

MEMORANDUM

DEPARTMENT OF PUBLIC WORKS County of Placer

TO: BOARD OF SUPERVISORS

DATE: July 21, 2009

FROM: KEN GREHM / PETER KRAATZ

SUBJECT: **MAINTENANCE AGREEMENT WITH TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT FOR THE TAHOE LAKE ELEMENTARY SCHOOL BMP AND ACCESS PROJECT**

ACTION REQUESTED / RECOMMENDATION

Adopt a Resolution approving a maintenance agreement between the Department of Public Works and the Tahoe Truckee Unified School District (District) for the District to maintain property improvements located within the public right of way, and authorize the Director of Public Works or his designee to execute the agreement and all related documents.

BACKGROUND / SUMMARY

The District owns and maintains property at the Tahoe Lake Elementary School in Tahoe City, California. In 1996, the County and District entered into an agreement pursuant to which the County has the right to use, operate, and maintain certain property (Parking Lot Property) at the school as a public parking area and for installation of storm drainage facilities. In exchange, the agreement allows the District to connect to the County's storm drainage facilities and use the public parking lot on a non-exclusive basis, free of charge.

In 2008, the District made improvements to the school property with a new parking lot and installation of storm water best management practices (BMP and Access Project). The new improvements drain to County's storm drainage facilities so a management agreement was requested by the County to ensure the District maintains their improvements so that school property runoff is properly treated prior to discharge into the County drainage system. The attached maintenance agreement fully articulates the responsibilities of the County and the District for property access and use and maintenance of improvements located on the property.

ENVIRONMENTAL

This action is not a project, as defined in Section 15378 of the California Environmental Quality Act (CEQA), and is exempt from CEQA requirements.

FISCAL IMPACT

The agreement will ensure that there is no fiscal impact associated with improvements constructed by the school district.

Attachments:

Resolution

Maintenance Agreement

**Before the Board of Supervisors
County of Placer, State of California**

In the matter of: A RESOLUTION APPROVING
AND AUTHORIZING THE DIRECTOR OF
PUBLIC WORKS TO EXECUTE THE
MAINTENANCE AGREEMENT BETWEEN
PLACER COUNTY AND THE TAHOE-TRUCKEE
UNIFIED SCHOOL DISTRICT

Resol. No:.....

Ord. No:.....

First Reading:.....

The following RESOLUTION was duly passed by the Board of Supervisors
of the County of Placer at a regular meeting held _____
by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:
Clerk of said Board

Chairman, Board of Supervisors

BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Placer, State of California, that this Board approves and authorizes the Director of Public Works to execute the attached Maintenance Agreement between Placer County and the Tahoe-Truckee Unified School District that defines access and maintenance responsibilities of the County and District at the District's Tahoe Lake Elementary School property located in Tahoe City, California.

TAHOE LAKE ELEMENTARY SCHOOL BMP AND ACCESS PROJECT MAINTENANCE AGREEMENT

This Agreement ("Agreement") is made this ____ day of _____, 2009 by and between the County of Placer ("County") and the Tahoe-Truckee United School District ("District").

WHEREAS, District is the owner of the real property located in Tahoe City, California, comprised of the three parcels, which are described in the Legal Descriptions provided in the attached Exhibits A and B and shown on the tract maps attached as Exhibit C, all of which are incorporated herein by reference, and

WHEREAS, County and District entered into an Agreement dated August 20, 1996 ("1996 Agreement"), which is attached hereto as Exhibit D, pursuant to which the County has the right to use, operate and maintain certain property ("Parking Lot Property") at the Tahoe Lake Elementary School as a parking area and for storm drainage facilities, and

WHEREAS, The 1996 Agreement provides that connection to the County's storm drainage facilities and use of the public parking lot are available to the District on a non-exclusive basis, free of charge, as consideration for the County's use of the Parking Lot Property.

