

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **FEBRUARY 14, 2012**

From: **JAMES DURFEE / MARK RIDEOUT** 

Subject: **AREA 2 PARK DEDICATION FEES FOR THE HOMEWOOD BIKE TRAIL**

ACTION REQUESTED / RECOMMENDATION: Approve and execute a Use Agreement with the Tahoe City Public Utility District authorizing use of Park Dedication Fees from Recreation Area 2, Tahoe City Public Utility District Area, in the amount of \$225,000 to help fund construction of the Homewood Bike Trail, and approve a Budget Revision appropriating the funds.

BACKGROUND: The Tahoe City Public Utility District (TCPUD) maintains a 19-mile trail network on the north and west shores of Lake Tahoe and along the Truckee River from Tahoe City to the entrance to Squaw Valley. The Homewood Bike Trail Project (Project) consists of completing a "missing link" in the trail network by constructing one mile of Class 1 bike trail between Cherry Street and Fawn Street in the Homewood area on the west shore of Lake Tahoe. The Homewood Bike Trail will be located adjacent to the westerly shoulder of State Route 89.

Completing this link in the trail system will increase the safety of bicyclists, hikers and joggers; improve access to recreational opportunities; and provide a means for commuting to work. TCPUD has received overwhelming support for the Project from the local community, including both business owners and residents. TCPUD's annual trail user surveys consistently indicate safety concerns over the missing Homewood section of the bike trail. These surveys also show that over 100,000 tourists, residents, and second homeowners enjoy TCPUD's trails annually.

Of the \$2,358,692 estimated total Project cost, to date TCPUD has secured \$474,500 from the California Tahoe Conservancy (\$165,000) and Transient Occupancy Tax (\$309,500). In October 2011, TCPUD applied for \$225,000 of County Park Dedication Fees, which will augment project financing and provide leverage to secure additional funding. TCPUD is actively pursuing the remaining balance through a variety of grant programs, and projects that construction will be completed by November 2015.

On November 3, 2011, the Squaw Valley MAC passed a motion in support of this TCPUD County Park Dedication Fee request, and on November 10, 2011, the North Tahoe Regional Advisory Council recommended approval. On November 8, 2011, the Placer County Parks Commission also recommended that your Board approve TCPUD's \$225,000 request for Homewood Bike Trail funding. In order to authorize the use of County Park Dedication Fees for this Project, your Board's approval of a Use Agreement and a Budget Revision is required.

ENVIRONMENTAL CLEARANCE: TCPUD completed an Initial Study/Mitigated Negative Declaration (IS/MND), State Clearinghouse # 2001072089, for the Homewood Bike Trail in 2001. Due to changes in requirements, TCPUD is preparing an addendum to this IS/MND. The action requested of your Board to approve PDF funding is not a project pursuant to CEQA Section 15378.

FISCAL IMPACT: The uncommitted fund balance in Recreation Area 2 is \$338,373. Your Board's approval of this request would leave a balance of \$113,373. There would be no impact upon the County General Fund.

JD:MR:JR:DB

ATTACHMENTS: USE AGREEMENT
BUDGET REVISION

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AGREEMENT NO. _____

**DESCRIPTION: AGREEMENT BETWEEN THE TAHOE CITY PUBLIC UTILITY DISTRICT
AND THE COUNTY OF PLACER FOR USE OF PARK DEDICATION FEES**

THIS AGREEMENT, made and entered into this _____ day of _____, 2012, by and between the COUNTY OF PLACER, hereinafter referred to as "COUNTY", and the TAHOE CITY PUBLIC UTILITY DISTRICT, hereinafter referred to as "TCPUD", to effect construction of the Homewood Bike Trail on the west shore of Lake Tahoe.

