



ORDINANCE No. 2471

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE COUNTY OF NEVADA, PAMELA DOBBAS, AND TEICHERT AGGREGATE, INC., FOR THE BOCA QUARRY EXPANSION PROJECT AND OFF-SITE ROADWAY IMPROVEMENTS LOCATED AT 16616 AND 16774 WEST HINTON ROAD, EAST OF TRUCKEE, UNINCORPORATED NEVADA COUNTY

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I:

The Development Agreement submitted by Teichert Aggregate, Inc. for Assessor's Parcel Numbers 048-090-012 and 048-200-003, which are located at 16616 and 16774 West Hinton Road, east of Truckee, in Nevada County, be approved, based on the following findings A-E:

- A. Teichert Aggregate, Inc., ("Developer") filed a Development Agreement application pursuant to Government Code section 65864, et seq. and Nevada County Land Use Development Code section L-II 5.18 for the 230-acre Boca Quarry Expansion Project located at 16616 and 16774 West Hinton Road, east of Truckee, in Nevada County; and
- B. That the proposed Development Agreement (the "Development Agreement"), a copy of which is attached as Exhibit "A," was duly reviewed and recommended for approval by the Planning Commission after a public hearing on August 22, 2019, on a 4-0, 1 absent vote; and
- C. That the Planning Commission's recommendation has been received; the Environmental Impact Report has been certified by the Board of Supervisors on October 8, 2019, included a review of the Development Agreement; and the public hearing has been held and concluded as required for approval of the Development Agreement; and
- D. That the Development Agreement complies with the requirements of Government Code section 65856.2 and Nevada County Land Use Development Code section L-II 5.18; and
- E. That the Board finds that the information presented or obtained at the public hearing substantiates all of the facts necessary for approval of the Development Agreement and that the Development Agreement:
 1. Is consistent with the goals, objectives, policies and applicable land use designations of the Nevada County General Plan; and

2. Complies with all of the provisions of the Nevada County Land Use and Development Code; and
3. Is consistent with the public convenience, general welfare and good land use practice, making it in the public interest to enter into the development agreement with the applicant; and
4. Will not:
 - a. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area; and
 - b. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site; and
 - c. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare; and
 - d. Adversely affect the orderly development of property or the preservation of property values.

SECTION II:

Pursuant to Government Code section 65856.2 and Nevada County Land Use Development Code section L-II 5.18, the Development Agreement is approved, and the Chair of the Board of Supervisors is hereby authorized upon the effective date of this Ordinance to execute, on behalf of the County of Nevada, the Development Agreement by and between the County of Nevada and Teichert Aggregate, Inc, in the form attached, with authorized changes, if any, approved by the Board prior to adoption of this Ordinance and subject to such minor and clarifying changes consistent with the terms thereof as may be necessary and approved by County Counsel prior to execution thereof. Within ten (10) days after execution of the Development Agreement on behalf of the County, the Clerk of the Board of Supervisors shall record the Development Agreement and this Ordinance with the Recorder of the County of Nevada.

SECTION III:

If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION IV:

This Ordinance shall take effect and be in full force thirty (30) days from and after introduction and adoption, and it shall become operative on the 7th day of November, 2019, and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in the Union, a newspaper of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by a majority vote of the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 8th day of October, 2019, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 


_____ Richard Anderson, Chair

10/8/2019 cc: GIS*
Union*
COB*
CoCo*
QC*
Planning*

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:	
ATTN: Planning Director County of Nevada 950 Maidu Avenue Nevada City, CA 95959	

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE COUNTY OF NEVADA,

A. TEICHERT & SON, INC.,

AND

PAMELA DOBBAS

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE COUNTY OF NEVADA,
A. TEICHERT & SON, INC., AND
PAMELA DOBBAS**

THIS DEVELOPMENT AGREEMENT (“Development Agreement”) is made and entered into this 8th day of October, 2019, by and between the COUNTY OF NEVADA, a political subdivision of the State of California (“County”), A. TEICHERT & SON, INC. a California corporation (“Developer”), and PAMELA DOBBAS (“Property Owner”). For the purposes of this Development Agreement, County, Developer, and Property Owner are referred to individually as “Party” and collectively as “the Parties.”

RECITALS

A. State Law. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864, *et seq.*, of the Government Code (the “Development Agreement Statute”) which authorizes the County and a party or person having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in real property. All references in this Agreement to a “Code” refer to a code of the State of California, unless otherwise specified.

B. County Rules and Regulations. Pursuant to Government Code section 65865, the County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in Section L-II 5.18 of the Nevada County Land Use and Development Code (“County Development Agreement Regulations”). This Development Agreement has been processed, considered and executed in accordance with County Development Agreement Regulations. County enters into this Agreement pursuant to the provisions of the Government Code, the County Development Agreement Regulations and applicable County policies.

