director

EXHIBIT

Exhibit 1 – PROJECT Location