WHEREAS, In 2001, the Parties agreed by amendment to the 1996 Agreement to extend the term of the Easement to fifty (50) years with a requirement that early termination by District would require five (5) years notice in consideration for an unrelated property transaction.

WHEREAS, District has submitted Improvement Plans for the Project referred to as the BMP and Access Project for the Tahoe Lake Elementary School ("the Project"), which are attached hereto as Exhibit E (the "Improvement Plans") to the County and Tahoe Regional Planning Agency (TRPA) for approval and intends to implement Best Management Practices (BMPs) that comply with TRPA requirements, and

WHEREAS, the Improvement Plans include improvements to the existing District connection to the County's Storm Drain System, and

WHEREAS, the parties wish to establish a written agreement further amending the 1996 Agreement to memorialize the rights and obligations of the Parties relative to the Project and the District's existing connection to the County Storm Drain System for the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree that the foregoing recitals are true.

2. The District shall maintain the Project in accordance with all laws, regulations and ordinances governing its connection to and use of the County Storm Drain System, and shall employ Best Management Practices (BMPs) with respect to its use of the County Storm Drain System to the satisfaction of the Lahontan Regional Water Quality Control Board (LRWQCB). Specifically, this obligation includes maintenance of the pretreatment BMPs in accordance with LRWQCB standards as related to the Project water quality improvements referenced in Exhibit E.

3. The County shall permit the District to continue to connect to the Storm Drain System, including but not limited to connection of the Project to the Storm Drain System, as consideration for the County's access to and use of the Parking Lot Property. District shall be entitled to use said Storm Drain System free of charge for as long as the County continues to have the right to use, operate and maintain the parking lot facilities on the Parking Lot Property pursuant to the 1996 Agreement.

4. At such time as the County's right to use, operate and maintain the parking lot facilities on the Easement shall expire or be terminated by the District, the District shall be obligated to pay a Maintenance Fee in accordance with Section 5 herein as District's share of its cost of the County's Storm Drainage System. However, as long as County continues to have the rights provided under the 1996 Agreement to use, operate and maintain the parking lot and storm drainage facilities located on the Parking Lot Property, and the conditions of Section 2 are met, County agrees to waive payment by District of the Maintenance Fee.

5. The Maintenance Fee (if required) shall be calculated as follows:

- A. The base year 2008-2009 fee shall be \$3,264.04 and shall be calculated as follows: $\$906.68 \times 3.6$, where 3.6 is the total area in acres of impervious surface that does not infiltrate on the Property;
- B. The Maintenance Fee shall be adjusted on July 1 of each year by the April to April percentage change in the 20-Cities Construction Cost Index as published in the Engineering News Record, or an equivalent publication in the event the Engineering News Record is no longer published. County shall send District an invoice stating the adjusted fee by June 1 of each year. The invoice shall be due and payable within thirty (30) days of District' receipt of the County invoice.

6. In the event the District shall fail to maintain the Project and/or to employ BMPs in accordance with its obligations under Section 2 of this Agreement, the District shall have one (1) year from the date of County notice to District of County's discovery to correct said conditions or to object to the County's determination that corrective action is required. Should the District fail to correct said conditions within one (1) year from the date of discovery or to object to the County's determination that corrective action is required, District shall thereafter be obligated to pay the Maintenance Fee,

calculated in accordance with Section 5 herein, until such time as corrections are made.

Any disputes over whether or not the District has failed to maintain the Project and/or to employ the BMPs in accordance with its obligations under Section 2 of this Agreement shall be subject to mediation and if not resolved, may be submitted to a neutral court of competent jurisdiction in the State of California within the meaning of Code of Civil Procedure section 394, by either party.

7. In the event a County Service Area, assessment district or other special district is formed whose sole or partial purpose is the institution and collection of storm drain maintenance fees and/or connection fees, the District's obligation to participate therein, and the determination and collection of any fees to be assessed to the District pursuant thereto, shall only be established pursuant to the mutual agreement of the Parties, considering the District's obligations and rights under this agreement at which time this Agreement shall be terminated. If the parties cannot agree as to whether fees will be assessed and if so, how much, the issue shall be subject to mediation and if not resolved, may be submitted to a neutral court of competent jurisdiction in the State of California, within the meaning of Code of Civil Procedure section 394, by either party.