C. Land Ownership. Property Owner owns in fee approximately 230 acres of real property in the County, which property is described in attached Exhibit A and shown on the map set forth in attached Exhibit B (the “Property”). Property Owner has granted Developer a legal interest in the Property to allow for the exclusive right to mine and process aggregate rock and to perform all other related activities on the Property.

D. Project Background. The Property has been mined for aggregate by several operators since the 1950s and was formerly known as the Hirschdale Cinder Quarry. In or around 2005, Developer took over as the operator of aggregate mining operations on the Property and renamed the operation “Boca Quarry” (“Boca Quarry”). Since taking over the operation of the Boca Quarry, Developer has invested substantially in the Boca Quarry by:

- 1) applying for and obtaining from the County a rezone of the Property to add a Mineral Extraction (ME) combining district to the Property in 2005;

2) applying for and obtaining from the County a revised Conditional Use Permit (“U06-012”), attached as Exhibit C, and an amended Reclamation Plan (“RP06-001”);

3) obtaining the necessary approvals from the U.S. Forest Service and constructing a new access road that bypassed the Hirschdale community in 2008. U06-012 allows for aggregate mining operations on approximately 40 acres of the Property, known as the “East Pit” as shown in Exhibit D. U06-012 has an expiration date of July 26, 2027. Developer operated the Boca Quarry from 2005 through 2008. The Boca Quarry has been idle since the end of the 2008 operating year based on reduced aggregate demand resulting from the economic downturn.

E. Boca Quarry Expansion Project. In addition to its prior investment in the Boca Quarry described in Recital D above, Developer desires to implement its Boca Quarry Expansion Project (“Project”). The Project consists of the planned expansion of Developer’s aggregate surface mining operation on the Property. The Project will extend surface mining operations from the existing operations in the East Pit to an additional approximately 118 acres of the Property known as the West Pit (“West Pit”), as depicted in Exhibit E. (The combined East Pit and West Pit excavation/disturbance areas will total approximately 158 acres of the Property.) The Project will allow for an increase in the Boca Quarry’s maximum aggregate production from its historical maximum of approximately three hundred thousand (300,000) tons sold per year to one million (1,000,000) tons sold per year, but actual production will vary depending on local market demand. The Project will result in the removal of a total of approximately 17 million (17,000,000) tons (approximately 13 million (13,000,000) cubic yards) of material in three phases over a 30-year period, beginning with the mining of the existing East Pit in Phase 1 and continuing with the mining of the West Pit in Phases 2 and 3. Blasting will also be utilized as part of the proposed mining activities. The mined areas of the Property will be reclaimed to open space with onsite overburden as well as clean fill material imported primarily from Developer’s nearby Martis Valley aggregate mining and processing site. The Project includes the issuance of a new Conditional Use Permit (“U11-008”), attached as Exhibit F, and Reclamation Plan RP11-001, attached as Exhibit G, to correspond with the proposed mine expansion.

F. Purpose of Development Agreement. The purpose of this Agreement is to develop the Project in conformance with the laws stated in Paragraphs A and B above, to facilitate the implementation of the Project Approvals through the development of the Project, thereby realizing the public benefits to the County and private benefits to Developer, including those described in these Recitals. The economic uncertainty of the aggregate market makes the Project difficult for Developer to undertake if the County had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with implementation of the Project. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in County planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with the Project. This Development Agreement also describes how the old Use Permit U06-012 and the new Use Permit U11-008 will apply to the mining and reclamation of the Property.

G. Developer's Intention. As with other major private undertakings, the implementation of the Project is subject to significant economic uncertainties. These uncertainties, together with other currently unknown factors, which may arise during the Term (as defined in Section 1.5(b) herein) of this Development Agreement, prevent Developer from presently predicting the precise timing for implementation of the Project. Nevertheless, assuming that market and economic conditions perform as currently anticipated and no force majeure events occur, it is Developer's present intention to implement the Project during the Term of this Development Agreement.

H. Project Approvals. Concurrent with the approval of this Agreement, County will approve Project Approvals as defined in Section 1.7 of this Agreement. As part of the Project Approvals, County has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code section 21000, *et seq.* and section 15000, *et seq.*, of Title 14 of the California Code of Regulations, hereinafter collectively, "CEQA"), the required analysis of the environmental effects which would be caused by the Project and has determined those feasible mitigation measures which will eliminate, or reduce to an acceptable level, the adverse environmental impacts of the Project. County has completed and certified an environmental impact report ("EIR") in connection with the Project, including the Project Approvals. County has also adopted a monitoring program to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed.

I. Consistent with General Plan. The County, after conducting all duly noticed public hearings, has found that this Agreement is consistent with the County's General Plan, Nevada County Land Use and Development Code section L-II 5.18, Government Code sections 65867, *et seq.*, and all other applicable ordinances, plans, policies and regulations of County.

