

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

To: **BOARD OF SUPERVISORS**

Date: **JULY 10, 2007**

From:  **JAMES DURFEE / ALBERT RICHIE** 

Subject: **USE AGREEMENT WITH TAHOE CITY PUBLIC UTILITY DISTRICT FOR A
MOBILE SHELL STAGE FOR PERFORMANCES**

ACTION REQUESTED / RECOMMENDATION: Approve a Use Agreement with the Tahoe City Public Utility District (TCPUD) authorizing the use of Park Dedication Fees from Recreation Area #2, Squaw Valley / Tahoe City Recreation Area, in the amount of \$10,000 for the purchase of a portable stage for performances throughout the Lake Tahoe area.

BACKGROUND: The TCPUD is requesting County Park Dedication Fees to help pay for the costs of purchasing a new portable stage to replace an old stage that is used for performing arts and concerts in the north Tahoe area.

The size of the current stage is 32' x 16'. The stage has been in constant use since 1991 and is at the end of its useful life. Many of the parts are no longer manufactured and the stage would be unusable if any significant parts failed. The stage has allowed performances to occur at many locations throughout the North Tahoe / Martis Valley area. Last year over 20,000 people attended performances at which the stage was used, for events such as the Lake Tahoe Music Festival.

Purchasing a new stage is supported by the North Lake Tahoe Resort Association, the Tahoe City Downtown Association, Lake Tahoe Music Festival, North Tahoe Public Utility District, Squaw Valley Business Association, and the North Tahoe Regional Advisory Council.

The total cost estimate for the new stage is \$126,000. The North Lake Tahoe Resort Association has agreed to contribute \$116,000 from Transient Occupancy Tax funds to be coupled with the \$10,000 of County Park Dedication Fees. The TCPUD will contribute operations, maintenance and insurance for the stage.

The North Tahoe Regional Advisory Council recommended approval of this request on March 8, 2007. In addition, the Squaw Valley Municipal Advisory Council recommended your Board's approval on March 29, 2007 and the Placer County Parks Commission recommended approval on April 10, 2007. A copy of the Use Agreement is attached.

ENVIRONMENTAL CLEARANCE: This project qualifies for a Categorical Exemption under CEQA Section 15301 (Class 1, Existing Facilities).

FISCAL IMPACT: The available fund balance of Park Dedication Fees in Recreation Area #2, Squaw Valley / Tahoe City Recreation Area, is \$119,211. If your Board approves the additional request of the TCPUD for portable docks (\$22,000), then the revised fund balance available is \$97,211. Therefore, approval of this request will have no effect upon the County General Fund.

JD/AR:JR/dh

ATTACHMENT: USE AGREEMENT – TCPUD STAGE

cc: COUNTY EXECUTIVE OFFICE

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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 _____, 2007 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 the purchase of a Mobile Sound Shell Stage for performing arts and concerts.

WITNESSETH:

WHEREAS, TCPUD operates several public beaches located in the Tahoe City area of Lake Tahoe; and

WHEREAS, TCPUD desires to purchase a new Mobile Sound Shell Stage (hereinafter referred to as "Stage") for performances throughout the Lake Tahoe area; and

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

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 purchase a new Stage for performances. The dimensions of the Stage will be approximately 32' long by 16' deep. The Stage shall have an anti-corrosion package, adjustable acoustic end wall panels, and a handicapped access lift.
2. COUNTY hereby grants to TCPUD County Park Dedication Fee funds in an amount up to ten thousand dollars (\$10,000). Funds shall be released on a reimbursement basis. After the improvements are installed, the COUNTY shall perform an audit of all expenses incurred. COUNTY will physically inspect and approve the facilities before releasing any funds. The COUNTY shall release the Park Dedication Fees to TCPUD within forty-five (45) days of receipt of a letter requesting payment.
3. Prior to construction, the TCPUD shall submit plans to the COUNTY for the purpose of allowing the COUNTY to verify the work to be done is consistent with the scope of work specified in this Agreement.
4. 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.

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5. Completion of purchase and installation of facilities set forth in Paragraph 1 herein, shall occur no later than October 30, 2008, unless an extension is approved in writing by the Director of the Placer County Department of Facility Services ("Director").
6. COUNTY disclaims any ownership interest in the improvements purchased and/or installed pursuant to this Agreement.
7. The 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.
8. 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.
9. TCPUD shall keep detailed accounting records. The COUNTY shall have the right to inspect detailed accounting records related to this Agreement at any reasonable time. Under no circumstances shall the COUNTY be considered a lead agency or be responsible for securing any permits and approvals.
10. The term of this Agreement shall be for a period of twenty (20) years commencing on the _____ day of _____, 2007 and ending on the _____ day of _____, 2027.

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 the TCPUD, not to exceed ten thousand dollars (\$10,000), 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

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11. All notices to either party that may be required or authorized by this Agreement shall be in writing 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 the TCPUD or the 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 City, CA 96145

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

12. TCPUD shall cause to be filed with COUNTY a certificate of insurance with respect to those insurable interests created by this Agreement in companies acceptable to the COUNTY, or with a carrier satisfactory to the COUNTY, with a Best's Rating of no less than A: VII, showing:
- A. Commercial General Liability insurance providing insurance for bodily injury and property damage liability for the limits indicated below:
- \$1,000,000 each occurrence and \$2,000,000 in the aggregate.
- One of the following forms is required:
- i. Commercial General Liability (Occurrence); or,
 - ii. Commercial General Liability (Claims Made).
- COUNTY agrees that its insurance requirements may be met through a Joint Powers Authority formed for the purpose of providing insurance for public agencies.
- B. Special Claims Made Policy Form Provisions
- A Commercial General Liability (Claims Made) policy shall not be provided without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:
- Coverage required shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide

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insurance coverage for the hold harmless provisions herein if the policy is a Claims Made policy.

C. Endorsements:

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

- i. "The County of Placer, its officers, employees and volunteers are to be covered as insureds for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- ii. "The insurance provided 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."
- iii. "This policy shall not be canceled without first giving thirty (30) days prior written notice to the County of Placer, and shall require notification of the County of Placer of any material change within thirty (30) days prior written notice."

13. TCPUD agrees to defend, save harmless and to indemnify Placer County from every claim or demand which may be made for any injury or death, or damage to property caused by TCPUD during the term of this Agreement. Such duty shall be irrespective of the date upon which the claim or demand is asserted. If any judgment is rendered against Placer County for any injury, death or damage caused by TCPUD during the term of this Agreement, TCPUD shall, at its own expense, satisfy and discharge any judgment.

Neither of the foregoing paragraphs shall be applicable if the injury, death or damage is caused by Placer County's negligence.

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

14. Workers' 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 Workers' Compensation Act, the Jones Act, or

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under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

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

Cancellation Notice - "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the County of Placer."

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

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.

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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.

COUNTY OF PLACER

By: _____ DATE _____
CHAIR, BOARD OF SUPERVISORS

TAHOE CITY PUBLIC UTILITY DISTRICT

By: Catherine Katchley 6/15/17
VICE PRESIDENT, BOARD OF DIRECTORS DATE

APPROVED AS TO FORM

By: _____ DATE 6/25/07
COUNTY COUNSEL

