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January 21, 2010

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Re: Legistar # 09-0506: Amended Lease and MOU for the El Dorado Beach portion of the South Lake Tahoe – El Dorado Recreation Area, Continued from 12/19/09 regular Board meeting,

Meeting Date: January 26, 2010

Dear Members of the Board:

Final versions of the Amended Lease and Memorandum of Understanding (MOU) for the for the El Dorado Beach portion of the South Lake Tahoe – El Dorado Recreation Area are included in this agenda item for your consideration. These documents are needed for the proposed construction of improvements to the 4.74 area site by the City of South Lake Tahoe with funding through grants from the California Tahoe Conservancy (CTC) and the Department of Boating and Waterways.

The Facilities Division has reviewed the previous Board discussions and memos regarding this project. We have made changes to the documents to reflect the concerns raised by the Board and have worked with the counsels from both the County and City to achieve concurrence on the 2 documents. Marked-up copies of both documents have been attached to this memo to facilitate the Board’s review of the final versions. Significant changes have been made to the attachments to both documents to correct previous inconsistencies found.

Many of the concerns raised dealt with the need to appropriately address the lease and master plan for the recreation area prior to considering a MOU with the City. Therefore, the Lease Amendment was brought forward and the language in the MOU discussing an amendment was removed. This final version also incorporates the El Dorado Beach portion of the Recreation Area into the existing Master Plan. The 4.74 acres north of Highway 50 was not included in the 1977 Master Plan. Since the County and the City agree with the planned improvements, including design review and on-site discussions at the November 10, 2009, Board meeting, the lease amendment provides for amending these improvements into the plan. A full Master Plan update is scheduled to occur during 2010.

Another common concern raised by the Board and Public Comment dealt with the potential name change for the project site. The use of the term “Lakeview Commons” by the City and CTC in the grant documents appeared to advance a name change for the actual beach site. Although this was not the intent of the City, this issue has been addressed in

the agreement documents and the use of the “Lakeview Commons” term has been removed. The name called out in the 1972 Lease, “South Lake Tahoe – El Dorado Recreation Area,” remains, along with the “El Dorado Beach” title for the beach site in particular.

In addition to the topics above, several specific issues and questions have been raised. I will try to address most below. Some previous requests were addresses by earlier memos from County Counsel. I have not included those herein. If items are missed, I will be happy to provide additional responses.

July 21, 2009, Board of Supervisors Meeting:

1. Supervisor Sweeney – Question regarding the concessionaire planned for the new plaza level building, dealing with whether it will be leased to someone as a business or operated by the City. Also mentioned that this was not addressed in the MOU.
Response: The City Parks and Recreation Department will operate the concessionaire. This was discussed in open forum at the City Counsel. “City operated” was added to the MOU in paragraph C, Section II.
2. Supervisor Nutting – Question regarding the scenic value of the site from both the campgrounds and traveling public. (Note this has been a common theme of questioning as well. This issue was also raised by Supervisor Sweeney in his 7-20-2009 letter.)
Response: The design reviewed with the Board adheres to the 1972 Lease regarding view sheds and does not impede views of the Lake. The appearance of the site for both the users and the traveling public will be enhanced with the proposed improvements.

October 19, 2009, Memo by Supervisor Sweeney:

Items 1, 2, 3, 4, and 5 – These items dealt with the proposed map or plans, the need to deal with the lease, the potential name change, and the master plan.

Response: These issues have been discussed above.

Item 6 – The combination of the 1972 Lease restrictions on buildings within 750 feet south and east of the highway 50 centerline and the previous deed to the City of 15.48 acres in the southeast corner of the Recreation Area appears to have taken up all of such buildable space.

Response: This issue is going to have to be studied for the Master Plan update. However, it is not part of the current action being requested of the Board. At this time we are only looking north and west of the highway, i.e. the El Dorado Beach portion of the Recreation Area.

Item 7 – County previously used all the coverage in exchange for the buildings at the court facilities. Verify the coverage issue.

Response: The El Dorado Beach projects do not use County coverage. The project actually earns credit for coverage. However, this coverage issue will also be part of the Master Plan update.

November 28, 2009, Email Memo by Supervisor Sweeney:

Item 1 – In both the MOU and amended lease should the deed to the City be referenced?

Response: Staff (DOT and County Counsel) determined that this is not necessary because the 4.74 acres covered by the new documents does not include any land deeded to the City. The deed to the City dealt with the southeast corner of the larger Tract.

Item 2 – In both the MOU and amended lease should the highway right of way be excepted and deed references made?

Response: Staff (DOT and County Counsel) determined that this is not necessary because the 4.74 acres covered by the new documents does not deal with Caltrans right of way. Although the project abuts the highway, any encroachments required by the project for the state highway will be a requirement of the project and the City.

Item 3 – In both the MOU and amended lease should the existing assessor parcel number be in the preambles?

Response: Done. See Lease Amendment paragraph 4 and MOU paragraph D, Section I.

Item 4 – In the MOU Section I – A insert “Scout” lodge.

Response: Done.

Item 5 – In the MOU Section I – B change the local community to “City and County residents.”

Response: Done.

Item 6 – In the MOU Section II – A & C need Attachments 1 and 2.

Response: All attachments were corrected for the documents.

Item 7 – In the MOU Section III – A & C agreement to amend must be removed.

Response: Done. Staff (DOT and County Counsel) agrees that we are addressing the grant requirements in the lease amendment, therefore the verbiage in the MOU is unnecessary.

January 19, 2010, Memo by Supervisor Sweeney:

Item 1 – As to the Amendment to the Lease – in line 2 “on” is missing

Response: Done.

Item 2 – As to the Amendment to the Lease – exhibits are not properly identified.

Response: All exhibits were corrected for the documents.

Item 3 – As to the Memorandum – need to address comments from the above referenced email (11-28-09).

Response: See responses above.

Item 4 – As to the Process – the lease modification must come before the MOU.

Response: Agreed. The City had not sent the signed lease agreement prior to the 1/19/10 Board meeting, however they were to act on that with the MOU. We are presenting both the Lease Amendment and the MOU so that the Lease can be approved first and then the MOU signed. It is important to proceed in proper order.

