

SOUTH TAHOE GREENWAY SHARED USE TRAIL PROJECT

Recommended Action: Adopt Resolution 17-03-03 (Attachment 1) authorizing Conservancy staff to enter into a Memorandum of Understanding (MOU) (Attachment 2) with the City of South Lake Tahoe (City) and Lake Tahoe Community College District to assign operations, maintenance, and land management responsibilities and define roles for future project implementation of the South Tahoe Greenway Shared Use Trail.

Location: El Dorado County and City between Sierra Boulevard and Van Sickle Bi-State Park, as more accurately depicted on the Project Map (Attachment 3).

Fiscal Summary: The MOU would allow \$5,000 per mile of local Measure S funds to be used to maintain the South Tahoe Greenway Shared Use Trail and commits the Conservancy to provide any additional funding for maintenance costs using State Operations Funds.

Overview

Description of Recommended Action

In March 2016 and January 2017, the California Tahoe Conservancy Board (Board) authorized multiple items related to implementation of the South Tahoe Greenway Phase 1b and 2 Project (Project) including a land exchange and boundary line adjustments; easement reservations; grants and agreements for implementation, operation, and maintenance; and funding for project implementation and trail maintenance.

In January, the Board authorized staff to negotiate, based on the framework provided to the Board in the staff recommendation, a MOU assigning operations, maintenance, and land management responsibilities and roles between the Conservancy, the Lake Tahoe Community College District (LTCC), and the City related to all existing and planned phases of the South Tahoe Greenway Shared Use Trail (Greenway). Accordingly, staff is now seeking authorization to enter into the MOU with LTCC and the City, which

together with the Phase 1a Operations and Maintenance Agreement between the Conservancy and the City, facilitates the operation and maintenance of all existing and planned phases of the Greenway.

To meet the deadlines for Public Works Board and California Transportation Commission review of the Project, each of the Project partners must approve and execute the MOU and other agreements by May 1, 2017.

The MOU:

- Assigns operations and maintenance roles for all existing and planned phases of the Greenway;
- Defines roles and responsibilities for land management within and adjacent to the trail corridor;
- Defines roles and responsibilities for seeking funding for future phases and major repair or replacement costs;
- Defines the relationship between the Conservancy and City to allow the City to perform preventative maintenance of the Greenway;
- Formalizes coordination efforts between the Conservancy, City, and LTCC.

The MOU must be approved by the LTCC Board of Trustees and City Council and will be considered at their meetings in March 2017.

History

The Greenway will be a 3.86 mile trail connection between the Tahoe Sierra (formerly “Sierra Tract”) neighborhood and Van Sickle Bi-State Park. The trail alignment generally follows the right-of-way (ROW) originally obtained by the California Department of Transportation (Caltrans) to build a bypass freeway.

The Greenway is currently broken into construction segments, given limited funding and other issues associated with acquiring easements along certain segments of the trail. In 2011 and 2013, the Board authorized \$950,000 for preliminary plans and final design and construction of the first section of the Greenway (Phase 1a), as well as planning and acquisition for other phases. Phase 1a opened in October 2015, providing a 0.42-mile neighborhood connection between Glenwood Way and Herbert Avenue.

To extend the trail beyond Phase 1a, staff partnered with several local agencies and secured \$1,928,000 in Active Transportation Program (ATP) funding in 2015 for the Greenway Phase 1b and 2 Project which extends the trail to Sierra Boulevard. A

summary of each partner agency's benefits and contributions to the Project can be found in Attachment 4. The \$4.3 million budget for this Project includes contributions from the following sources:

Federal Active Transportation Program Funding	\$ 1,928,000
California Tahoe Conservancy	\$ 1,300,000*
Lake Tahoe Community College District	\$ 700,000
Tahoe Transportation District (CMAQ** funds)	<u>\$ 399,000</u>
	\$ 4,327,000

**Authorized in 2014 (\$1,100,000) and 2016 (\$200,000). Of this amount, \$1,000,000 is reserved as match funding for the ATP grant award.*

***CMAQ: Congestion Mitigation and Air Quality Funds*

In March 2016, the Board approved several items related to implementation of the Project. These actions included adoption of California Environmental Quality Act (CEQA) documents for a trail realignment of Phase 2 near Trout Creek to reduce disturbance in environmentally sensitive areas, provide a more direct trail connection, and facilitate partner funding. The Board also authorized an additional \$200,000 to complete technical studies and coordinate with Department of General Services (DGS) and Caltrans as required by the ATP grant award. The Board also authorized staff to enter into land exchanges, easements, and other land tenure agreements for implementation, operation, and maintenance of the Project with partners.

To provide its \$700,000 contribution to the Project, the LTCC has determined that a portion of the trail must be located on its campus. As a result, the Conservancy, LTCC, and the City are moving forward with a land exchange to address this issue and to facilitate more efficient management of the trail. The MOU apportions management and maintenance responsibilities for the trail and the parcels involved in the land exchange.

In January 2017, the Board and the South Lake Tahoe Recreation Facilities Joint Powers Authority (JPA) took actions related to maintenance funding. The JPA authorized \$5,000 annually per mile of trail from Measure S funds for the Greenway's maintenance. This Measure S funding will be provided to the City once they agree to operate and maintain the Greenway on behalf of the Conservancy. The Board authorized up to \$30,000 over five years to reimburse the City if operation and maintenance costs for Phases 1a, 1b, and 2 exceed the Measure S funding. Future Conservancy funding commitments will be determined based on experience gained from the initial five-year

Operation and Maintenance Agreement, length of future trail sections, and by working with the City to determine future maintenance needs.

Financing

Since 2002, the Conservancy has expended \$2,140,500 on a feasibility analysis, preliminary planning and design, initial permits, environmental review, and construction of Phase 1a. The Conservancy has authorized an additional \$1,300,000 for planning and construction of the Phase 1b and 2 Project.