8. This Agreement shall be binding on the heirs, successors and assigns of the parties.

9. This Agreement shall remain in full force and effect as long as all or any portion of the Property is connected to the County Storm Drain System, unless sooner terminated pursuant to the provisions hereto.

10. Notices and payments pursuant to this Agreement shall be sent by U.S. mail or personally delivered to the following addresses, or at such other place as provided to the other party in writing:

COUNTY

Placer County
Department of Public Works
10825 Pioneer Trail, Suite 105
Truckee, CA 96161

OWNER

Tahoe-Truckee Unified School District
Administration Office
11839 Donner Pass Road
Truckee, CA 96161

11. Except as otherwise expressly provided herein, the terms and conditions of the 1996 Agreement, as amended in 2001, shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

COUNTY

DISTRICT

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

Placer County Counsel

Attachments:

Exhibit A – Real Property

Exhibit B – Plat

Exhibit C – Assessor's Map of APNs 094-080-001; 094-101-002, 003, 004

Exhibit D – Tahoe Lake Elementary School

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August 1, 2008
File No. 07170

EXHIBIT A - LEGAL DESCRIPTION
TAHOE LAKE ELEMENTARY SCHOOL

A parcel of land situated in Section 6, Township 15 North, Range 17 East, M.D.B. and M., Placer County, California, being a portion of Lots 1, 2 and 3, Block 3, Tahoe City Subdivision as shown on Roll 7A, Placer County Official Records, said parcel being more particularly described as follows:

COMMENCING at the North corner of Lot A, of the Fairway Tract Subdivision as shown in Book D of Maps at Page 83, Placer County Official Records and also being a point on the Southeast right of way line of Fairway Drive and considering the Meridian of this description to be the same as said Fairway Tract Subdivision as shown in Book D of Maps at Page 83;

Thence North $51^{\circ}43'00''$ East 115.20 feet along the Southeast right of way line of Fairway Drive also the Northwest right of way line of said Lot 1, Block 3, Tahoe City Subdivision to the Southwest right of way line of Grove Street;

Thence South $45^{\circ}48'00''$ East 814.50 feet more or less along the Southwest right of way line of Grove Street also the Northeast line of said Lot 1, Block 3, Tahoe City Subdivision to an angle point the POINT OF BEGINNING;

Thence continuing South $45^{\circ}48'00''$ East 400.00 feet more or less along the Southwest right of way line of Grove Street to the Northwest line of a Record of Survey No. 1735 as shown in Book 14 of Surveys at Page 58 Placer County Official Records;

Thence South $44^{\circ}12'00''$ West 200.00 feet along said Northwest line of the Record of Survey No. 1735 as shown in Book 14 of Surveys at Page 58 to an angle point;

Thence North $45^{\circ}48'00''$ West 400.00 feet more or less to an angle point;

Thence North $44^{\circ}12'00''$ East 200.00 feet to the POINT OF BEGINNING.

Said parcel contains 80,000 sq.ft. more or less or 1.84 Acres more or less.

Attached hereto is a plat labeled exhibit "B" and by this reference made a part hereof.

Prepared by:

Kenneth B. Foster R.C.E. 20257

Date

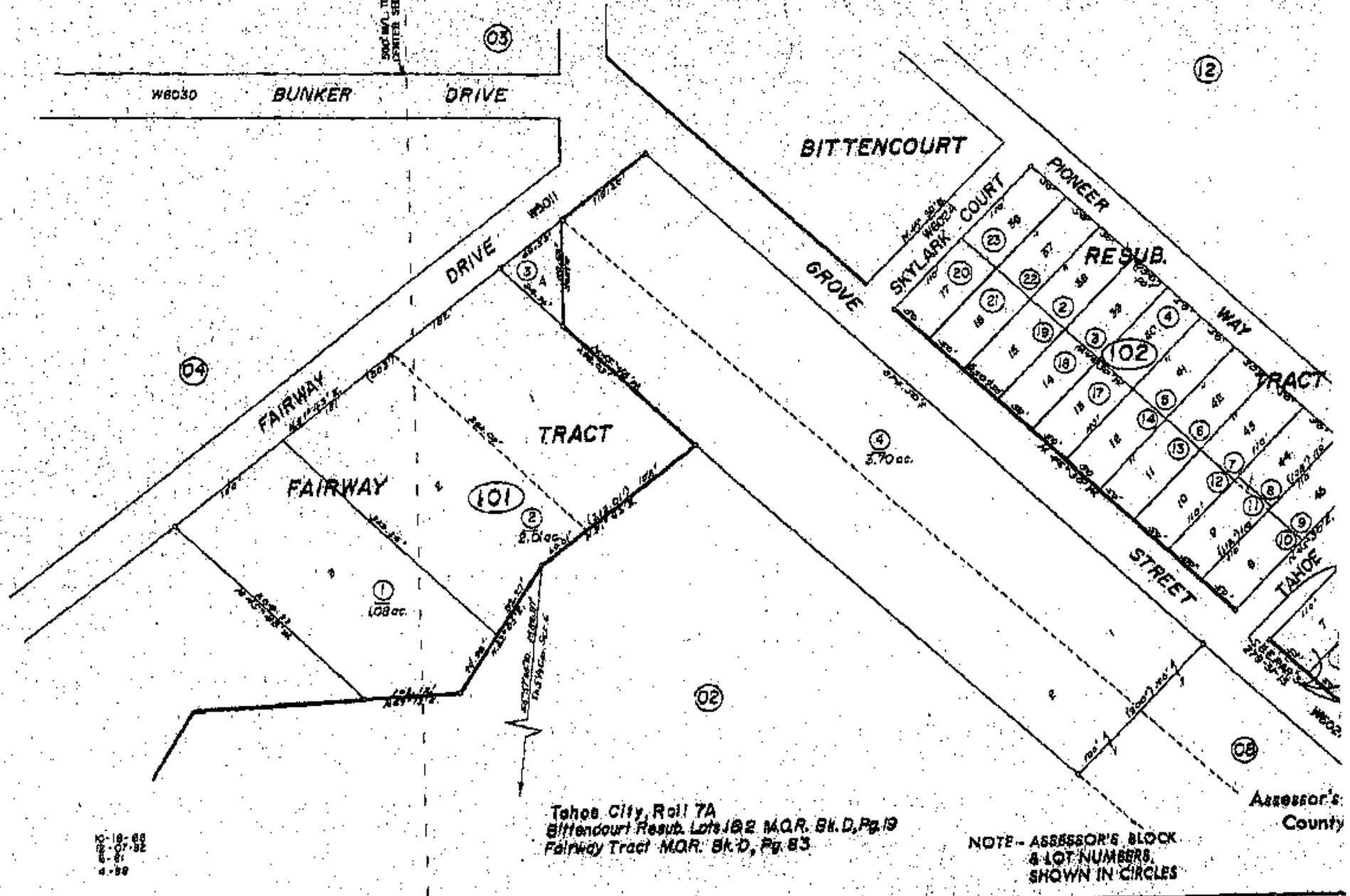
License Expires 9-30-09

K.B. Foster Civil Engineering Inc
P.O. Box 129
Carmelian Bay, CA. 96140, (530) 546-3381

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EXHIBIT C

POR. NE 1/4 SW 1/4, POR. NW 1/4 SW 1/4 SEC. 6, T15N. R17E. M.D.B.&M.