I hope I have provided all the information the Board needs to proceed with this agenda item. If there are additional issues, or more information is required, please do not hesitate to contact me (x5916).

Contact:

A handwritten signature in cursive script that reads "Russell A. Nygaard". The signature is written in black ink and is positioned above the printed name.

Russell A. Nygaard, P.E.
Deputy Director – Engineering, Facilities
Department of Transportation

Concurrences: County Counsel

Attachments

1. Lease Amendment with "Track-changes"
2. MOU with "Track-changes"

Amended Lease
With Tracked Changes

AMENDMENT TO LEASE OF REAL PROPERTY

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This "Amendment to Lease of Real Property" ("Amendment") is made on January 2010, by and between the County of El Dorado, a political subdivision of the State of California, hereinafter referred to as "Lessor", and the City of South Lake Tahoe, a municipal corporation, hereinafter referred to as "Lessee."

This Amendment amends the "Lease of Real Property" dated December 12, 1972, as previously amended of December 9, 1986 and April 14, 1987. (collectively, "the 1972 Lease.") The 1972 Lease covers a property commonly known as "The South Lake Tahoe- El Dorado Recreation Area". The 1972 Lease rescinded and superseded a previous lease for the same property dated July 1, 1968.

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WHEREAS, the term of the 1972 Lease expires on June 30, 2023; and

WHEREAS, the City has applied for grants from the California Tahoe Conservancy and the Department of Boating and Waterways for funds to construct improvements on a 4.74 acre portion of the leased property commonly known as El Dorado Beach, which is more fully described in Exhibit A and shown on Exhibit B (APN 026-050-06) (hereinafter, "the El Dorado Beach Portion of the Leased Property"); and

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WHEREAS, the 1972 Lease requires a Master Plan for the development of the subject property; and

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WHEREAS, in 1977, a Master Plan was adopted; the Master Plan identified improvements for the portion of South Lake Tahoe- El Dorado Recreation Area south of Highway 50 but did not identify improvements for the El Dorado Beach Portion of the Leased Property; and

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WHEREAS, the County and City have agreed that the El Dorado Beach Improvements as described in Exhibits C and E and shown on Exhibits D, and F, shall serve as an amendment to the 1977 Master Plan for the South Lake Tahoe- El Dorado Recreation Area, and

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WHEREAS, the County and City agree that nothing in this Lease Amendment relieves the City from its obligations to amend the Master Plan prior to commencing any improvements, other than those shown on Exhibits C, D, E, and F, anywhere on the South Lake Tahoe- El Dorado Recreation Area; and

Deleted: for reconstruction of the existing restrooms, as described in Exhibit E and shown on Exhibit F,
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WHEREAS, one of the conditions of the funding agreement with the California Tahoe Conservancy is that the City demonstrate that they have a proprietary right in the property and ability to maintain the El Dorado Beach Portion of the Leased Property for a period of 20 years after the completion of the improvements; and

Deleted: and this approval has been accepted to incorporate these improvements on the El Dorado Beach Portion of the Leased Property into the Master Plan for the South Lake Tahoe- El Dorado Recreation Area; and
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Deleted: for the improvements shown in Exhibit A and B

WHEREAS, the Lessor and Lessee want the improvements to be constructed and maintained in accordance with the terms of the 1972 Lease; and

WHEREAS, the 1972 Lease requires that the "financing, maintenance and execution of the development of all facilities to be constructed or placed on said property, shall be the entire obligation of Lessee. Lessee shall, in addition, maintain all of the subject property at no cost to Lessor." (1972 Lease, p. 15).

FOR AND IN CONSIDERATION of the mutual promises, covenants and conditions set forth herein, IT IS HEREBY MUTUALLY AGREED as follows:

1. The term of the 1972 Lease is hereby extended for the El Dorado Beach Portion of the Leased Property, as more fully described in Exhibit A and shown on Exhibit B, which is attached hereto and incorporated by reference. The Lease for the El Dorado Beach Portion of the Leased Property shall expire upon the earlier of the following events:

(1). Twenty years after the Lessee delivers to the County a notice of completion for the improvements described in the "El Dorado Beach Improvement Project" Exhibit C and shown on Exhibit D.

or (2): December 31, 2034.

2. All other provisions of the 1972 Lease shall remain in full force and effect.

IN WITNESS HEREOF, the parties hereto have executed this Amendment to Lease of Real Property in duplicate on the date and year set opposite their respective signatures.

COUNTY OF EL DORADO

Date _____

By _____
Chairman, Board of Supervisors

CITY OF SOUTH LAKE TAHOE

Date _____

By _____
Mayor

ATTEST:
Suzanne Allen de Sanchez
Clerk of the Board

Deleted: WHEREAS, the 1972 Lease requires a Master Plan for the development of the subject property which was adopted for the southern portion the El Dorado Beach Portion in 1977; and¶

¶

WHEREAS, the northern portion of the El Dorado Beach Portion (north of South Lake Tahoe Boulevard) has never adopted a Master Plan, and this Lease Amendment shall be considered the Master Plan for the northern portion of El Dorado Beach as set forth below; and¶

¶

WHEREAS, the Master Plan for the southern portion of the El Dorado Beach Portion (south of South Lake Tahoe Boulevard) shall be amended by this Amendment to include the northern 4.74 acre lakefront portion.¶

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By _____

Date: _____

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Exhibit "A"

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All that real property in the County of El Dorado, State of California, located in Lot 1 and the Southeast quarter of the Southeast quarter of Section 32, Township 13 North, Range 18 East, M.D.B. & M. and being more particularly described as follows:

Tract B of that Record of Survey entitled "Lot 1, Section 32, T.13 N., R.18 E., M.D.M. recorded in Book 16 of Record of Surveys at Page 30, El Dorado County Recorders Office, Document #65452, on November 16, 1988: containing 4.74 acres more or less.