J. Planning Commission Recommendation and Board of Supervisors Approval. On August 22, 2019, the Nevada County Planning Commission (the "Planning Commission"), after giving notice as provided by law, held a public hearing to consider this Development Agreement, and recommended approval of this Development Agreement. On October 8, 2019, the Nevada County Board of Supervisors (the "Board of Supervisors"), after giving notice as provided by law, held a public hearing to consider this Development Agreement.

K. County Best Served. The terms and conditions of this Development Agreement have undergone extensive review by County staff, its Planning Commission and its County Board of Supervisors at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the County General Plan, the Development Agreement Legislation, and the County Development Agreement Regulations and, further, the County Board of Supervisors finds that the economic interests of County's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

L. County Ordinance. On October 8, 2019, the Board of Supervisors adopted Ordinance No. _____, approving this Agreement and authorizing the Chair of the Board of Supervisors to execute the Agreement ("Ordinance"), a copy of which is attached hereto as Exhibit H. The Ordinance becomes effective on November 7, 2019.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, County, Developer, and Property Owner agree as follows.

ARTICLE 1.

GENERAL PROVISIONS

1.1. Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full. In the event of inconsistency between the Recitals and the Articles of this Agreement, the provisions of the Articles shall prevail.

1.2. Parties.

(a) County. County is a political subdivision, with offices located at 950 Maidu Avenue, Nevada City, CA 95959. "County," as used in this Development Agreement, shall include the County and any assignee of or successor to its rights, powers and responsibilities.

(b) Developer. Developer is a California corporation with offices located at 3500 American River Drive, Sacramento, CA 95864. "Developer," as used in this Development Agreement, shall include any permitted assignee or successor in interest as herein provided.

(c) Property Owner. Property Owner is an individual. "Property Owner," as used in this Development Agreement, shall include any permitted assignee or successor in interest as herein provided.

1.3. Property. All of the Property, as described in Exhibit A and shown in Exhibit B, shall be subject to this Development Agreement.

1.4. Relationship between County, Developer, and Property Owner. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the County, Developer and the Property Owner and that Developer is not an agent of County, and Property Owner is not an agent of County. County, Developer and Property Owner hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making County, Developer and/or Property Owner joint venturers or partners.

1.5. Term.

(a) Effective Date. This Development Agreement shall become effective upon the date the Enacting Ordinance becomes effective ("Effective Date").

(b) Term of Agreement. The term ("Term") of this Development Agreement shall commence upon the Effective Date and shall continue in full force and effect for thirty (30) years thereafter unless extended or earlier terminated as provided herein. Upon request by Developer, the term of Agreement may be extended one (1) time for a term of ten (10) years. The request for an extension shall be subject to review by the Planning Department and approval

by the County Board of Supervisors. The extension will be subject to any new state and federal laws, including health and safety regulations in effect at the time of the extension request. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits of the Project.

1.6. Existing Entitlements. As discussed in Recital D, mining of the East Pit is subject to Use Permit U06-012, attached herein as Exhibit C. U06-012 was approved by the County Planning Commission on July 26, 2007, for a term of twenty (20) years. U06-012 has an expiration date of July 26, 2027. Reclamation of the East Pit is subject to Reclamation Plan RP06-001, also approved on July 26, 2007.

1.7. Project Approvals. Concurrent with or prior to the approval of the Agreement, County will approve or has approved the following land use entitlements for the Property, which entitlements are also the subject of the Agreement:

(a) Environmental Impact Report. Certification of the Final Environmental Impact Report (EIR11-001) (State Clearinghouse No. 2012022024) prepared pursuant to the California Environmental Quality Act and known as “Boca Quarry Expansion Project Final Environmental Impact Report” (“EIR”) as adequate and complete by written findings, and a Mitigation Monitoring Program.

(b) Conditional Use Permit. U11-008 to establish proposed mine expansion operations and fees.

(c) Reclamation Plan. RP11-001 to ensure the process of restoring the land to a condition that is readily adaptable for alternative land uses.

(d) Subsequent Approvals. The Parties agree that in order to develop the Property as contemplated in this Development Agreement, the Project may require additional entitlements, development permits, and use and/or construction approvals other than the Project Approvals, which may include without limitation: conditional use permit amendments, reclamation plan amendments, grading permits, building permits, lot line adjustments, and encroachment permits (collectively, “Subsequent Approvals”). At such time as any Subsequent Approval is approved by the County, such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Development Agreement.

ARTICLE 2.

IMPLEMENTATION OF THE PROJECT

2.1. Developer’s Obligations.

2.1.1. Compliance. Developer agrees that implementation of the Project shall be in conformance with all of the terms, covenants, obligations, and requirements of the Project Approvals and this Development Agreement.

2.1.2. Project Implementation. Developer shall have the right to implement the Project on the Property in accordance with the Project Approvals and this Development Agreement.

