

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

To: **BOARD OF SUPERVISORS**

Date: **JANUARY 13, 2009**

From: **JAMES DURFEE / ALBERT RICHIE**

Subject: **USE AGREEMENT WITH NEWCASTLE ELEMENTARY SCHOOL DISTRICT FOR  
A PLAYGROUND AND NATURAL TRAIL BRIDGE**

**ACTION REQUESTED / RECOMMENDATION:** Approve and execute a Use Agreement with the Newcastle Elementary School District (District) authorizing the use of Park Dedication Fees from Recreation Area #15, Ophir/Newcastle, in the amount of \$66,000 for a playground and nature trail bridge at Newcastle Elementary School and approve a Budget Revision appropriating the funds.

**BACKGROUND:** The 8-acre Newcastle Elementary School campus provides recreational facilities for school students and for the general public. Because there is no public park in the Newcastle vicinity, the school's recreational facilities are the primary parks and recreation facilities for area residents and guests. Although the school has a small play structure, it does not meet the needs of the current student body or the public.

The cost estimate for the playground is \$79,000. Funding for the project is proposed to come from County Park Dedication Fees, in the amount of \$65,000, with the remaining \$14,000 secured by the District through a grant from Greenman Corporate. The labor, cement, and installation will be donated by the Newcastle Golden Spike Lions. The National Playground Compliance Group will ensure compliance of construction.

A Nature Trail over a ravine connects the Newcastle Elementary campus to the Pineview campus and is used by students, programs for disabled persons and the community in general. The original bridge had fallen into disrepair and was removed. A new bridge has been constructed by an Eagle Scout candidate. The cost for the bridge totaled \$5,300. The Newcastle Parent Teacher Club donated \$500; the District contributed \$1,000; and Eagle Scout donations of labor and materials totaled \$2,800. The request for County Park Dedication Fees in the amount of \$1,000 will complete the funding for this project.

On September 18, 2008 the Newcastle/Ophir Municipal Advisory Council recommended approval of this request and on September 26, 2008, the Placer County Parks Commission also recommended approval.

**ENVIRONMENTAL CLEARANCE:** This action is not a project as defined by the California Environmental Quality Act (CEQA) and therefore, is not subject to CEQA.

**FISCAL IMPACT:** The available fund balance in Recreation Area #15, Ophir/Newcastle is \$91,967. Therefore, approval of this request will have no effect upon the County General Fund.

ATTACHMENT: AGREEMENT  
BUDGET REVISION

JD:AR:JR:DB

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## AGREEMENT

### FOR DEVELOPMENT OF A PLAYGROUND AND NATURE TRAIL BRIDGE AT NEWCASTLE ELEMENTARY SCHOOL WITH COUNTY FUNDS

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the NEWCASTLE ELEMENTARY SCHOOL DISTRICT, a public school district organized and operating pursuant to the Education Code, hereinafter referred to as "DISTRICT", and PLACER COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY".

#### WITNESSETH:

**WHEREAS**, DISTRICT and COUNTY are authorized by Division 12, Chapter 6 of the Education Code (commencing with Section 10900) to cooperate and enter into agreements to organize, promote and conduct programs of community recreation, to establish a system of playgrounds and recreation and to acquire, construct, improve, maintain, and operate recreation centers, and

**WHEREAS**, COUNTY has received funds for public parks and recreation facilities pursuant to County Code Sections 15.34.010, 16.08.100 and/or 17.54.100 (D), and

**WHEREAS**, COUNTY desires to assist DISTRICT with construction of a new playground and nature trail bridge at Newcastle Elementary School, located on DISTRICT property in Newcastle, Ca.,

**NOW, THEREFORE**, it is hereby agreed by and between the parties hereto as follows:

1. The recitals listed above are incorporated into this Agreement.
2. COUNTY shall provide to DISTRICT Park Dedication Fees in a sum not to exceed Sixty-Six Thousand Dollars (\$66,000) for use by DISTRICT to construct a new playground and nature trail bridge.

In the event it is determined by the COUNTY that DISTRICT has utilized funds in a manner that is in violation of any applicable regulation or administrative rule pertaining thereto, and the COUNTY requires repayment of any funds granted to DISTRICT, DISTRICT shall immediately upon request of COUNTY reimburse COUNTY for the same.