APN 026-050-06

Exhibit "B"

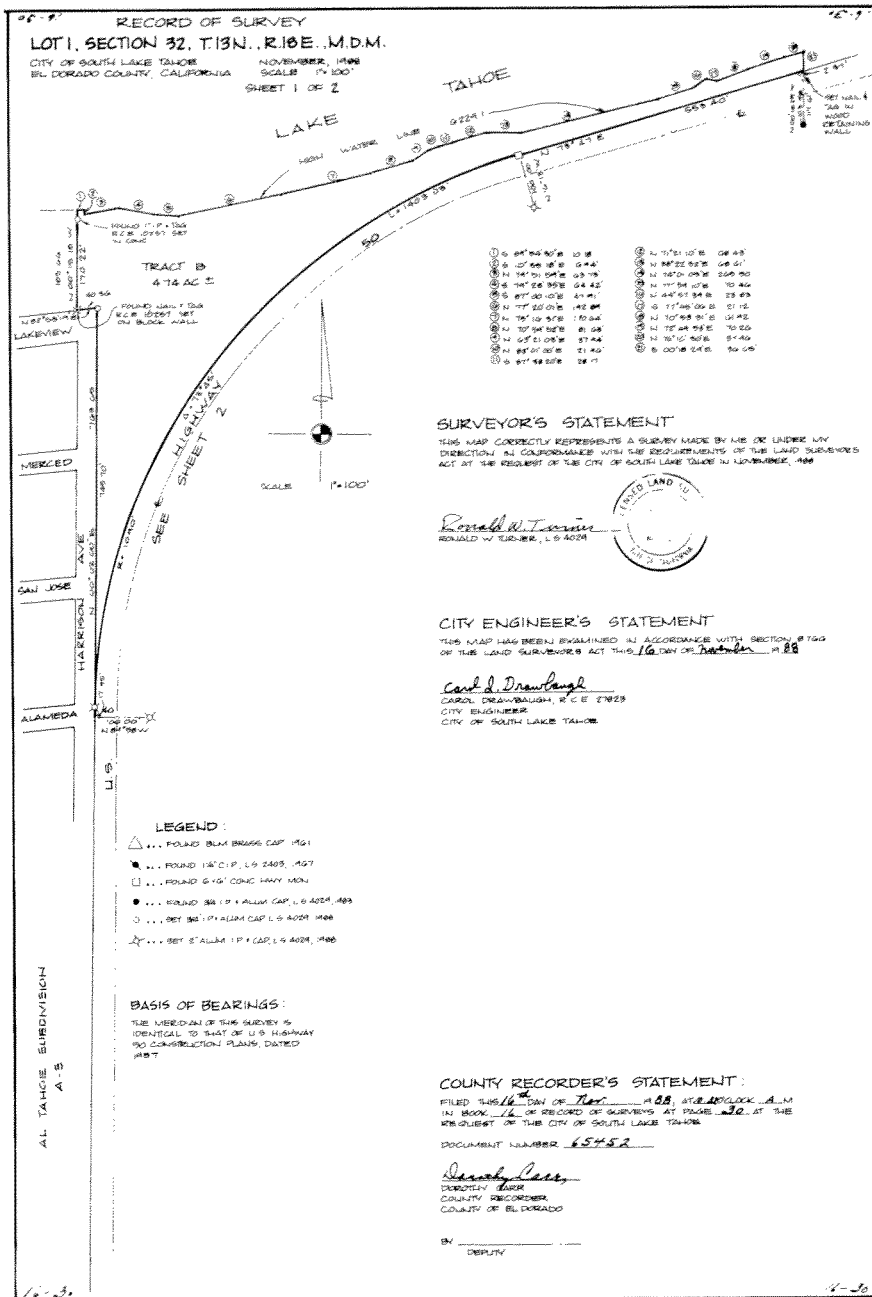


Exhibit “C”

El Dorado Beach Improvement Project

Description

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The proposed Beach Improvement Project will provide visitors and residents alike with a world class open space and gathering place. The project will be the centerpiece of the community’s effort to develop a sustainable and vibrant environment and economy. Key elements of the project will include a boat launch, boat storage facility, concessions, restrooms, lake front open space, picnic and barbeque facilities, immediate beach access, and other civic and recreation facilities. The design and the management of the site will reflect the active sustainable mountain lifestyle with a careful respect for the area’s natural setting. Therefore, project will utilize various strategies to clean and filter storm water run-off before allowing it to return to the natural water system, and will strive toward a zero carbon footprint with all of its new buildings, creating a fully sustainable complex. This project will be a model for sustainable design throughout the Lake Tahoe Region and beyond.

The proposed boathouse is located at the western edge of the recreational plaza and has two levels. The upper level is designed to be accessed from the east, north and south sides at the plaza elevation and includes men’s and women’s restrooms and a ‘heat and serve’ food concessionaire. The lower level is designed to be accessed from the west side at the boat ramp elevation and includes a non-motorized boat storage area for private use (with rental fee), a storage area for non-motorized boat rental, and a small office space. The boat storage facility will accommodate year-round non-motorized boat storage at lake level on the south shore. The storage space will provide for a variety of non-motorized boats, such as up to 50 kayaks or 30 canoes or some combination that could include peddle boats.

Exhibit "D"