As stated above, the Board authorized up to \$30,000 over five years in State Operations Funds for reimbursement to the City for routine and interval maintenance of the Greenway. A five-year timeframe for this initial operations and maintenance contract with the City will allow City and Conservancy staff to reevaluate funding needs in future years. Conservancy funding for future years beyond current appropriations is subject to the availability of funds and may be subject to legislative appropriation.

Authority

Consistency with the Conservancy's Enabling Legislation

The recommended action is consistent with the Conservancy's enabling legislation. Specifically, Government Code sections 66907.8 and 66907.9 authorize the Conservancy to exchange or transfer real property to local public agencies and to enter into operation and maintenance agreements for management of land under its ownership or control. In accordance with Government Code section 66906.8, the Conservancy is authorized to select and hire private consultants or contractors to achieve these purposes. Finally, Government Code section 66907.10 authorizes the Conservancy to improve and develop acquired lands for a variety of purposes.

Consistency with the Conservancy's Strategic Plan

The recommended action is consistent with the Strategic Plan because the Greenway contributes to a more walkable and bike-friendly community (Strategy I.A). It also provides a quality recreation and public access facility that reduces traffic congestion (Strategy II.D.)

Consistency with the Conservancy's Program Guidelines

The recommended action is consistent with the Conservancy's Public Recreation and Access Program Guidelines:

- 1) To "increase and enhance significant regional public access and public recreational opportunities" by establishing a shared use trail in the core portion of the South Lake Tahoe bikeway network;
- 2) To "provide a range of public access opportunities to locations with regionally significant lakefront, riverfront, cultural/historical and natural characteristics," by directly linking neighborhoods and tourist accommodations to services, schools and parks, and, through network connections, to beach facilities;
- 3) To "increase regional ... non-motorized transportation and recreation opportunities" by implementing the highest priority California project in the TRPA Bicycle and Pedestrian Master Plan, a priority project in the Regional Transportation Plan (RTP #22), and Environmental Improvement Program (EIP) project #03.01.02.0087; and
- 4) To "support environmental education, interpretation ... that promotes stewardship" through interpretive signage along the route.

Consistency with External Authorities

The recommended action is consistent with the EIP because it facilitates the implementation of EIP project 03.01.02.0087. It also facilitates implementation of the Lake Tahoe Sustainable Communities Strategy and the Regional Transportation Plan.

Compliance with the California Environmental Quality Act (CEQA)

On September 15, 2011, the Board adopted the South Tahoe Greenway Shared Use Trail Mitigated Negative Declaration (MND) and Mitigation Monitoring Reporting Program. The Board also approved two additional project implementation phases under the 2011 MND: Greenway Phase 1a Project (June 2013), and Greenway Phase 1 and 2 Project (May 2014). On March 17, 2016, the Board adopted an MND Supplement that evaluated trail modifications and the proposed land exchange between the Conservancy, LTCC, and the City for the Greenway Phase 1b and 2 Project. All potential environmental effects of the current recommended action have been previously analyzed in the MND and MND Supplement.

List of Attachments:

Attachment 1 – Resolution 17-03-03

Attachment 2 – Proposed Memorandum of Understanding

Attachment 3 – Project Map

Attachment 4 – Project Partners

Conservancy Staff Contact:

Chris Mertens

chris.mertens@tahoe.ca.gov

ATTACHMENT 1

California Tahoe Conservancy
Resolution
17-03-03
Adopted: March 16, 2017

SOUTH TAHOE GREENWAY SHARED USE TRAIL PROJECT

Staff recommends the California Tahoe Conservancy adopt the following resolution pursuant to Government Code sections 66906.8, 66907.8, 66907.9, and 66907.10:

“The Conservancy hereby authorizes staff to enter into a Memorandum of Understanding with the City of South Lake Tahoe and Lake Tahoe Community College District to assign operations, maintenance, and land management responsibilities and define roles for future project implementation of the South Tahoe Greenway Shared Use Trail.”

I hereby certify that the foregoing is a true and correct copy of the resolution duly and regularly adopted by the California Tahoe Conservancy at a meeting thereof held on the 16th day of March, 2017.

In WITNESS THEREOF, I have hereunto set my hand this 16th day of March, 2017.

Patrick Wright
Executive Director

ATTACHMENT 2

FEBRUARY 15, 2017 – DRAFT

MEMORANDUM OF UNDERSTANDING

BETWEEN

LAKE TAHOE COMMUNITY COLLEGE DISTRICT

CALIFORNIA TAHOE CONSERVANCY

CITY OF SOUTH LAKE TAHOE

This Memorandum of Understanding (“MOU”) for the South Tahoe Greenway Shared Use Trail Project (“Project”) as more specifically described in Exhibit 1, is entered into this ____ day of _____, 2017 (“Effective Date”), between Lake Tahoe Community College District, a California Community College District (“District”), the California Tahoe Conservancy, a State Agency (“Conservancy”), and the City of South Lake Tahoe, a Municipal _____ (“City”) as may also be referred to throughout this Agreement (singularly “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, District, Conservancy, and City own certain real property in the trail corridor for the Project located in the City of South Lake Tahoe, County of El Dorado, State of California.

WHEREAS, the Project is the 3.86 mile shared use trail between Sierra Boulevard and Van Sickle Bi-State Park located in the City of South Lake Tahoe, County of El Dorado, State of California more particularly described in Exhibit 1 approved by the Conservancy Board of Directors in September 2011 (Resolution 11-09-07) and March 2016 (16-03-04).

WHEREAS, District’s Board of Trustees, the Conservancy’s Board of Directors, and the City’s Council duly authorize this MOU for the implementation, operation, and long-term maintenance of the Project as reflected in the following actions (Conservancy Resolutions **XX-XX-XX**, 17-01-01, 16-03-04, 14-05-06, 13-06-08, 11-09-07); District Resolutions **[list]**; City Resolutions **[list]**). (**Resolution/Action Dates & Numbers**)

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants, and conditions of the Parties as hereinafter set forth, the parties agree to take the following actions for the purposes of long term operation, maintenance, and implementation of the Project and management of surrounding lands.