Tahoe City, Roll 7A
 Bittencourt Resub. Lots 1 & 2 M.Q.R. Bl. D, Pg. 19
 Fairway Tract M.Q.R. Bl. D, Pg. 83

NOTE - ASSESSOR'S BLOCK
 & LOT NUMBERS
 SHOWN IN CIRCLES

Assessor's
 County

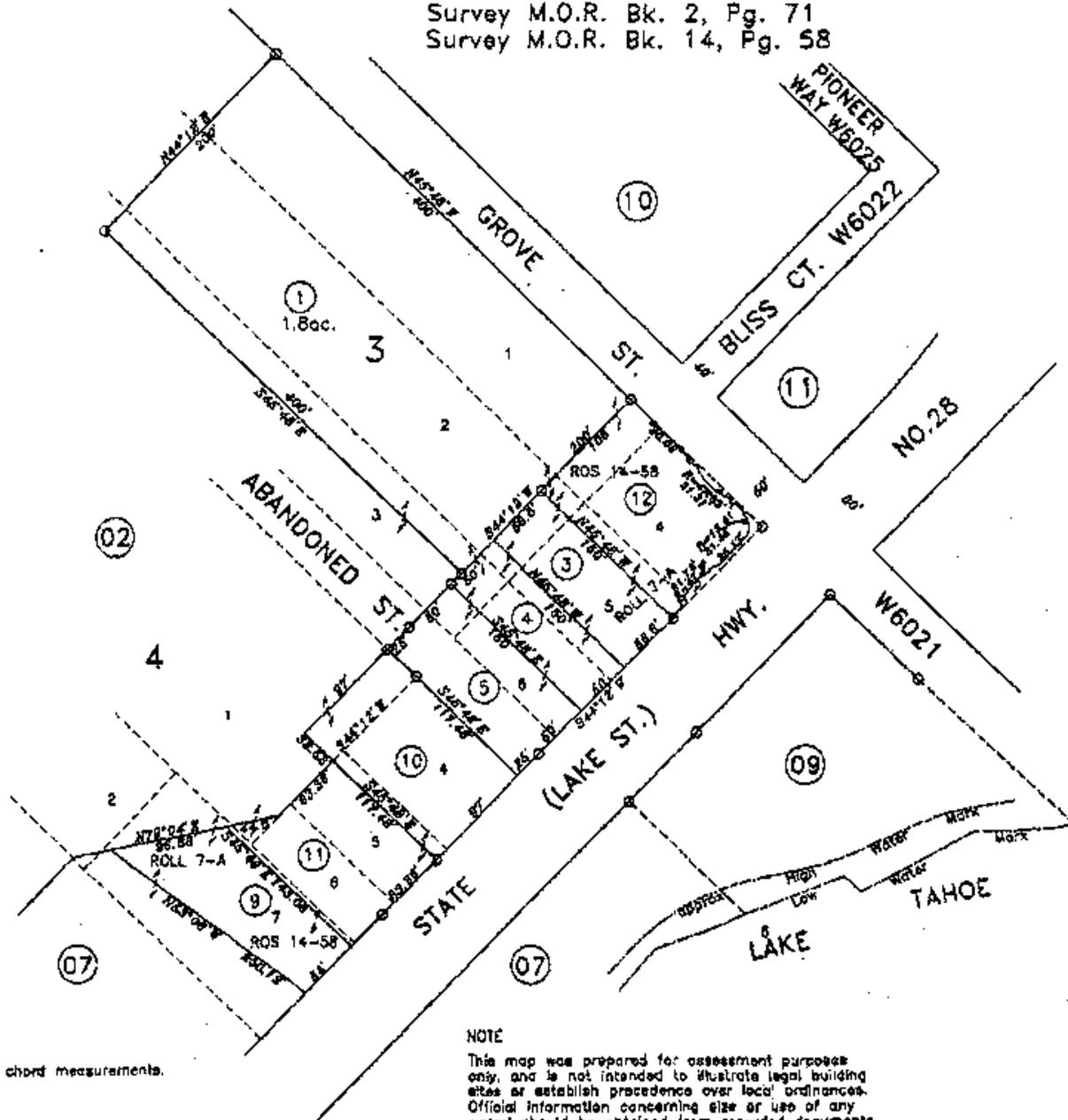
10-18-88
 12-07-92
 8-81
 4-88

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EXHIBIT C

POR. E.1/2 & POR.W.1/2 S.E.1/4 SEC.6,T.15N., R.17E., M.D.B. & M.