2.1.3. Public Benefits. County is desirous of gaining the public benefits that will result from the development of this Property, including but not limited to:

(a) providing a local source of aggregate to keep infrastructure construction and maintenance costs down;

(b) implementing the County's General Plan goals and policies by reducing vehicle miles traveled (VMT) and associated traffic, air quality, and noise impacts associated with the importation of aggregate from outside of the region;

(c) mining of valuable mineral resources recognized by the State and County (as reflected by the State Department of Conservation's MRZ and County's ME designations);

(d) generating sales tax revenue for the County;

(e) Developer shall construct sight distance and bicycle mitigation measures identified in the EIR and incorporated into U11-008, prior to the commencement of sales of aggregate material mined from the West Pit.

(f) Developer shall place a Knox lock or equivalent locking mechanism to the satisfaction of County fire officials on all quarry gates. Developer and Property Owner shall allow for emergency ingress and egress through the site in the event of an emergency evacuation or similar public safety need.

These public benefits are in addition to those dedications, conditions and exactions required by the Project Approvals, laws or regulations, and advance the planning objectives of and provide benefits to the County.

2.1.4 East Pit Mining. The County agrees that any aggregate material mined from the East Pit and sold by Developer will not be subject to the conditions and mitigation measures contained in U11-008 but will instead be subject to the conditions and mitigation outlined in U06-012, as described in Section 1.6 above. Developer agrees to comply with all of the conditions and mitigation outlined in U06-012 in connection with the mining and sales of aggregate originating from the East Pit. Reclamation of the East Pit shall be subject to the Reclamation Plan RP 11-0001, as described in Section 1.6 above. Developer agrees that annual production of aggregate material mined from the East Pit will not exceed the historical maximum of three hundred thousand (300,000) tons sold per year. Upon the expiration of U06-012, on July 27, 2027, any remaining mining shall be subject to the conditions and mitigation provided in U11-008, as described in Section 2.1.5 below, and the payment of cents per ton funding, as provided in Section 2.1.7 below.

2.1.5 West Pit Mining. Developer agrees that any aggregate material mined from the West Pit and sold by Developer will be subject to the conditions and mitigation measures contained in U11-008, as described in Section 1.7 above. Reclamation of the West Pit shall be subject to the Reclamation Plan RP 11-001, as described in Section 1.7 above. Developer agrees

that annual production of aggregate material mined from the West Pit will not exceed the maximum of one million (1,000,000) tons sold per year that was analyzed in the EIR.

2.1.6. Combined Annual Production Limitation. In addition to the tonnage limitations for East Pit Mining and West Pit Mining set forth in Sections 2.1.4 and 2.1.5, respectively, Developer agrees that annual production of aggregate mined from the Property will not exceed the maximum of one million (1,000,000) tons per year that was analyzed in the EIR.

2.1.7 Cents Per Ton. Developer agrees to pay cents per ton funding (“Cents Per Ton”) to the County and Town of Truckee pursuant to the payment table attached herein as Exhibit I, as adjusted for inflation in accordance with Section 2.1.7.5 below. These funds shall be paid for each ton of aggregate sold by Developer that is produced from the West Pit (or produced from the East Pit after expiration of U06-012) for the term of the Development Agreement.

2.1.7.1 Purpose of Cents Per Ton Funding. The purpose of the Cents Per Ton is to compensate the County and the Town of Truckee for roadway maintenance costs on Stampede Meadows Road between West Hinton Road and the Interstate 80/Hirschdale Road interchange resulting from the transport of aggregate produced from the West Pit pursuant to U11-008, as well as any remaining aggregate produced from the East Pit after the expiration of U06-012.

2.1.7.2 Method and Timing of Payment. Payments of Cents Per Ton to the County required under Section 2.1.7 shall be made to the County of Nevada and delivered to the County Executive Office, or such address as County may designate in writing. All transmittals of payments to the Town of Truckee shall be copied to Developer. Payments required by Section 2.1.7 shall be made annually after the close of each calendar year (December 31). Within 30 days of the close of the calendar year, Developer shall provide County with a statement indicating the tons of aggregate from the West Pit (and East Pit after expiration of U06-012) sold and a calculation of the cents per ton contribution to be made as a result of said production. Annual payments shall be based upon the tonnage produced and sold from the West Pit (and the East Pit after expiration of U06-012) and the rates provided for in Exhibit I, as adjusted for inflation in accordance with Section 2.1.7.5 below. Upon receipt of this accounting and calculation of payment due, County shall invoice Developer for payment. Within 30 days of receipt of said invoice, Developer shall make the required cents per ton payment to the County.

2.1.7.3 Payments to the Town of Truckee. The County shall forward such funds to the Town of Truckee in accordance with Exhibit I, as adjusted for inflation in accordance with Section 2.1.7.5 below, per separate agreement with Truckee.

2.1.7.4 Payment Verification. For the purpose of administering this section, Developer will report and account for the sale of all aggregate removed from the West Pit (and from the East Pit after expiration of U06-012) for which contributions are due. Said procedures shall be consistent with the terms of this Agreement. The County may audit, as often as it determines is necessary, the tonnage of aggregate mined from the East Pit, and/or the West Pit and sold at the Project site and the payments to the County or to the Town of Truckee to verify that the amount of payment correctly reflects actual tonnage sold. The County hereby agrees to keep any proprietary information it may obtain from Developer confidential to the maximum extent

allowed by law. Developer shall clearly mark any proprietary information provided County as confidential.