PURPOSE

The Parties recognize that public access and recreation is vital to the economic sustainability of the Lake Tahoe Basin. Shared use trails in the Lake Tahoe area enhance public recreational opportunities and protect the natural environment by reducing vehicle emissions and road dust which are significant factors in air and water pollution. Furthermore, shared use trails reduce traffic congestion and improves the visitor experience at Lake Tahoe.

A coordinated approach to planning, implementation, and long-term operation and maintenance will result in a more effective effort to provide safe and efficient operation of the Project. The purpose of this MOU is to define the terms and conditions under which the Parties will cooperate and coordinate Project activities including operation and maintenance, repair and replacement, management of adjacent lands, and future trail implementation, consistent with applicable law.

RESPONSIBILITIES OF PARTIES

Conservancy.

The Conservancy will own the Project and have easement interest in the right-of-way regardless of underlying land ownership, notwithstanding other agreements, and assumes responsibility for major repair or replacement for the Project's useful life. The Conservancy may, in its sole discretion for good cause or in the event of natural disaster which renders the Project obsolete or impracticable to rebuild, subject to required approvals, may elect not to replace or repair the improvements.

Conservancy will reimburse City for preventative maintenance costs of the trail in excess of costs covered by Measure S funds, subject to available funding. Should funding not be available, the City will not be obligated to maintain the Project beyond Measure S funds.

At the expiration of Measure S and if no replacement funding source for trail maintenance is authorized, the Conservancy shall be responsible for Project maintenance costs, subject to available funding.

Conservancy shall continue to seek funding for implementation of the Project.

Conservancy agrees to assume responsibility for natural resource management including wildlife management, flood clean up, and forest management including hazard tree removal outside of trail corridor on Sites 1 and 4 as shown in Exhibit 2.

City.

The City will perform preventive maintenance for all existing and future phases of the Project on behalf of the Conservancy. City maintenance responsibilities for Phase 1a are defined in Exhibit 3 ("South Tahoe Greenway Shared Use Trail, Phase 1a Operations and Maintenance Agreement"). Exhibit 3 will serve as a template for City trail maintenance responsibilities for future Project phases. Subsequent Operations and Maintenance Agreements for future Project phases will be executed when those phases are nearing completion.

City agrees to incorporate Project into City bike trail network for purposes of operations, including application of public use policies and special event permits.

The City will use funding available from Measure S to perform preventative maintenance activities and will only seek reimbursement for additional costs from Conservancy once those funds have been expended.

City agrees to support Conservancy's efforts to secure funding for implementation of the Project.

City agrees to work collaboratively with Parties to seek funding for major repair and replacement of the trail.

City retains responsibilities for all aspects of land management on property owned by the City located adjacent to but outside of the trail corridor.

District.

District agrees to support Conservancy's efforts to secure funding for implementation of the Project.

District agrees to work collaboratively with Parties to seek funding for major repair and replacement of the trail.

District is not responsible for performing or funding trail maintenance activities or costs.

District agrees to assume responsibility for people management issues such as homelessness, litter removal, and volunteer trails outside of trail corridor on Sites 1 and 4 as shown in Exhibit 2.

District agrees to grant right of entry to trail corridor to City for maintenance purposes.

MISCELLANEOUS PROVISIONS

Additional Requirements

Phases 1b and 2 are funded in part through the State Active Transportation Program and as such are subject to additional State and federal requirements.

Information Sharing, Inspection, & Reporting.

The Parties will collectively provide and share data and information on the status of the operation and maintenance of the Project and adjoining land on a regular basis. The information shall be provided for the purpose of ensuring the Project and adjoining land ownerships function for their intended purposes over time.

Term/Amendment.

The term of this MOU shall be twenty (20) years from the Effective Date and will automatically extend unless terminated by one Party.

Termination.

Any Party may terminate its participation in this MOU by providing one year written notice to all other Parties.

Other Related Agreements.

This MOU in no way restricts the involved Parties from participating in similar understandings and/or activities with other public or private agencies.

Additional Partners.

Additional participants, including interested property owners, property managers, special districts, non-profit entities, and members of the public may become partners by execution of a Signature Page, subject to ratification by a majority of the existing participants.

Public Documents.

Information provided to any government agency pursuant to this MOU may be subject to state law including but not limited to the Public Records Act (Government Code Section 6250 et. seq).

No Funding Obligation.

Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and other signatories to this MOU will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

Budget Contingency Clause.

- A. It is mutually agreed that if the California State Budget Act (Budget Act) of the current year and/or any subsequent years covered under this MOU does not appropriate sufficient funds for the program, project or activity, this MOU shall be non-binding with respect to future obligations in this event, and the Conservancy shall have no liability to pay any funds whatsoever or to furnish any other considerations under this MOU.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, project or activity, the Conservancy shall have the option to either cancel this MOU with no liability occurring to the Conservancy, or offer an amendment to reflect the reduced amount.

Indemnification.

To the extent allowed under State law, each Party shall defend, indemnify, and hold harmless each of the other Parties, their officers, employees and agents from any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this MOU but only in proportion to and to the extent such liability, loss expense, attorneys' fees, or claims for injury or damages are caused by or result from the sole and active negligent or intentional acts or omissions by the indemnifying Parties.

Counterparts.

This MOU may be executed in one or more counterparts, each of which shall be deemed an original.

Resolution of Disputes.

If a dispute arises relating to this MOU the Parties shall first attempt to resolve it through informal discussions. Any Party may convene such discussions by written notice, and each Party shall reasonably accommodate the other Party with respect to scheduling. If the dispute is not resolved in this manner within thirty (30) days from the date one Party first contacts the other to commence informal discussions hereunder, any Party may submit the matter to mediation by providing written notice to the other party. The cost of such mediation shall be borne equally by the Parties.

Governing Law.

This Agreement must be construed according to its fair meaning and as if prepared by all Parties. This Agreement must be construed in accordance with the laws of the State of California in effect on the Effective Date. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of El Dorado.