Tahoe City, Roll 7A
 Survey M.O.R. Bk. 2, Pg. 71
 Survey M.O.R. Bk. 14, Pg. 58



NOTE
 All distances on curved lines are chord measurements.

NOTE
 This map was prepared for assessment purposes only, and is not intended to illustrate legal building sites or establish precedence over local ordinances. Official information concerning size or use of any parcel should be obtained from recorded documents and local governing agencies.

05-17-2000 SKS
 Page Redrawn Per BaseMap Information.

Assessor's
 County of

NOTE
 Assessor's Block
 Assessor's Parcel

Handwritten signature or initials

EXHIBIT D

10574

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AGREEMENT

This Agreement, made and entered into this 20th day of August, 1996, by and between TAHOE-TRUCKEE UNIFIED SCHOOL DISTRICT, First Party, being hereinafter referred to as "SCHOOL DISTRICT", and PLACER COUNTY, Second Party, being hereinafter referred to as "COUNTY", for a parking lot adjacent to Tahoe Lake Elementary School.

RECITALS

WHEREAS, SCHOOL DISTRICT desires to cooperate with COUNTY in order to have better parking facilities nearby the school for general use during school events and activities; and

WHEREAS, COUNTY desires to complete the improvement of the parking facility on the school property in order to meet a portion of the mitigation requirements of the Tahoe City Improvement plan and related environmental documents, including the Tahoe City Urban Improvement Project EIR/EIS; and

WHEREAS, SCHOOL DISTRICT and COUNTY desire to cooperate with each other for the purpose of developing, operating, and maintaining parking and underground storm drain for the Tahoe City area, the Tahoe community and the SCHOOL DISTRICT; and

NOW THEREFORE, in consideration of the benefits to be derived from the improvements to be constructed by the COUNTY, it is mutually agreed between the parties hereto as follows:

AGREEMENT REGARDING CONSTRUCTION AND MAINTENANCE
OF PARKING LOT AT TAHOE LAKE ELEMENTARY SCHOOL, TAHOE CITY

1. The SCHOOL DISTRICT hereby grants to the County of Placer the right to use that portion of the school grounds as set forth in Exhibit "A" at the Tahoe Lake Elementary School, Tahoe City, County of Placer, California, for the purpose of constructing, operating, and maintaining a public parking facility and storm drainage facilities, for the use of the general public in the Tahoe City area, including use by the SCHOOL DISTRICT. If, prior to commencement of the project, COUNTY determines it is unable to proceed with the project due to lack of sufficient available financing, COUNTY has the right to terminate the project, and shall notify SCHOOL DISTRICT within ten (10) days of any such decision to terminate.

2. The COUNTY shall have the right to develop, improve, landscape, construct, operate and maintain such improvements, and parking facilities, including drainage facilities on the school grounds as indicated on Exhibit "A", attached hereto, and COUNTY agrees to provide a copy of any such construction, and improvement plans in regard to said site, to the SCHOOL DISTRICT for their approval prior to construction. Major improvements and/or material modifications to parking lot shall require mutual consent. SCHOOL DISTRICT agrees not to unreasonably withhold its consent and approval. COUNTY agrees to take all reasonable measures to limit any inconvenience during construction to the

greatest extent possible, in order to allow uninterrupted use of adjacent playfields. The facilities, as constructed, shall be available on a non-exclusive basis to the SCHOOL DISTRICT for its use. SCHOOL DISTRICT acknowledges that use of the parking facility will be open to the public at all times. Parking shall be free except as otherwise mutually agreed in writing.