3. DISTRICT shall post signs near the playground advising the public that the playground is available for general public use.
4. Prior to construction, the DISTRICT shall provide a site plan and construction drawings for the new recreation facilities to the COUNTY. The plans should also show the location of the signs that will notify the public that the recreation facilities are available for public use.
5. In order to receive funds hereunder, DISTRICT shall provide the COUNTY with a written request for the release of funds, including copies of receipts of the expenditures for constructed improvements and any other information reasonably required by COUNTY. Funds will be released within 45 days of the County's approval of the request for release of funds from the DISTRICT. DISTRICT agrees to be subject to any audits of eligible expenditures as may be conducted by the COUNTY.
6. The improvements for which funding is requested hereunder shall be completed no later than December 31, 2009, unless COUNTY grants a one-year extension in writing.

7. DISTRICT shall comply, to the extent applicable, 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 fund received by DISTRICT hereunder.
8. Upon completion, DISTRICT agrees that said recreational facilities will be made available to the general public during non-school hours pursuant to the following terms and conditions:
  - a. Use of the recreational facility shall not be inconsistent with the use of the school buildings or grounds for school purposes, and shall not interfere with the regular conduct of schoolwork or regularly scheduled extra curricular school functions, and shall be in accordance with all applicable provisions of law.
  - b. DISTRICT shall establish and provide to the COUNTY a schedule of public use for the facilities. DISTRICT may alter the schedule upon giving the County 30 days-advanced written notice.
  - c. During such times when the recreational facilities are available to the general public, the DISTRICT shall ensure that pedestrian access is available.
  - d. The DISTRICT may adopt reasonable policies, rules and regulations consistent with this paragraph and §§10900-10912 and §§40040-40058 of the Education Code to implement this Agreement.
9. All property and/or improvements purchased and/or installed by DISTRICT pursuant to this Agreement shall become the sole and separate property of DISTRICT as of the time said property and/or improvements are installed.
10. DISTRICT, at its sole cost and expense shall provide all water, electricity and, utilities, and shall provide all necessary maintenance and repair to the recreational facility during the term of this Agreement.
11. DISTRICT 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. DISTRICT shall keep detailed records in accordance with the requirements of the COUNTY. COUNTY shall have the right to inspect said records at any reasonable time.
12. The term of this Agreement shall be for a period of ten (10) years commencing on the \_\_\_ day of \_\_\_\_\_, 2009, and ending on the \_\_\_ day of \_\_\_\_\_, 2019. After completion of the improvements by DISTRICT and release of the grant moneys by COUNTY, either party may, in its sole discretion and without cause or reason, terminate this Agreement by providing thirty (30) days written notice to the other. If DISTRICT terminates this Agreement during the ten (10) year term, DISTRICT shall reimburse COUNTY for the actual amount granted by COUNTY to the DISTRICT, not to exceed amount, as described in Paragraph 2 of this Agreement in accordance with the following schedule:

<u>Years in use</u>	<u>Percent Reimbursed</u>
1	90
2	80
3	70
4	60
5	50
6	40
7	30
8	20
9	10
10	0

13. 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 DISTRICT or COUNTY at:

Kathleen Daugherty, Superintendent,  
Newcastle Elementary School District  
8951 Valley View Drive  
Newcastle, CA 95658

Parks Administrator  
County of Placer, Department of Facility Services  
Parks and Grounds Division  
11476 C Avenue  
Auburn, CA 95603

Either party may amend its address for notice by notifying the other party in writing.

14. DISTRICT, at its sole cost and expense, shall provide premise liability insurance coverage for the recreational facilities in the same amount and type of coverage as it provides for its other school facilities.
15. DISTRICT agrees to save harmless and to indemnify COUNTY from every claim or demand which may be made for any injury or death, or damage to property caused by DISTRICT 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 COUNTY for any injury, death or damage caused by DISTRICT during the terms of this Agreement, DISTRICT 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 COUNTY negligence.

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

16. 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.
17. 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.
18. 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.

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.

**Newcastle Elementary School District (DISTRICT)**

By: *Kathleen Daugherty* 12/3/08  
Kathleen Daugherty, Superintendent Date

**Placer County Board of Supervisors (COUNTY)**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Chairman

**Approved As To Form:**

By: *Sara Long* 12/31/08  
County Counsel Date