Notices.

TO THE DISTRICT:

Lake Tahoe Community College District
Attn: Jeff DeFranco
Superintendent/President
1 College Way
South Lake Tahoe, California 96150
Phone: 530.541.4660
with copy to:
Liebert Cassidy Whitmore

Attn: Eileen O'Hare-Anderson
5250 N. Palm Avenue, Suite 310
Fresno, California 93704
Phone: 559.256.7800

TO THE CONSERVANCY:

California Tahoe Conservancy
Attn: Patrick Wright
Executive Director
1061 Third Street
South Lake Tahoe, CA 96150
Phone: 530.543-6002
with copy to:
Ryan Davis
Staff Counsel
1061 Third Street
South Lake Tahoe, CA 96150
Phone: 530.543.6022

TO THE CITY:

Nancy Kerry
City Manager
Attn:
1052 Tata Lane
South Lake Tahoe, CA 96150
Phone:
with copy to:
Thomas T. Watson
City Attorney
Attn:
1901 Airport Road, Suite 300
South Lake Tahoe, CA 96150
Phone:

IN WITNESS WHEREOF, the parties have caused this MOU to be executed on the date first written above.

LAKE TAHOE COMMUNITY COLLEGE DISTRICT

By: _____

Jeff DeFranco
Superintendent/President

CALIFORNIA TAHOE CONSERVANCY

By: _____
Patrick Wright
Executive Director

CITY OF SOUTH LAKE TAHOE

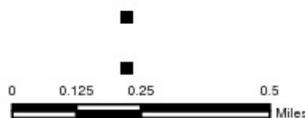
By: _____
Nancy Kerry
City Manager

- Exhibit 1 (Project Location)**
- Exhibit 2 (“Site” number reference)**
- Exhibit 3 (City Operations and Maintenance Agreement for Phase 1a)**

Exhibit 1: South Tahoe Greenway Project Location



- Planned and Funded
- Existing
- Future

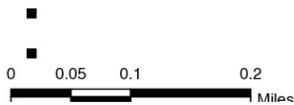
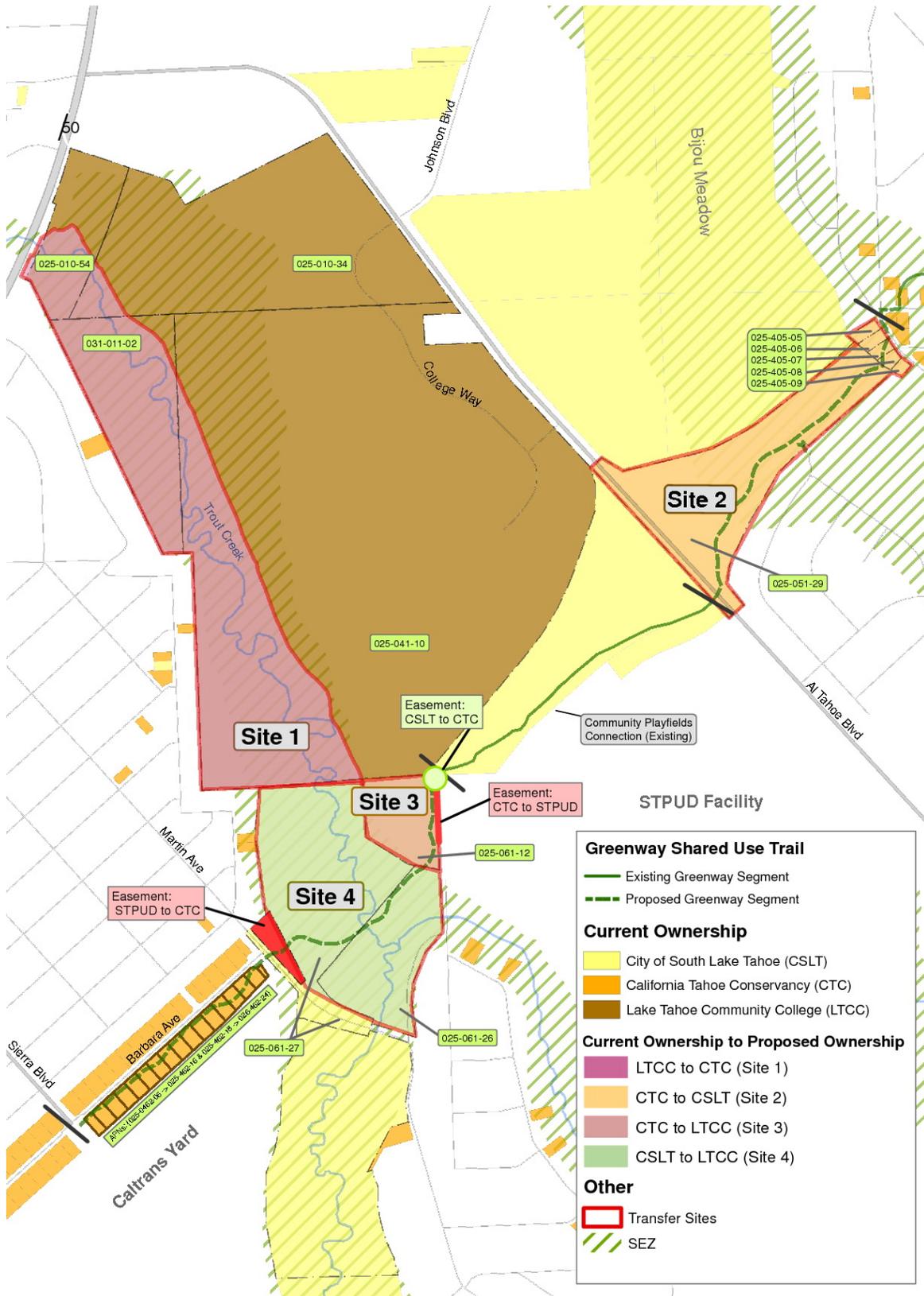