3. During the term of this agreement, COUNTY agrees to do all necessary maintenance and repair on the parking facilities, drainage system facilities, and landscaping, except that the SCHOOL DISTRICT shall maintain its landscaping and other improvements, if any, on district-owned areas that border upon the parking area. County shall provide for snow removal in the parking lot during the term of this agreement. County shall have the responsibility of responding to complaints, if any. Any exceptions to this provision shall be approved in writing by both parties.

4. The operation and maintenance of the parking area and storm drainage facility shall not interfere with the regular conduct of school activities.

5. Parking lot improvements constructed, developed, or installed on the site shall at all times during the term of this agreement remain the property of the COUNTY with the right of removal. In the event of any such removal, the property shall be left in at least as good a condition as existed prior to the construction of such developments, improvements and parking facilities. The cost of any such removal, restoration or repairs

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shall be borne by the COUNTY.

6. Insofar as legally authorized, the COUNTY shall hold the SCHOOL DISTRICT and any of its officers, agents or employees, free and harmless from all liability, damages, costs or expenses which may arise by reason of any liability imposed by law because of injury to property or injury or death to persons received or suffered by reason of the use of the parking facilities including drainage facilities under the supervision and responsibility of the COUNTY, except to the extent any such injury is caused by the negligence or willful misconduct of SCHOOL DISTRICT, it's officers, agents or employees. The COUNTY agrees to assume all liability and pay all costs of any remediation required as the result of discovery of hazardous materials in the construction of the parking lot.

7. Insofar as legally authorized, SCHOOL DISTRICT shall hold the COUNTY and any of its officers, agents, or employees, free and harmless from all liability, damages, costs or expenses which may arise by reason of any liability imposed by law because of injury to property or injury or death to persons received or suffered upon the school grounds, in regard to activities under the supervision of the SCHOOL DISTRICT, except to the extent any such injury is caused by the negligence or willful misconduct of COUNTY, it's officers, agents or employees.

If the SCHOOL DISTRICT should ever decide to sell or lease the property which is the subject of this Agreement, after complying

with Education Code Section 39363.5(a) and Government Code Section 54220, et seq. if the property is not leased or sold to a priority purchaser as listed in Government Code Section 54222, SCHOOL DISTRICT hereby grants to COUNTY the right of first refusal to lease or purchase said property, provided that DISTRICT and COUNTY are able to arrive at a mutually satisfactory price or lease payment pursuant to Education Code Section 39363.5(b). If COUNTY purchases said property, any remediation costs which COUNTY expends under the terms of this agreement over the amount of \$25,000. shall be applied toward the purchase price. Notwithstanding the foregoing, if the SCHOOL DISTRICT determines to sell or lease the entire Tahoe Lake Elementary School site, the COUNTY shall not have the right of first refusal as to this portion of the site. If, in regard to the above provisions, any future discussion arises as to the intent of the parties which cannot be clearly ascertained from the face of this agreement, the parties may refer to the letter dated July 19, 1996 from counsel for the SCHOOL DISTRICT to counsel for the COUNTY for further elaboration. A copy of that letter is attached hereto and labelled as Exhibit B.

8. SCHOOL DISTRICT agrees that it shall maintain in full force and effect during the term of this Agreement, insurance against liability for injuries to persons or property with limit of not less than Two Million Dollars (\$2,000,000) aggregate. COUNTY agrees that it shall provide liability insurance, as a self-insured entity, and hereby does specifically agree to

indemnify SCHOOL DISTRICT in regard to any liability occurring on the parking area, which is the subject of this Agreement.

9. The term of this Agreement shall initially be fifteen (15) years, and shall be subject to automatic renewal in five (5) year increments at the end of the initial fifteen (15) year term. If either party desires to terminate this Agreement at the end of the initial fifteen (15) year period or later, that party shall provide a minimum of sixty (60) months notice to the other party in advance of the effective date of such termination. The initial term of this Agreement shall begin on the date that this contract is finally executed.