El Dorado Beach Improvement Project

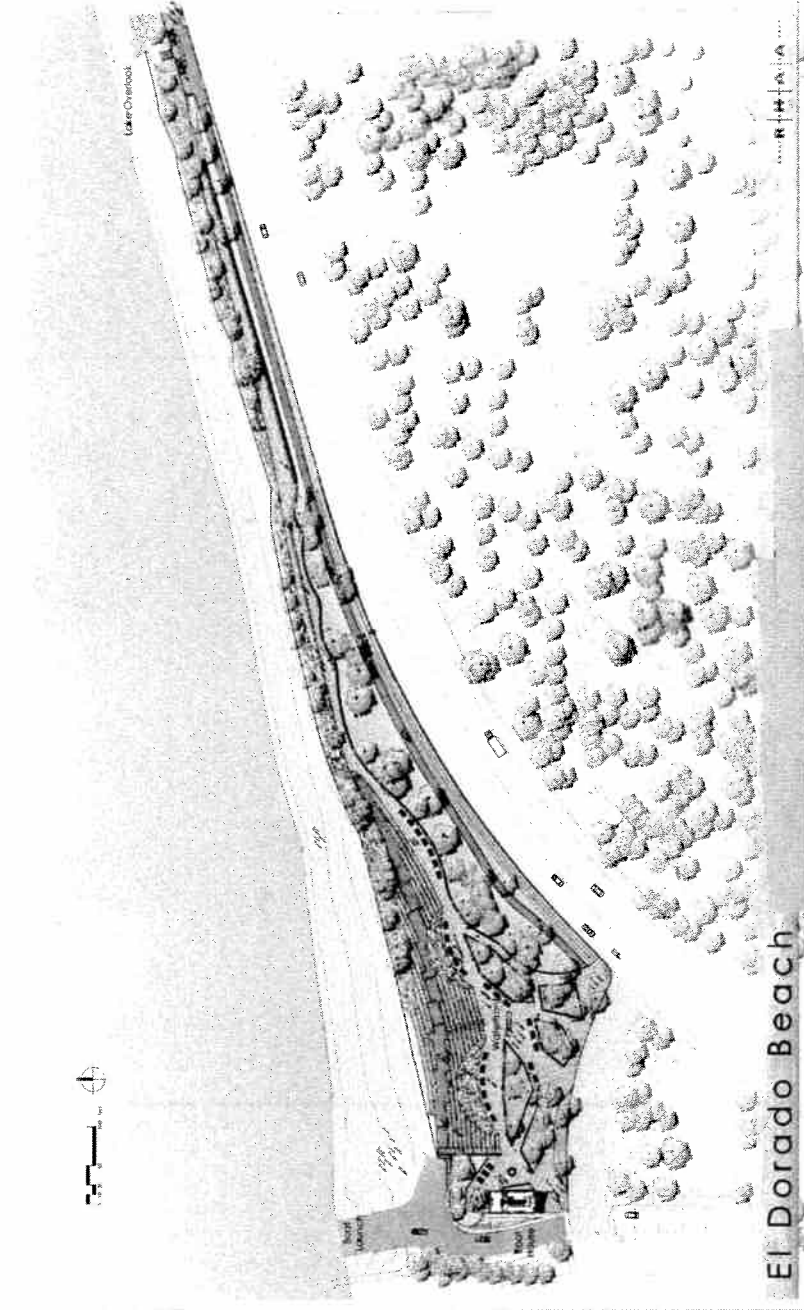
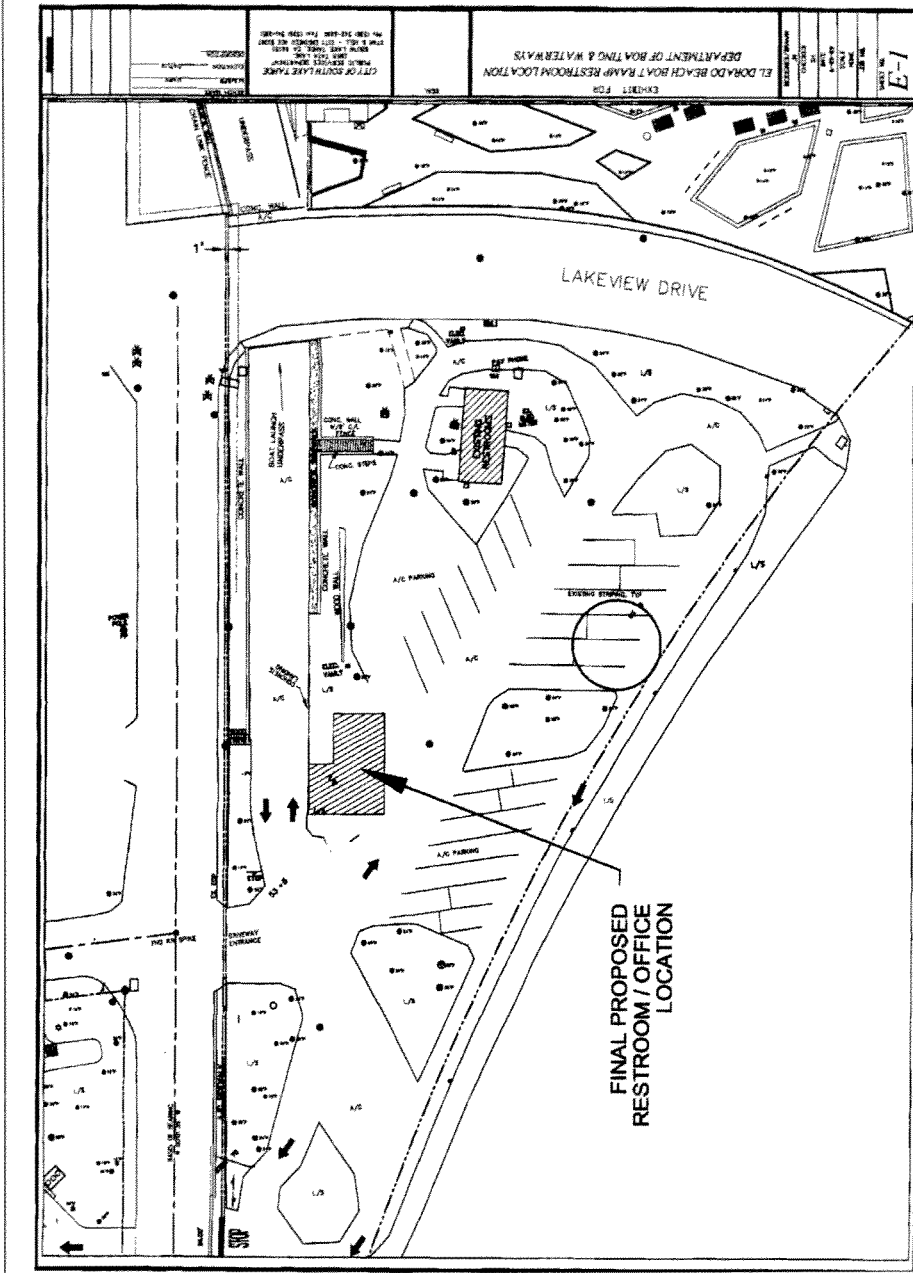


Exhibit “E”**Restroom Relocation and Reconstruction Project****Description**

Reconstruction of the existing restrooms to meet Americans with Disability Act (ADA) requirements and standards for winterization: The restroom facility currently provides four women’s toilet fixtures and two men’s toilet fixtures and one urinal. It does not offer shower facilities. Reconstruction of the restroom is anticipated to include a new facility with up to six stalls for women and six facilities for men to accommodate the large numbers of users. The new restroom facility will need to meet all of the aesthetic requirements of the City, the County, and TRPA. The restroom retrofit includes modificatiojn of the existing drinking fountain to make it wheelchair accessible. Some paving of pedestrian walkways/ramps will be required to get users to the new restrooms. The City also proposes to place parking lot safety lighting that will assist users of the facility.