California Tahoe Conservancy
April 2016

Map for reference purposes only.
Sources: TRPA; CTC



EXHIBIT 2 – SITE NUMBER REFERENCE



California Tahoe Conservancy
March 2016

Map for reference purposes only.
Sources: TRPA; El Dorado County; CTC



EXHIBIT 3

SOUTH TAHOE GREENWAY SHARED USE TRAIL, PHASE 1A OPERATIONS AND MAINTENANCE AGREEMENT

This Operations and Maintenance Agreement (“Agreement”) is made and entered into as of this _____ day of _____ 2017 by and between the City of South Lake Tahoe (“City”), a municipal corporation and the California Tahoe Conservancy, a California public agency (“Conservancy”), with reference to the following facts and intentions:

On June 20, 2013, the Conservancy Board of Directors authorized implementation of the South Tahoe Greenway Shared Use Trail Project – Phase 1a (the Project);

On July 19, 2013, the Conservancy and the United States Forest Service (Forest Service) entered into a Special Use Permit whereby the Conservancy is authorized to construct, operate and maintain the Project on National Forest Lands for 20 years;

The Conservancy and the Forest Service own certain real property upon which the Project was constructed, more fully described in Exhibit A (“Property”);

The Project includes a Class 1 paved Bicycle Trail and trail appurtenances such as: signage, drainages, accessibility improvements, shoulder materials, and landscaping; commonly known as the South Tahoe Greenway Shared Use Trail, Phase 1A;

The City intends to operate and maintain the bicycle trail and associated infrastructure and facilities as more specifically described in Exhibit B (“Facilities”);

The City possesses the skills, tools, and knowledge to perform such operation and maintenance of the Facilities;

The Forest Service recognizes that the City will operate and maintain the portion of the Facilities on National Forest Lands; and

The City agrees to perform such operation and maintenance of the Facilities pursuant to the terms and conditions of this Agreement. If the City cannot maintain the Facilities on National Forest Service Lands, all responsibilities will remain with the Conservancy, or its designee.

Now Therefore, the parties agree as follows:

1. Facilities Defined.

1.1. Included Facilities. Class 1 HMA bicycle trail from the limits of Herbert Avenue to the limits of Glenwood Way (2700’ long, 10’ wide, with 2’ shoulders). The Facilities are identified within the California Tahoe Conservancy South Tahoe Greenway Shared Use Trail Phase 1A (Conservancy Project No. 111342A) plans and in Exhibit B. All Facilities shall be inspected twice annually. City will coordinate date of inspection with the Conservancy and include the Conservancy in the inspection.

1.2. Excluded Facilities. Some Project components and activities are excluded from the City's responsibilities and remain the responsibility of the Conservancy or the Forest Service (see Exhibit C)

2. Operations and Maintenance. The City agrees to operate and maintain the Facilities (Exhibit B), including all necessary inspections, tests, utility charges, and services.

3. Conservancy Responsibilities. The Conservancy shall perform the following activities which are an express condition precedent to the City's performance of its responsibilities:

3.1. Access. The Conservancy and the Forest Service shall at all times provide City with access to the Facilities in order for the City to perform the Services (defined below) and any and all work related thereto.

4. Scope of Services.

4.1. Preventative Maintenance Program. The City shall be responsible for activities and materials necessary to keep the Facilities operational and maintained in a clean and neat manner, including but not limited to the activities listed below. Any damage to the path surface from snow removal activities will be repaired the following spring. Care will be exercised to avoid unnecessary damage to adjacent unpaved, vegetated surfaces.

- Inspection of Property twice annually
- Sweeping, vandalism, and litter control, monthly during summer.
- Crack fill and minor pavement patching as needed
- Seal coating/slurry seal – as needed
- Trail striping/crosswalk striping – as needed
- Sign maintenance & replacement – as needed
- Checking & replacing lights – as needed

4.2. Major Repair and Replacement. Major repair and replacement such as major asphalt overlay or replacing asphalt, boardwalk, or bridge sections including damage repair resulting from storms or other natural disasters is not included in the Scope of Services.

5. City Performance Responsibilities.

5.1. Standards for Performance of the Services. The City shall perform the Services in a prudent, reasonable, and efficient manner and in accordance with: the Preventive Maintenance Program and Annual Budget; and, Prudent Utility Practices.

5.2. Personnel Standards. The City shall provide as reasonably necessary all labor and professional, supervisory, and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned. All individuals employed by the City to perform the Services shall be employees of the City, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by the City.

5.3. Compliance with Laws. The City shall comply with all laws applicable to the operation and maintenance of the Facilities and the performance of the Services. The City will adhere to all terms and conditions when performing work on Forest Service parcels, as outlined in permit ELD 100805.

5.4. Operating Records and Reports. The City shall maintain operating logs, records, and reports that document the operation and maintenance of the Facilities.

6. Coordination and Communication. The City's Assistant Director of Public Works shall be the City's primary contact for coordination and direction of City forces under this Agreement unless a differing contact is designated in writing by the City.

7. Compensation. The City shall fund the performance of the Services as follows:

7.1. Preventative Maintenance Program. The City's compensation for all Services, including labor, travel, materials, and out-of-pocket expenses, following the effective date of this Agreement, shall be borne by the City. Measure S funds shall be used to assist with these costs. Conservancy will reimburse City for preventative maintenance costs in excess of costs covered by Measure S funds, up to \$30,000 as authorized in Conservancy Resolution 17-01-01. Should funding not be available, the City will not be obligated to maintain the Project beyond Measure S funds. City will program intermediate project maintenance such as seal coats, slurry seals, and crack fill into the long term Preventative Maintenance Schedule.

7.2. Corrective Maintenance. City shall provide corrective maintenance to items listed within Exhibit B of this agreement. City shall notify Conservancy of corrective action prior to work. If, in the opinion of the City the corrective work proposed is a result of latent defects in workmanship of the original contract, City will notify the Conservancy of such and request funds for such work.