2.1.7.5 Inflation Adjustment. The payment of Cents Per Ton required under Section 2.1.7 and as provided in Exhibit I shall be adjusted annually based on the Engineering News Record (ENR) index for California Cities.

2.2 Developer's Rights. Developer shall have the right to develop the Project on the Property in accordance with the Project Approvals and the Vested Elements, and other terms and conditions of development applicable to the Property as are set forth in:

- (a) The General Plan of County on the Effective Date (“Applicable General Plan”);
- (b) The Nevada County Land Use and Development Code on the Effective Date (“Applicable Land Use and Development Code”);
- (c) Other rules, regulations, ordinances and policies of the County applicable to development of the Property on the Effective Date (collectively, together with the Applicable General Plan and Applicable Land Use and Development Code, the “Applicable Rules”);
- (d) The Project Approvals;
- (e) This Agreement;
- (f) Use Permit U06-012, as set forth in Exhibit C attached hereto; and
- (g) The Cents Per Ton, as set forth in Exhibit I attached hereto

The foregoing items (a) through (g) inclusive (“Vested Elements”) are hereby vested subject to the provisions of this Development Agreement.

2.3 County Obligations.

2.3.1. County hereby agrees to be bound with respect to the Vested Elements, subject to Developer's compliance with the terms and conditions of this Development Agreement. Nothing in this section shall be deemed to eliminate or diminish the requirement that Developer obtain any required Subsequent Approvals for the Project in accordance with County requirements.

2.3.2. Upon submission by Developer of completed applications and processing fees for any Subsequent Approvals, County shall use its best efforts to promptly and diligently process all applications for Subsequent Approvals, including land use and construction approvals, permits, plans and maps necessary to implement the Project, in accordance with the terms of this Agreement, the Project Approvals, the County's General Plan and the Nevada County Land Use and Development Code. Developer acknowledges that County cannot promptly process Subsequent Approvals until Developer submits complete applications and responds to request for additional information on a timely basis.

2.3.3. Subject to the provisions of Section 2.4 of this Agreement, neither the County nor any County Agency shall enact any initiative, ordinance, policy, resolution, general plan amendment or other measure that relates to the development or the construction of the Project, on all or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

2.3.4. Permit Exercise. The County agrees that U011-008 and Reclamation Plan RP11-001 addresses the mining and reclamation of the Property as a whole. As mining may occur on a portion of the Property pursuant to U06-012, the County hereby finds that U11-008 has been exercised as required under Nevada County Code, Title 3, Section L-II 5.10, through Developer's prior removal of material from the East Pit in connection with U06-012.

Section 2.1.7 above, the County shall forward cents per ton funding to the Town of Truckee in accordance with Exhibit I, as adjusted for inflation in accordance with Section 2.1.7.5 above per separate agreement with Truckee.

2.4. Changes to Applicable Laws and Regulations.

2.4.1. Notwithstanding anything to the contrary in Section 2.2 of this Agreement, in addition to the Vested Elements, only the following changes to the General Plan and the Nevada County Land Use and Development Code ("Land Use Regulations") adopted by the County after the Effective Date shall apply to and govern the Project from the Effective Date through the remainder of this Agreement:

(a) Future Land Use Regulations that are of general applicability to the entire County and that either are not in conflict with this Agreement or have been consented to in writing by Developer.

(b) County ordinances, resolutions, policies or actions reasonably adopted or pursued by the County in order to comply with preemptory State and federal laws (the "New Law"). In the event such laws prevent or preclude compliance with one or more provisions of this Agreement, then immediately following the enactment of the New Law the Parties shall meet and confer in good faith to determine whether the New Law applies to the Property, and whether suitable amendments to the Agreement can be made, in order to maintain Developer's right to develop the Project.

(c) In the event the Parties, after having engaged in good faith negotiations, are unable to agree on such amendments, the Parties shall consider whether suspension of the term of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event that the Parties, after having engaged in good faith negotiations are unable to agree on the suspension issues, either Party shall have the right to terminate this Agreement by giving the other Party sixty (60) days written notice of termination.

(d) Developer or County shall have the right to institute litigation relating to the New Law and raise any issues regarding its applicability or validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that County would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the New Law, County shall not be required

to undertake such action until the litigation is resolved, or the New Law is otherwise determined invalid, inapplicable, or is repealed. In the event that such judgment invalidates the New Law or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its term shall be extended by the amount of time between the effective date of the New Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is directly or indirectly affected by the New Law, the provisions of subparagraph 2.4.1.(c) above shall apply.

2.4.2. Upon execution of this Agreement, Developer shall prepare two (2) sets of the vested Elements as provided in Section 2.2. of this Agreement, one (1) set for County and one (1) set for Developer, so that if it becomes necessary in the future to refer to any of the Vested Elements, there will be a common set available to both Parties.