10. SCHOOL DISTRICT acknowledges that the construction, provision, operation, and maintenance of the parking area and storm drainage facilities is for the mutual benefit of the SCHOOL DISTRICT and the Tahoe City area community and general public, and constitutes one of the mitigation measures for the changing of parking areas on the highway in the Tahoe City commercial area, pursuant to the Tahoe City Community Plan. This Agreement may be modified from time to time by mutual consent and written Agreement of the parties hereto. This agreement is not assignable, except upon mutual written agreement of both parties.

11. This Agreement shall be interpreted pursuant to the laws of the State of California. Any legal action related to this Agreement shall be brought in the Superior Court, County of Placer, State of California.

12. Notices: All notices, demands, requests and exercises

under this Agreement by either party shall be hand delivered or sent by Federal Express or by United States mail, postage prepaid, addressed to the other party as follows:

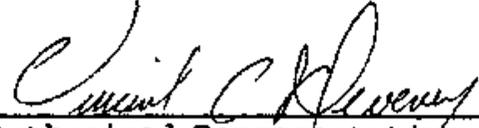
To COUNTY: Placer County Dept. of Public Works
Attn: Robert Costa
Address: 11444 "B" Avenue
Auburn, CA 95603
(916) 889-7500

To SCHOOL DISTRICT: Tahoe-Truckee Unified School District
Attn: Tony Hesch, Director of Facilities
Address: 11839 Donner Pass Road
Truckee, CA 96161
(916) 582-7621

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13. IN WITNESS WHEREOF, SCHOOL DISTRICT and the COUNTY OF PLACER respectively, pursuant to authorization of the SCHOOL DISTRICT'S Board of Trustees, and the COUNTY Board of Supervisors, has authorized and approved this Agreement and have authorized execution of the same by their designated officers and/or directors.

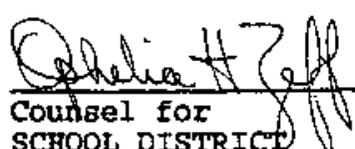
TAHOE-TRUCKEE UNIFIED SCHOOL DISTRICT



Authorized Representative of the
Tahoe-Truckee Unified School District

Date: 8-28-96

Approved as to form:



Counsel for
SCHOOL DISTRICT

COUNTY OF PLACER

By: [Signature]
CHAIRMAN,
PLACER COUNTY BOARD OF SUPERVISORS

Approved as to form:

[Signature]
PLACER COUNTY COUNSEL

Date: 8-20-96

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EXHIBIT "A", PAGE 1

April 11, 1995
N° 89202.LD9

EXHIBIT "A"

ACCESS AND PARKING EASEMENT

An easement as shown on the attached Exhibit "B", for ingress, egress and parking over and across a portion of the SW 1/4 of Section 6, T.15 N., R. 17 E., M.D.M., Placer County, California, being a portion of that certain parcel of land described in Book 455 at Page 448 as filed in the Office of the Recorder of said Placer County, and being more particularly described as follows:

BEGINNING at the southeast corner of said 455/OR/448, being on the southwesterly right of way line of Grove Street and considering the Meridian of this description to be identical to the Meridian of said 455/OR/448;

Thence S 43° 05' 00" W 200.00 feet along the south line of said 455/OR/448;

Thence N 46° 55' 00" W 80.00 feet;

Thence N 43° 05' 00" E 171.00 feet;

Thence N 56° 55' 00" W 37.00 feet;

Thence N 43° 05' 00" E 29.00 feet to a point on said southwesterly right of way line;

Thence S 46° 55' 00" E 117.00 feet along said right of way line to the POINT OF BEGINNING.

Said property as described contains 17,073 sq. ft. more or less.

Refer this description to your Title Company before incorporating it into any document.

Prepared by:



 James R. Allen
 License expires 3/31/1999

K.B. Foster Civil Engineering, Inc.
P.O. Box 128 (916) 546-3381
Carnelian Bay, California 96140