8. Indemnity.

8.1. By the City. To the maximum extent allowed by law, the City shall indemnify, defend and hold harmless the Conservancy, its directors, elected officials, officers, employees, representatives, members, consultants, and agents (collectively, "Conservancy") from and against any and all losses, liabilities, damages, claims, demands, obligations, causes of action, proceedings, awards, fines, judgments, penalties, or costs and expenses (including attorneys' fees and costs, court costs, experts' and witness' fees, and other costs and fees of litigation) arising out of, related to or resulting from, in whole or in part, out of or in connection with: (i) the City's or its elected officials, officers, employees, representatives, members, consultants and agents (collectively "City") breach or failure to comply with any of its obligations contained in this Agreement, including any obligations arising from compliance with or failure to comply with applicable laws; and, (ii) The City's retention of third parties to perform the Services.

8.2 By the Conservancy. To the maximum extent allowed by law including Government Code Section 14662.5, the Conservancy shall indemnify, defend and hold harmless the City, its council members, elected officials, officers, employees, representatives, members, consultants,

and agents (collectively, "City") from and against any and all losses, liabilities, damages, claims, demands, obligations, causes of action, proceedings, awards, fines, judgments, penalties, or costs and expenses (including attorneys' fees and costs, court costs, experts' and witness' fees, and other costs and fees of litigation) arising out of, related to or resulting from, in whole or in part, out of or in connection with the Conservancy, and its directors, elected officials, officers, employees, representatives, members, consultants, and agents, willful misconduct or negligence related to the Facilities or this Agreement.

8.3 Notice. The indemnifying party shall notify the indemnified party of the existence of any claim that it reasonably becomes aware of or to which the indemnifying party's indemnification obligations would apply and shall give the indemnifying party a reasonable opportunity to defend the same at its sole cost and expense with counsel of its own selection, subject to the indemnified party's reasonable approval. If the indemnifying party, within a reasonable time after written notice, fails to defend the indemnified party, the indemnified party shall have the right, but not the obligation, to undertake the defense of, and compromise and settlement of (exercising reasonable business judgment) the claim on behalf, for the account, and at the risk and expense of the indemnifying party.

9. Limitations Of Liability.

9.1 Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, the Conservancy agrees not to assert against the City any claim, demand, or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the Services by the City under this Agreement, and the Conservancy waives any such claim, demand, or suit against the City.

9.2. Exclusivity. The provisions of this section constitute the City's exclusive liability and the Conservancy's sole remedy with respect to the City's performance of the Services and the Conservancy hereby expressly and knowingly releases the City from any further liability.

10. Fines And Penalties. If during the term of this Agreement any governmental or regulatory authority or agency assesses any fines or penalties against the City or the Conservancy arising from the City's failure to operate and maintain the Facilities in accordance with applicable laws, such fines and penalties shall be the sole responsibility of the City.

11. Force Majeure. If the City is rendered wholly or partially unable to perform its obligations under this Agreement due to a Force Majeure Event (defined below), the City shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the City promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance, (i) promptly gives notice to the Conservancy stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of the City which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The term "Force Majeure Event" shall include explosion, fire, flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental

entities or officials, failure to obtain governmental permits or approvals, and changes in laws, rules, regulations, orders or ordinances affecting the City's performance of the Services.

12. Storage of Materials. The City, its agents, employees and contractors, at all times, shall only maintain and store materials, supplies and tools necessary for the City's performance of the Services. No materials and supplies will be stored on Forest Service parcels.

13. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: Assistant Director of Public Works
City of South Lake Tahoe
1052 Tata Lane
South Lake Tahoe, CA 96150

Provide a copy to: City Attorney's Office
City of South Lake Tahoe
1901 Airport Road, Suite 300
South Lake Tahoe, CA 96150

If to the Conservancy: Resources and Public Access Program Manager
California Tahoe Conservancy
1061 3rd Street
South Lake Tahoe, California 96150

Provide a copy to: Conservancy Greenway Project Manager
California Tahoe Conservancy
1061 3rd Street
South Lake Tahoe, California 96150

14. Assignment. This agreement is personal to the City. As such, the City has no right to assign any part of this agreement, or any part of its obligations under this agreement in whole or in part. The City may not grant concessions nor approval for events in or upon the Property or to, at, and about the Facilities without the prior written approval of the Conservancy. Neither this agreement nor any interest in this Agreement shall be assignable without the prior written consent of Conservancy.

15. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

16. **Good Faith.** The parties agree to exercise reasonable efforts and good faith to effectuate the terms and conditions of this Agreement.

17. **Controlling Law Venue.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in the Superior Courts in the County of El Dorado, South Lake Tahoe Division.

18. **Equal Opportunity Employment.** The City represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, disability, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

19. **Amendments.** This Agreement may be modified or amended only by a written document executed by both the City and Conservancy and approved as to form by the City Attorney.

20. **Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

21. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of Agreement between City and the Conservancy. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

22. **Execution.** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

23. **Survival.** Notwithstanding any provisions to the contrary, the obligations set forth in Sections 7, 9, 10, 11, and 12 shall survive in full force despite the termination of this Agreement.

24. **Authority to Enter Agreement.** Each party has all requisite power and authority to execute, deliver, and perform under this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

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

California Tahoe Conservancy:

By _____
Patrick Wright, Executive Director
California Tahoe Conservancy

City of South Lake Tahoe:

ATTEST:

By _____
Nancy Kerry, City Manager

By: _____
Susan Alessi, City Clerk

APPROVED AS TO FORM:

By _____
Thomas T. Watson, City Attorney

Attachments:

Exhibit A – Description of the Property

Exhibit B – Facilities included in City operations and maintenance responsibilities

Exhibit C – Facilities excluded from City operations and maintenance responsibilities