2.4.3. The provisions of Section 9.9 of this Agreement relating to estoppel certificates shall apply to any request made by Developer to County with respect to the life of any entitlement covered by this subparagraph. Nothing in this section shall be construed to or operate to extend the term of this Agreement.

ARTICLE 3.

FEES

3.1 Fees.

(a) Developer shall be subject to all fees currently adopted by the County, including scheduled or periodic increases as provided for in the adopting ordinances or resolutions (“Current Fee”). Developer shall pay, without protest or without challenge, the Current Fees in effect at the time of the issuance of requested permit or entitlement.

In addition, Developer agrees to pay any new fees adopted by the County, or the recalculation of existing fees (“New Fees”) in effect at the time of the issuance of a requested permit or entitlement. Developer shall retain the right to challenge New Fees as permitted by law.

3.2 **Dedications.** No dedication of an interest in land shall be imposed by the County as a condition of Project development except as set forth in the public benefits or if required as a condition of obtaining a Discretionary Approval.

3.3 **Taxes and Assessments.** The County may impose new taxes and assessments without consent of Developer and/or Property Owner on the Property in accordance with the then-applicable laws, but only if such taxes or assessments are also imposed on others’ land and/or projects similarly situated within the jurisdiction of the County, and only if the impact thereof does not fall disproportionately on the Property as compared with other similarly situated land and projects within the County’s jurisdiction or portion of the County’s jurisdiction subject to the tax or assessment. The amount of any taxes or assessments may be increased over time so long as the increase is applied consistently to all land or projects subject thereto. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise

have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property.

3.4 Life of Development Approvals and Permits.

(a) The Term of this Agreement and any of the Vested Elements shall not include any period of time during which (i) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay the construction of the Project; (ii) a condition of approval could not be satisfied because the condition of approval necessitated action by a public agency, and the public agency did not take such action; or (iii) a lawsuit involving any of the Vested Elements is pending. The Term of this Agreement shall be extended by the length of the period of time during which any situation described in (i) through (iii) exists.

3.5 Development Timing. This Agreement contains no requirement that Developer must initiate or complete development of the Project or Property or any portion thereof within any period of time set by County. It is the intention of this provision that Developer be able to develop the Project in accordance with Developer's own schedule. However, nothing herein shall be construed to relieve Developer from any time conditions in any permit or to excuse the timely completion of any act which is required to be completed within a time period set by any applicable code or permit provisions.

ARTICLE 4.

ANNUAL REVIEW

4.1. Annual Review. The annual review required by Government Code section 65865.1 shall be conducted as provided in Section L-II 5.18 (F) of the Nevada County Land Use and Development Code, as of the date of this Agreement. Failure to conduct the annual review, standing alone, is not a breach of the Agreement.

4.2. Relationship to Default Provisions. The above procedures shall supplement and shall not replace that provision of Section 5.1 of this Development Agreement.

ARTICLE 5.

AMENDMENTS

5.1. Amendments to Agreement. This Agreement may be amended or modified from time to time or canceled in whole or in part by mutual consent of the Parties or their respective successors-in-interest or assigns in writing in accordance with Government Code sections 65867, 65867.6 and 65858 as follows:

(a) Administrative Agreement Amendments. Any amendment to this Agreement which does not relate to (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for reservation and dedication of land, including the location or size of areas committed to open space, (iv) conditions, terms, restrictions and requirements relating to subsequent Discretionary Actions, (v) any conditions or covenants relating to the Project or use

of the Property, (vi) significant changes in the Project Approvals or any infrastructure construction, maintenance or securitization requirements, or (vii) monetary contributions by Developer, shall be determined to be an “Administrative Agreement Amendment” and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute any amendment hereto. Such amendment may be approved by the County Executive Officer or designee and does not require action by the Board of Supervisors. All other amendments to this Agreement shall be processed and approved in accordance with the same procedure, including without limitation, public notice and hearing requirements, as used for approval of this Agreement.

(b) Any Minor Administrative Amendment to a Project Approval or Subsequent Approval, as defined in Section 5.2 below, shall not require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

(c) No amendment, modification, waiver or change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which expressly refers to this Agreement and is signed by the duly authorized representatives of both parties, their successors or assigns.

5.2. Amendments to Project Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

(a) The Planning Director shall have the authority to approve minor administrative changes to the Project Approvals in accordance with, and as defined by, Section L-II 5.8 of the Land Use and Development Code (“Minor Administrative Amendment”).

(b) Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Minor Administrative Amendment as set forth above, shall be subject to review, consideration and action pursuant to the applicable substantive and procedural provisions of the County’s General Plan, zoning, subdivision, and other applicable land use ordinances and regulations in effect when such an amendment or modification request is approved. Any such approved amendment or modification shall be reflected in an amendment to this Agreement and/or its pertinent exhibits. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be a Minor Administrative Amendment or otherwise permitted by this Agreement, shall be considered a new discretionary action by County (“Discretionary Action”) and may be subject to further CEQA review. County shall not be precluded from considering and/or applying any County law or other rule, regulation, standard or policy which is in effect at the time such Discretionary Action is acted upon by County.