Exhibit "F"

Restroom Relocation and Reconstruction Project



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Memorandum of Understanding
With Tracked Changes

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY OF EL DORADO
AND THE CITY OF SOUTH LAKE TAHOE
FOR THE CONSTRUCTION OF THE EL DORADO BEACH
IMPROVEMENT PROJECT IN THE SOUTH LAKE TAHOE
RECREATIONAL AREA**

This Memorandum of Understanding (“MOU”) is made and entered into 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”), a municipal corporation. For purposes of this MOU, the County and the City are each a “Party” and are sometimes referred to as the “Parties.”

I. RECITALS

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

B. The City of South Lake Tahoe, El Dorado County, and the California Tahoe Conservancy have cooperatively worked on improving the Property, 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 City and County residents as well as visitors.

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C. The Parties entered a Memorandum of Understanding in May of 2006 for the cooperative assessment of alternative concepts for the Property, 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 Property (APN 026-050-06) 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 funding and construction of the El Dorado Beach Improvements (hereinafter “the Beach Improvement Project”).

II. SCOPE OF BEACH IMPROVEMENT PROJECT

A. The Beach Improvement Project will improve an existing day use recreation area in a portion of the Project Area 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 the Beach Improvement Project is attached hereto, identified as "Attachment 1" and incorporated herein by reference.

B. The Parties have identified the following objectives for the Beach Improvement Project:

- 1) Improve recreational characteristics through reconstruction of existing facilities 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 quality of the waterfront.
- 4) Make the site ADA accessible.

C. The Beach Improvement Project 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 the Beach Improvement Project is attached hereto, identified as "Attachment 2" and incorporated herein by reference. The Beach Improvement Project 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 City operated concessions for food, a restroom, 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 (hereinafter "Beach Improvement Project Improvements").

III. OWNERSHIP, CONDITIONS TO AGREEMENT AND LEASE AND CONDITION OF LEASE EXTENSION

A. The Beach Improvement Project is located on real property owned by the County and leased by the City ("Leased Property") in accordance with a Lease of Real Property Agreement commencing on July 1, 1968 for a term of 55 years and memorialized in an Agreement dated December 12, 1972, fully executed and amended in December 1986 ("Lease Agreement"). This MOU is contingent on the full execution of an amendment to the Lease Agreement accomplishing a Lease Extension to conform to the anticipated funding agreement(s). Accordingly, the Parties shall execute such amendment prior to the award of any contract for the construction or implementation of the Beach Improvement Project. The Lease Extension covers only the El Dorado Beach Portion of the Lease Property as defined in the amendment to the Lease Agreement.

Deleted: In the event that the anticipated funding agreement has terms and conditions that conflict with this MOU and/or the Lease Agreement, the Parties agree to the extent possible to amend this MOU and/or the Lease Agreement as necessary to conform to the anticipated funding agreement(s) inclusive of California Tahoe Conservancy, and affect the intent of the parties herein. Consistent with the stated intent of the Lease Agreement, the Parties hereby agree to modify and extend the existing term of the Lease Agreement which will expire on July 1, 2023, for a period including a minimum of twenty (20) years commencing on the date a notice of completion for the Beach Improvement Project is recorded by the City ("Lease Extension").

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B. County hereby consents to, and has entered into this MOU on the express condition that, 100% of the costs of construction of the Beach Improvement Project is fully funded, either by grant agreements and/or City contributions, prior to award of any contract for construction, and actual construction, of the improvements. 100% of the costs of construction are defined as the engineer's estimate of the cost of construction plus a minimum 15% contingency, together with the estimated costs of construction management, and project management and administration. In no event shall County be obligated to fund, from its General Fund or any other funds, any costs associated with this MOU or the construction, operation, maintenance, repair or improvement of the Beach Improvement Project. In the event that actual costs of the Beach Improvement Project exceed the grant funding, as between the County and City, City shall be solely responsible for any and all additional costs.

C. Ownership of all Beach Improvement Project Improvements shall vest in the County in accordance with the Lease Agreement and City shall remain solely responsible for the operation, maintenance, repair, and correction of defects of said improvements at no cost to the County for the term of the Lease Agreement. In the event the parties do not amend the Lease Agreement to conform to the requirements of the grant agreement before award of a construction contract for the Beach Improvement Project Improvements, including but not limited to the Lease Extension, this MOU shall be of no further force and effect.

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IV. COOPERATIVE APPLICATION FOR FUNDING, GRANT ADMINISTRATION RESPONSIBILITIES

The City intends to accept funds or grants in its name allocated by the California Tahoe Conservancy for the Beach Improvement Project Improvements and City shall have the responsibility to administer and comply with the requirements and obligations set forth therein including but not limited to fiscal control, accounting, record keeping, invoice and other administrative tasks.

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V. CITY DUTIES AND RESPONSIBILITIES

A. The City will, in a workmanlike manner, construct or cause to be constructed to the satisfaction of the County and any funding agency such as California Tahoe Conservancy, within the time-frame required by the funding agency, all of the Beach Improvement Project Improvements, and all work incidental thereto inclusive of utility location and re-location if any, in accordance with this MOU and the ordinances, rules and regulations of the Tahoe Regional Planning Agency, the Bijou/Al Tahoe Community Plan, County of El Dorado and City of South Lake Tahoe, applicable funding agencies rules, regulations and requirements, and the Lease Agreement. City acknowledges that it has occupied the site of the Beach Improvement Project since 1968 and is fully familiar with all of the conditions of the site. City shall be responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or environmental permits

and approvals, including but not by way of limitation NPDES and RWQCB requirements, for the Beach Improvement. The costs of said compliance and implementation, and defense of any claim, challenge, administrative proceeding, or notice of violation, as between County and City, shall be solely a cost to the City and City shall hold harmless, defend, and indemnify County from any cost, fine or penalty arising therefrom.