EXHIBIT A

South Tahoe Greenway Shared Use Trail - Phase 1A

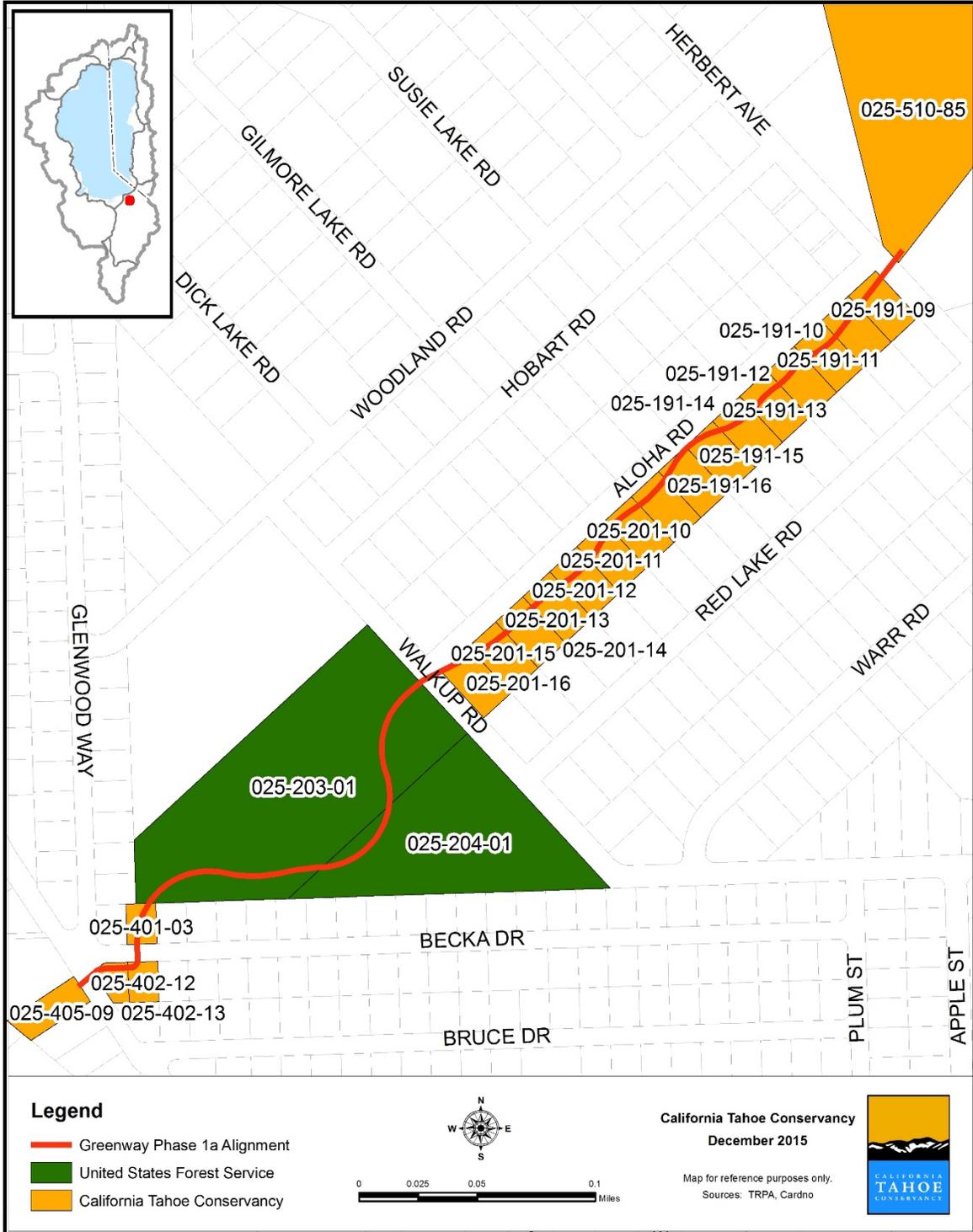


EXHIBIT B

Facilities included in City maintenance and operations responsibilities

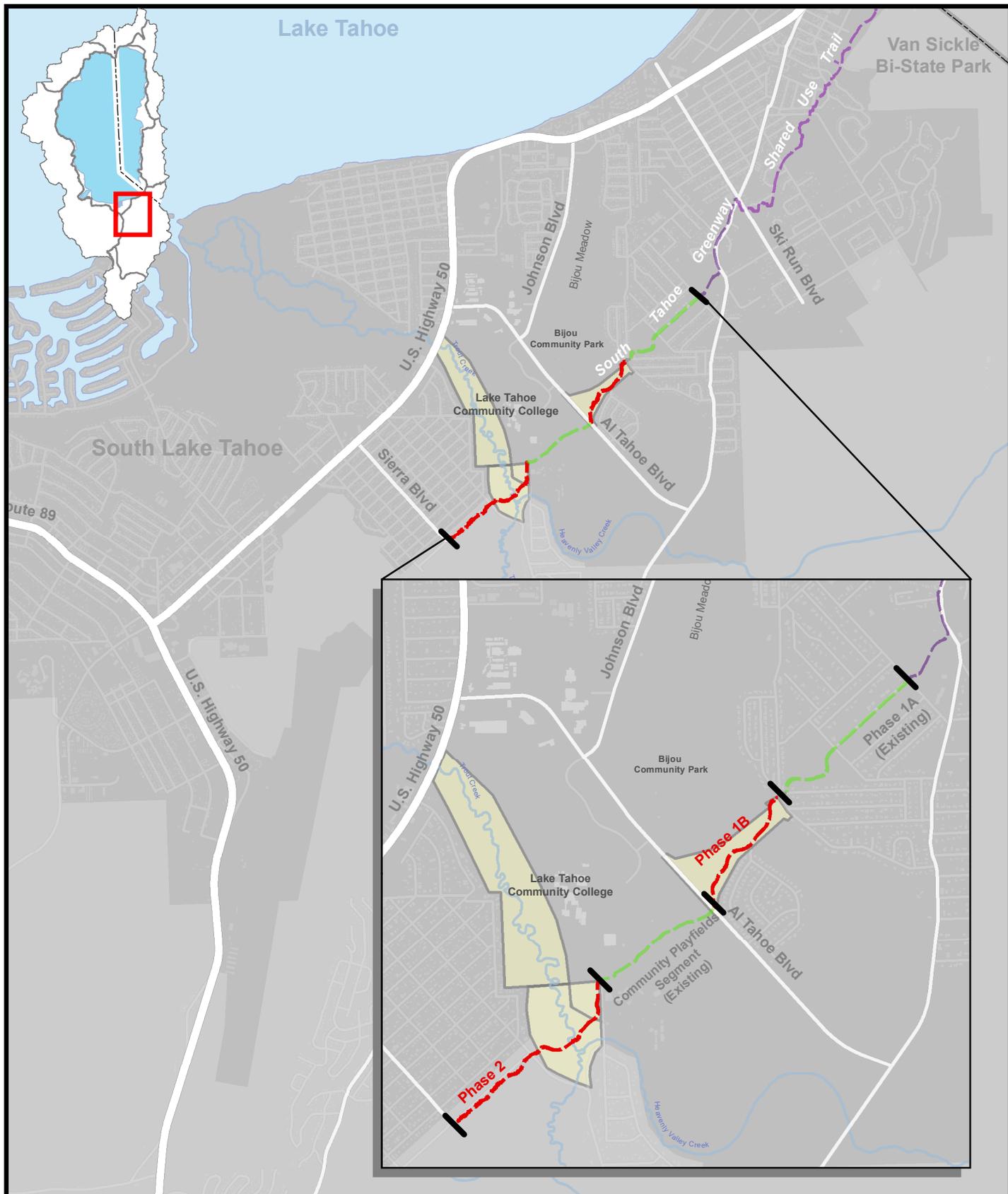
Included Facilities	Quantity
Concrete curb and gutter (details 2, 3, 4, 5/D-2)	
Concrete valley gutter (detail 6/D-2)	2
Concrete accessibility ramps (details 1, 3, 4/D-4)	8
Snow stakes installed in association with bike path (typical - in road shoulders)	15
Bike path "no motor vehicles signs" (R44A)	8
Bike path small stop signs (R1-1)	6
Bike path "end bike route" signs (M4-6)	6
Bike path "road crossing" stencils (MUTCD (California)	6
Cross walk striping (CALTRANS STANDARD)	6
Street double yellow centerline striping (4"), intersection of Glenwood Way, Rancho Way and Becca Drive	4
Street stop bars striping (12" white)	6
Street stop signs (R1-1)	6
Street stop ahead signs (W3-1)	6
Street all way plaque (R1-3P)	4
Street trail x-ing signs (W11-15, W11-15P, W16-7P)	10
Street bike x-ing stencils (MUTCD (CALIFORNIA) FIGURE 9B-7	9
Rock dissipaters (Becca drainage)	4
12" HDPE pipe (Becca drainage)	25 LF
18" HDPE pipe (Becca drainage)	94 LF
Double sediment trap (36" – Becca) (detail 1/D-8)	2
Flared end sections (Becca) (detail 2/D-5)	3
Yard drain (Becca) (detail 3/D-5)	1
Power to the utility side of the electrical panels for cobra street lights	3
Cobra head lights (plans state CTC/City to coordinate with Liberty Energy for installation on utility pole, sheet P-5A)	3

EXHIBIT C

Facilities excluded from City maintenance and operations responsibilities

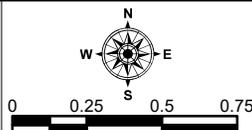
Excluded Facilities	Quantity
Grounds surrounding Facility	N/A
Erosion control	N/A
Vegetation– Conservancy owned land (including noxious weed management)	N/A
Vegetation– National Forest Service Lands (including noxious weed management)	N/A
Buck and pole fence	~100 LF

ATTACHMENT 3 Project Map South Tahoe Greenway Shared Use Trail Project



Greenway Shared Use Trail

- - - Proposed Phases 1b & 2
- - - Existing
- - - Future
- Parcels Involved in Property Exchange



0 0.25 0.5 0.75