ARTICLE 6.

DEFAULT, REMEDIES, TERMINATION

6.1. Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 9.2 hereof regarding permitted delays,

any failure by either Party to perform any material term or provision of this Development Agreement (but not including terms, provisions or conditions of any other Project Approvals) shall constitute an "Event of Default," (i) if such defaulting Party does not cure such failure within sixty (60) days following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given hereunder shall specify in detail the nature of the failures in performance which the noticing Party claims constitutes the Event of Default and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, or (b) institution of legal proceedings with respect thereto. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

6.2. Remedies and Termination. If after notice and expiration of the cure periods and procedures set forth in Section 6.1, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Sections 6.3 or 6.4 of this Development Agreement and/or terminate this Development Agreement. In the event that this Development Agreement is terminated pursuant to this Section 6.2 and litigation or mediation is instituted which results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

6.3. Legal Action by Parties. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Notwithstanding the foregoing, in no event shall County be liable for loss of profits on any theory of liability.

6.4. Termination.

(a) Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement as set forth in Section 1.4.

(b) Survival of Obligations. Upon the termination of this Development Agreement pursuant to Section 6.2 or this Section 6.4, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation which is specifically set forth as surviving this Development Agreement. The termination of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) or Subsequent Approvals.

ARTICLE 7.

COOPERATION AND IMPLEMENTATION

7.1. Further Actions and Instruments. The Parties to this Development Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Development Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

7.2. Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of County may possess authority to regulate aspects of the development of the Property separately from or jointly with County, and this Development Agreement does not limit the authority of such other public agencies. Developer or County (whichever is appropriate) shall apply in a timely manner for the permits and approvals which may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. County shall cooperate with Developer in its endeavors to obtain such permits and approvals.

7.3. Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, or the issuance of Project Approvals and/or Subsequent Approvals for the Project, the Parties hereby agree to affirmatively cooperate in defending said action. Developer agrees to bear the litigation expenses of defense, including reasonable attorneys' fees. Developer shall be entitled to any award of reasonable attorneys' fees arising out of any such legal action. Developer shall have sole authority to select legal counsel for its defense.

7.4. Revision to Project. In the event of a court order issued as a result of a successful legal challenge, County and Developer shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Agreement and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

7.5. Indemnification Agreement. County and Developer shall enter into a mutually acceptable indemnification agreement in a form substantially similar to Exhibit J attached hereto.

ARTICLE 8.

TRANSFERS AND ASSIGNMENTS

8.1. Right to Assign. Developer shall be permitted to sell, transfer or assign its rights and interests under this Agreement with respect to all or a portion of the Property concurrent with the sale, transfer or assignment of the underlying portion of the Property with the prior approval of the County, not to be unreasonably withheld.

8.2. Release upon Transfer. Upon the sale, transfer or assignment of Developer's rights and interests under this Development Agreement pursuant to Section 8.1, Developer shall be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property sold, transferred or assigned and any subsequent default or breach with respect to the transferred or assigned rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that (a) Developer has provided to County notice of such transfer, and (b) the transferee executes and delivers to County a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property sold, transferred or assigned. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 8.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

8.3. Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective successors in interest, and all persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder (a) is for the benefit of such Property and is a burden upon such Property, (b) runs with such Property, (c) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such Property.

ARTICLE 9.

MISCELLANEOUS PROVISIONS

9.1. Project Is a Private Undertaking. It is specifically understood and agreed by the Parties that (a) the development contemplated by this Development Agreement is a private development, (b) that neither Party is acting as the agent of the other in any respect hereunder, and (c) that Developer shall have full power over the exclusive control of the Property herein

described subject only to the limitations and obligations of Developer under this Development Agreement.

9.2. Force Majeure. The Term of this Development Agreement and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, enemy action, civil disturbances, fire, unavoidable casualties, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of the Developer.

9.3. Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between County, Developer and Property Owner shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of County, Developer and Property Owner as indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 9.3.

County:	Planning Director County of Nevada 950 Maidu Avenue Nevada City, CA 95959
Developer:	A. Teichert and Son, Inc. P.O. Box 15002 Sacramento, CA 95851 Attn: President, Teichert Materials
with copy to:	Taylor & Wiley 500 Capitol Mall, Suite 1150 Sacramento, CA 95814 Attn: James B. Wiley
Property Owner:	Pamela Dobbas 8260 Hubbard Rd. Auburn, CA 95602

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated above as the Party to

whom notices are to be sent, or (ii) within 5 days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received 24 hours after the date of deposit.

9.4. No Joint Venture or Partnership. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making County, Developer, and/or Property Owner joint venturers or partners.