WITNESSETH

WHEREAS, TCPUD operates and maintains nineteen miles of Class I Bike Trails in the Tahoe City area of Lake Tahoe; and,

WHEREAS, there is a one-mile stretch near the Homewood area of Lake Tahoe, where there is no bike trail; and,

WHEREAS, TCPUD desires to construct the missing section of the bike trail so that the trail will be safer for tourists and residents and provide for bike trail connections to recreation areas and businesses; and,

WHEREAS, TCPUD has requested COUNTY'S assistance in helping to fund the cost of this Project.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN CONTAINED, IT IS AGREED AS FOLLOWS:

1. County Park Dedication Fees are hereby authorized to be used by TCPUD to pay for a portion of the cost to construct the Homewood Bike Trail ("Trail"). The Trail will complete a missing section of the TCPUD's bike trail network. The Trail will be a Class I bike trail located between Cherry Street and Fawn Street in the Homewood area on the west shore of Lake Tahoe. The Trail will be asphalt paved with a minimum width of 8' and will be separated from the paved roadway surface. The Trail will be approximately one mile long. The Trail will be located on the mountain side of State Route 89.
2. COUNTY hereby grants to TCPUD County Park Dedication Fee funds in an amount up to **TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$225,000)**. Funds shall be released on a reimbursement basis. After the improvements are installed, COUNTY shall perform an audit of all expenses incurred. COUNTY will physically inspect and approve the facilities before releasing any funds. COUNTY shall release the Park Dedication Fees to TCPUD within forty-five (45) days of receipt of a letter requesting payment.
3. No County Park Dedication Fee funds, authorized by this Agreement, shall be used to construct any portion of the Homewood Bike Trail that is required to be constructed as a Condition of Approval of the Homewood Mountain Resort Ski Area Master Plan Project.
4. Prior to construction, TCPUD shall submit plans to COUNTY for the purpose of allowing COUNTY to verify the work to be done is consistent with the Scope of Work specified in this Agreement.

5. TCPUD shall comply with the California Environmental Quality Act (CEQA—Public Resources Code Section 21000 et seq.) with regard to any of the activities involving the expenditure of funds received by TCPUD hereunder.
6. Completion of purchase and installation of facilities set forth in Paragraph 1 herein shall occur no later than October 30, 2015, unless written request for extension is received from TCPUD and approved in writing by the Director of the Placer County Department of Facility Services.
7. COUNTY disclaims any ownership interest in the improvements purchased and/or installed pursuant to this Agreement.
8. TCPUD, at its sole cost and expense, shall provide all necessary maintenance and repair to facilities purchased, constructed and/or installed pursuant to this Agreement.
9. TCPUD agrees that funds granted to it for the construction of said recreation facilities shall not be used for any purpose not specified in this Agreement.
10. TCPUD shall keep detailed accounting records. COUNTY shall have the right to inspect detailed accounting records related to this Agreement at any reasonable time. Under no circumstances shall COUNTY be considered a lead agency or be responsible for securing any permits and approvals.
11. The Term of this Agreement shall be for a period of twenty (20) years commencing on the _____ day of _____, 2012, and ending on the _____ day of _____, 2032.

After completion of the improvements and release of the monies by COUNTY, TCPUD shall ensure the recreation facilities described in Paragraph 1 are available for public use throughout the term of this Agreement. If TCPUD terminates this Agreement during the twenty (20) year term, TCPUD shall reimburse COUNTY for the actual amount granted by COUNTY to TCPUD, not to exceed the amount specified in Paragraph 2, above, in accordance with the following schedule:

<u>Years in use</u>	<u>Percent Reimbursed</u>	<u>Years in use</u>	<u>Percent Reimbursed</u>
1	95	11	45
2	90	12	40
3	85	13	35
4	80	14	30
5	75	15	25
6	70	16	20
7	65	17	15
8	60	18	10
9	55	19	5
10	50	20 or more	0

12. All notices to either party that may be required or authorized by this Agreement shall be in writing by electronic means and either deposited in the United States Mail, postage prepaid, or personally delivered. The notice shall be effective upon the date of personal delivery or date of mailing. Notices regarding this Agreement shall be sent or delivered to TCPUD or COUNTY at:

COUNTY: Placer County Parks Administrator
Department of Facility Services
11476 C Avenue
Auburn, CA 95603

TCPUD: General Manager
Tahoe City Public Utility District
P.O. Box 5249
Tahoe, CA 96145

The parties may amend their addresses for notice by notifying the other parties in writing.