All construction work shall be in accordance with all applicable federal, state and local rules, regulations, and ordinances including but not limited to applicable Public Contract Code requirements and bidding requirements, Labor Code requirements inclusive of prevailing wage, State licensing requirements, and bonding requirements, permitting requirements, and building code requirements. City shall be solely responsible for the day-to-day construction management, inclusive of construction engineering, inspection, surveying, and administration, of the Beach Improvement Project, shall be solely responsible to secure any and all applicable permits and approvals inclusive of environmental approvals, and shall be solely responsible for fiscal administration, and payment of funds to any third parties performing work, services or furnishing materials, in connection with the Beach Improvement Project. As between County and City, City shall warrant the materials and workmanship on the Beach Improvement Project and shall make such replacements and repairs as are necessary due to defects during the period of the Lease Agreement as modified to conform to funding requirements at City's sole costs and expense.

City shall have an engineer prepare record drawings ("As-Built" Drawings) describing the finished work, inclusive of all changes orders, and submit the As-Built Drawings to County upon completion of the work.

B. The City shall retain or cause to be retained for audit by the County, California Tahoe Conservancy, its agents and representatives, and any other funding or governmental agency, for a period of four (4) years from the date of final payment of construction costs, all records and accounts relating to the Beach Improvement Project.

C. The City shall not award any contract for, shall not issue any notice to proceed for, and shall not perform any work for, the construction of all, or a portion of, the Beach Improvement Project Improvements by and until 100% of the construction costs, as defined in Section III herein, have been allocated and secured, and all permits and approvals have been obtained. Further, City shall not allow third parties to perform any work on the Beach Improvement Project without first executing a written agreement meeting the requirements of federal, State and local rules and regulations, all funding and grant agreement requirements, and the intent and requirements of this MOU, and containing the following provisions:

(1) The written contract shall contain the requirement that such third party agrees, to the fullest extent allowed by law, to defend and indemnify the City, the County, and any funding agency, 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 that third party's work, services, operations or performance of the written contract, 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.

(2) The written contract shall further contain a requirement that the third party contractor obtain and demonstrate proof of insurance meeting the limits set forth in Attachment 3 to this MOU, and naming the City, County and any funding agency as additional insured, and such insurance shall be the primary insurance for all losses arising from the performance of the contractor or consultant's work. Any insurance or self-insurance maintained by the County, the City, its officers, officials, employees or volunteers shall not contribute with, but shall be in excess of the third party's insurance, and further, as between the County and the City, the City's insurance shall be primary to the County and County's insurance shall not contribute with it but shall be excess to it.

D. In recognition that the construction work for the Beach Improvement Project will take place on real property owned by County and for the purpose of protecting the County's interests, City agrees to require the construction contractor to furnish both a payment and a performance bond naming the County as obligee in the amount of 100% of the construction contract and issued by a surety admitted in the State of California and complying with all state regulations regarding such bonds. Prior to the performance of any work on the Beach Improvement Project, City shall comply with Code of Civil Procedure section 995.311 in reviewing said contractor's bonds and insuring that this requirement is met. The performance bond shall contain an attorney's fees provision and a one year warranty period requiring the City's contractor to warrant the materials and workmanship on the Beach Improvement Project for a period of one year from the date of City's acceptance of said improvements.

City shall defend, indemnify and hold harmless County, its officers, officials, and employees from all claims by stop notice claimants related to the construction of the Beach Improvement Project under the payment bond.

E. In accordance with the Lease Agreement, the City shall remain solely responsible for the cost of all utility and other like services provided to the Lease Property.

F. To the fullest extent allowed by law, City shall defend, indemnify, and hold harmless the County, any funding agency, its/their officers, officials, employees agents and representatives from any and all claims, suits, losses, damages and liability, inclusive of administrative proceedings, fines and penalties, 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 Beach Improvement Project, the design, construction, operation, maintenance, and/or repair of the Beach Improvement Project Improvements, whether by the City, its agents and representatives or a third party, City's duties and obligations with reference to the City's assumption of the funding agreement(s), and City's performance of its responsibilities and obligations under this MOU, 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 prohibited by statute.

G. If City's contractor fails to complete the construction of the Beach Improvement Project Improvements, City shall take all necessary steps to enforce its contract, inclusive of enforcing the performance and payment bonds, to secure the completion of the improvements.

H. If the City fails to secure the completion of the Beach Improvement Project Improvements, or otherwise terminates the Beach Improvement Project after commencement of construction, City shall take all necessary steps to remove all obligations of the grant or other funding obtained for the project and shall restore the Leased Property to its original condition or to a safe and operable condition acceptable to the County.

VI. GENERAL TERMS AND CONDITIONS

A. This MOU will become effective upon execution by both Parties and will remain in effect for the period of time required by the grant or funding received for the Project. The insurance and indemnity obligations of the City under this MOU shall survive the expiration or termination of this MOU.

B. Prior to the commencement of work in connection with the Beach Improvement Project, this MOU may be terminated for any reason by either Party upon thirty (30) days written notice. Neither Party may terminate this MOU after the award of any construction contract, notice to proceed or commencement of any work on the project.

C. This MOU may only be amended by mutual agreement in writing signed by both Parties.

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

E. Nothing herein is intended to create duties or obligations to or rights in third parties not parties to this MOU. Nothing in this MOU 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.

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

G. 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.

H. Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested, and addressed as follows:

County:	Russ Nygaard <u>Deputy Director</u> Department of Transportation 2850 Fair Lane Court Placerville, CA 95667 <u>russell.nygaard@edcgov.us</u> (530) 621-5916	Jim Ware <u>Director</u> Department of Transportation 2850 Fair Lane Court Placerville, CA 95667 <u>jim.ware@edcgov.us</u> (530) 621-7533	Deleted: , Director Deleted: Construction Division Deleted: . Deleted: . Deleted: 5918
City:	Debbie Vreeland Project Manager <u>deb@vreelandworks.com</u> 530.577.1777	David Jinkens City Manager <u>City of South Lake Tahoe</u> 1901 Airport Rd., Ste. 203 South Lake Tahoe, CA 96150 530.542.6045	

I. 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 to bind upon said party the obligations set forth herein.

J. The County officer or employee with responsibility for administering this MOU is Jim Ware, the Director of the County's Department of Transportation, or successor.