Miles

Sources:
TRPA, CTC

**California
Tahoe Conservancy**



March 2017
*Map for reference purposes only.

ATTACHMENT 4 - Project Partners

South Tahoe Greenway Partners		
AGENCY	BENEFITS	CONTRIBUTION
	<ul style="list-style-type: none"> • Adds 3.86 of paved trail to the bicycle/pedestrian trail network in the core of South Lake Tahoe, linking residential and lodging uses to jobs, schools, shopping and recreation areas. • Serves residents of two densely populated, low-income neighborhoods. • Implements a high-priority project identified on the City’s Park, Trails, and Recreation Master Plan. • Resolves approximately 45,000sf of existing encroachments of City facilities on Conservancy property (bike park and disc golf course). • Provides opportunity to expand fast-growing Bijou Community Park through acquisition of high capability land. • \$420,000 net gain in land/coverage value as a result of land exchange. 	<ul style="list-style-type: none"> • Trail maintenance (paid by Measure R/S + Conservancy funds)
	<ul style="list-style-type: none"> • Provides safe and direct connection to campus from two neighborhoods with large student populations. • Reduces natural resource management responsibilities in Trout Creek corridor. • Increases amount of high capability land available for possible campus expansion. • \$6,500 net gain in land/coverage value as a result of land exchange. 	<ul style="list-style-type: none"> • \$700,000 (contingent upon land exchange)
	<ul style="list-style-type: none"> • Implements EIP and Regional Plan, and contributes to a regionally significant non-motorized trail network. 	<ul style="list-style-type: none"> • \$1,300,000 (planning and construction) • Trail maintenance costs above Measure R/S • Major repair/replacement costs • \$426,500 in land/coverage value
	<ul style="list-style-type: none"> • Implements Regional Transportation Plan (RTP) and Bike and Pedestrian Master Plan, and contributes to GHG emission reductions required as part of TRPA’s Sustainable Community Strategy (SCS). 	<ul style="list-style-type: none"> • \$1,928,000 (Caltrans) • \$399,000 (TTD/TMPO)