13. Hold Harmless and Indemnification Agreement:

The TCPUD hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. TCPUD agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the TCPUD. TCPUD also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against TCPUD or the COUNTY or to enlarge in any way the TCPUD'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from TCPUD'S performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means Placer County or its officers, agents, employees, and volunteers.

14. Insurance:

TCPUD shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-VII showing:

Worker's Compensation and Employers Liability Insurance:

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to TCPUD'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the TCPUD.

TCPUD shall require all subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

General Liability Insurance:

- A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of TCPUD, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
- (1) Contractual liability insuring the obligations assumed by TCPUD in this Agreement.
- B. One of the following forms is required:
- (1) Comprehensive General Liability;
 - (2) Commercial General Liability (Occurrence); or
 - (3) Commercial General Liability (Claims Made).
- C. If TCPUD carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
- One million dollars (\$1,000,000) each occurrence
 - Two million dollars (\$2,000,000) aggregate
- D. If TCPUD carries a Commercial General Liability (Occurrence) policy:
- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) for Products-Completed Operations
 - Two million dollars (\$2,000,000) General Aggregate
 - (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

TCPUD shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) aggregate for Products Completed Operations
 - Two million dollars (\$2,000,000) General Aggregate
- (2) The insurance coverage provided by TCPUD shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.

Endorsements:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided by the TCPUD, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer"

Automobile Liability Insurance:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

Additional Requirements:

Premium Payments - The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - The TCPUD shall be responsible for all deductibles in all of the TCPUD'S insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

TCPUD'S Obligations - TCPUD'S indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - TCPUD shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the TCPUD'S obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the TCPUD to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

15. This Agreement shall inure to the benefit of, and bind the parties hereto, and their successors and assigns, including any and all public agencies to whom the real property and facilities herein referred to may be transferred by reason of incorporation, annexation, unification, consolidation or for any other reason.
16. If any provision of this Agreement, as applicable to either party, or to any other person or circumstance, is for any reason held to be invalid, it should not affect the validity of any other provision of this Agreement. The waiver by either party hereto, of any breach, term, covenant or condition contained herein shall not constitute a waiver of any subsequent term, covenant or condition contained herein.
17. This is an integrated Agreement and contains all of the terms, conditions, understandings and promises of the parties. The terms of this Agreement may not be modified except upon the mutual written consent of the parties.

THE REMAINDER OF THIS PAGE BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of the persons duly authorized by the governing boards of the parties hereto.

Tahoe City Public Utility District (TCPUD)

By: 
President, Board of Directors

1/13/12
Date

County of Placer (COUNTY)

By: _____
Chairman, Board of Supervisors

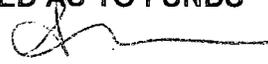
Date

APPROVED AS TO FORM

By: _____
County Counsel

Date

APPROVED AS TO FUNDS

By: 
Auditor

4/18/12
Date

PAS DOCUMENT NO.

Facility Service to do journal to transfer cash

BUDGET REVISION

POST DATE:

DEPT NO.	DOC TYPE	Total \$ Amount	TOTAL LINES
12	BR	450,000.00	2

Cash Transfer Required

Reserve Cancellation Required

Establish Reserve Required

Auditor-Controller

County Executive

Board of Supervisors

ESTIMATED REVENUE ADJUSTMENT										APPROPRIATION ADJUSTMENT											
DEPT NO.	T/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT	DEPT NO.	T/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT
12	006		100		997425	97425	8780			225,000.00	12	014		100		997425	97425	2840			225,000.00
TOTAL										225,000.00	TOTAL										225,000.00

REASON FOR REVISION: TO APPROPRIATE EXPENDITURES AND OFF-SETTING REVENUES IN THE PARKS & GROUNDS BUDGET FROM THE PARK DEDICATION
FEE AREA #2, TAHOE CITY PUBLIC UTILITY DISTRICT, FOR CONSTRUCTION OF THE HOMEWOOD BIKE TRAIL.

Prepared by Valerie Bayne Ext 6803
Department Head Valerie Bayne
Board of Supervisors _____

Date: 2/14/12

Page: _____

Budget Revision # _____ FOR INDIVIDUAL DEPT USE

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