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K. Any dispute resolution action arising out of this MOU, including but not limited to litigation, mediation, or arbitration shall be brought in El Dorado County, California and shall be resolved in accordance with the laws of the State of California.

L. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

M. 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: _____

Norma Santiago, Chair
Board of Supervisors
"County"

Deleted: Ron Briggs

Deleted: man

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

By: _____
Deputy Clerk

-- CITY OF SOUTH LAKE TAHOE --

Dated: _____

By: _____

Kathay Lovell, Mayor
"City"

Deleted: Jerry Birdwell

ATTEST:
Susan Alessi, City Clerk

By: _____

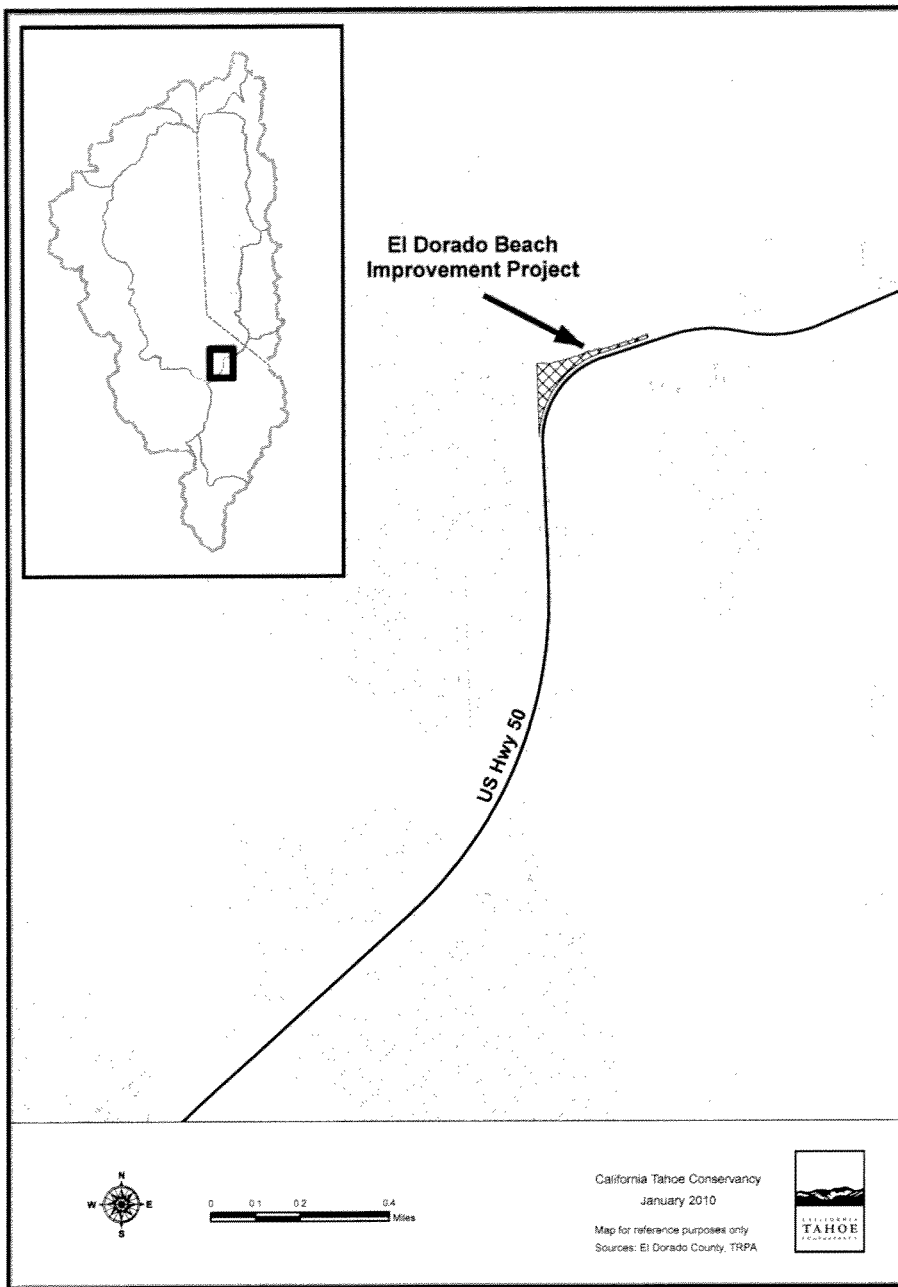
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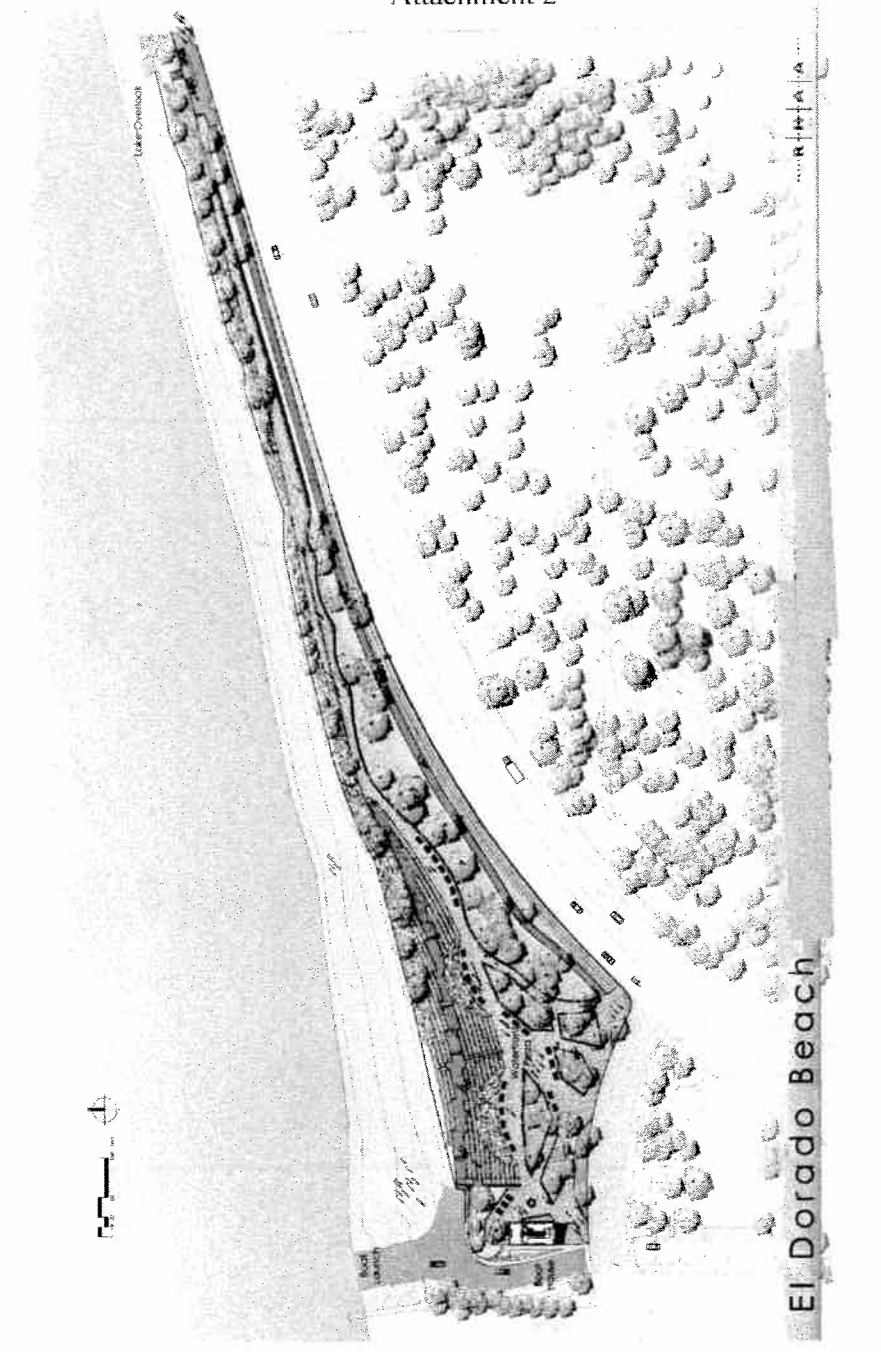
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Regional Location Map
Attachment 1

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Beach Improvement Project Map
Attachment 2



Required Insurance Limits
Attachment 3
(2 pages)

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CONTRACTOR'S INSURANCE REQUIREMENTS
for
PUBLIC WORKS PROJECTS

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GENERAL INSURANCE REQUIREMENTS

The Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Management Division and documentation evidencing that the Contractor maintains insurance that meets the following requirements:

- 1. Full Workers' Compensation and Employers' Liability Insurance covering all employees of the Contractor as required by law in the State of California. Formatted: Bullets and Numbering
- 2. Commercial General Liability (CGL) Insurance of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: Premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors liability. This insurance can consist of a minimum \$1 Million primary layer of CGL and the balance as an excess/umbrella layer, but only if the County is provided with written confirmation that the excess/umbrella layer "follows the form" of the CGL policy. Formatted: Bullets and Numbering
- 3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by the Contractor in performance of the Contract. Formatted: Bullets and Numbering
- 4. In the event Contractor is a licensed professional and is performing professional services under this Contract, Professional Liability Insurance is required with a limit of liability of not less than One Million Dollars (\$1,000,000). Formatted: Bullets and Numbering
- 5. Explosion, Collapse and Underground coverage is required when the scope of work includes XCU exposures. For the purpose of this Contract, XCU coverage is required. Formatted: Bullets and Numbering

PROOF OF INSURANCE REQUIREMENTS

- 1. Contractor shall furnish proof of coverage satisfactory to the El Dorado County Risk Management Division as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division. Formatted: Bullets and Numbering
- 2. The County of El Dorado, its officers, officials, employees, and volunteers shall be included as additional insured, but only insofar as the operations under this Contract are concerned. This provision shall apply to all general liability and excess liability policies. Proof that the County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to Contractor's insurance policy naming the County additional insured. Formatted: Bullets and Numbering
- 3. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Contract for not less than three (3) years following completion of performance of this Contract. Formatted: Bullets and Numbering
- 4. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions Formatted: Bullets and Numbering

as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

5. Contractor shall require each of its subcontractors to procure and maintain commercial general liability insurance, automobile liability insurance, and workers' compensation insurance of the types and in the amounts specified above, or shall insure the activities of its subcontractors in its own policy in like amounts. Contractor shall also require each of its subcontractors to name Contractor and the County of El Dorado and any other additional insured listed above as additional insureds.

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INSURANCE NOTIFICATION REQUIREMENTS

1. Contractor agrees no cancellation or material change in any policy shall become effective except upon thirty (30) days prior written notice to the County of El Dorado Project Manager at the office of the Department of Transportation, 2850 Fair Lane Court, Placerville, CA 95667.

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2. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Contract. In the event said insurance coverage expires at any time or times during the term of this Contract, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event. New certificates of insurance are subject to the approval of the Risk Management Division.

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ADDITIONAL STANDARDS

Certificates shall meet such additional standards as may be determined by the Department either independently or in consultation with the Risk Management Division, as essential for protection of the County.

COMMENCEMENT OF PERFORMANCE

Contractor shall not commence performance of this Contract unless and until compliance with each and every requirement of the insurance provisions is achieved.

MATERIAL BREACH

Failure of Contractor to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Contract.

REPORTING PROVISIONS

Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

PRIMARY COVERAGE

The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

PREMIUM PAYMENTS

The insurance companies shall have no recourse against the County of El Dorado its officers, agents, employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

CONTRACTOR'S OBLIGATIONS

Contractor's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Contract.