9.5. Severability. If any terms or provision(s) of this Development Agreement or the application of any term(s) or provision(s) of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties; provided that, if the invalidation, voiding or enforceability would deprive either County or Developer of material benefits derived from this Development Agreement, or make performance under this Development Agreement unreasonably difficult, then County and Developer shall meet and confer and shall make good faith efforts to amend or modify this Development Agreement in a manner that is mutually acceptable to County and Developer.

9.6. Section Headings. Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement.

9.7. Construction of Agreement. This Development Agreement has been reviewed and revised by legal counsel for both Developer and County, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Development Agreement.

9.8. Entire Agreement. This Development Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of [written number] ([numeric symbols]) pages including the Recitals, and [written number] [numeric symbol] exhibits, attached hereto and incorporated by reference herein, which constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits are as follows:

- Exhibit A Legal Description of the Property
- Exhibit B Map of the Property
- Exhibit C Use Permit U06-012
- Exhibit D Map of the East Pit
- Exhibit E Map of the West Pit
- Exhibit F Use Permit U11-008

Exhibit G	Reclamation Plan RP11-001
Exhibit H	Ordinance Approving This Agreement
Exhibit I	Cents Per Ton Payment Table
Exhibit J	Defense and Indemnification Agreement

9.9. Estoppel Certificates. Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Development Agreement is in full force and effect and a binding obligation of the parties, (b) this Development Agreement has not been amended or modified either orally or in writing, or if amended, the Party shall describe the amendments, and (c) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, the Party shall describe the nature and amount of any such defaults. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that no default exists. Either the County Executive Officer or the Planning Director of County shall have the right to execute any certificate requested by Developer hereunder. County acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

9.10. Execution and Recordation. Pursuant to California Government Code section 65868.5, within ten (10) days after the approval of the Enacting Ordinance, the County shall execute this Development Agreement and the Clerk of the Board shall record this Development Agreement with the Nevada County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended pursuant to Article 5, Article 6 or Article 7 of this Development Agreement, the County Clerk shall record notice of such action with the Nevada County Recorder.

9.11. No Waiver. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

9.12. Time Is of the Essence. Time is of the essence for each provision of this Development Agreement for which time is an element.

9.13. Applicable Law. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. The Parties agree that venue for any legal action brought under this Agreement shall be Nevada County.

9.14. No Third-Party Beneficiaries. County, Developer, and Property Owner hereby renounce the existence of any third-party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

9.15. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Property.

9.16. Authority. The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', County Board of Supervisors', or other approvals have been obtained.

[signatures on next page.]

IN WITNESS WHEREOF, County and Developer and Property Owner have executed this Development Agreement as of the date first set forth above.

DEVELOPER:

A. Teichert & Son, Inc.
a California Corporation

By: _____
Name

Title

By: _____
Name

Title

APPROVED AS TO FORM:

By: _____
[Teichert Attorney signature]
Attorney for Developer

PROPERTY OWNER:

By: _____
Pamela Dobbas

APPROVED AS TO FORM:

By: _____
[Ms. Dobbas Attorney signature]
Attorney for Property Owner

COUNTY:

County of Nevada, a political subdivision of the State of California

By: _____
Honorable Richard Anderson, Chair
Nevada County Board of Supervisors

ATTESTATION:

By: _____
Julie Patterson-Hunter
Clerk of the Board

APPROVED AS TO FORM:

By: _____
Alison A. Barratt-Green
County Counsel

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____,
Date *Here insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The West half (W1/2) of the Southwest quarter (SW1/4), the Northeast quarter of the Southwest quarter (NE1/4 of SW1/4) and the Southwest quarter of the Northwest quarter (SW1/4 of NW1/4) of Section 26, Township 18 North, Range 17 East, Mount Diablo Meridian, according to the Official Plat thereof.

EXCEPTING THEREFROM that portion thereof conveyed by Deed dated September 11, 1957, recorded December 26, 1957 in Book 240 of Official Records, at Page 540, executed by Roxie Archer to the State of California.

Assessor's Parcel No.: 48-090-12

All that portion of the Southeast quarter of Section 27, Township 18 Norther, Range 17 East, M.D.B. & M., lying Northeast of U.S. Highway 40 also know as Interstate 80.

TOGETHER WITH an easement for a connecting road, as set forth in the instrument recorded July 8, 1958, in Book 264, Page 276 of Official Records.

ALSO TOGETHER WITH an Easement for right of way purposes over and across that certain real property owned by the undersigned and being in the county of Nevada, State of California, and more particularly described as the Northeast one-quarter of Section 34, Township 18 North, Range 17 East, M.D.B. & M., which right of way shall following a winding road commencing at old U.S 40 Highway and thence winding in a general Northeasterly direction to the underpass at the new U.S. 40 Highway as set forth in the instrument recorded May 20, 1960, in Book 279, Page 440 of Official Records.

EXHIBIT B
MAP OF THE PROPERTY

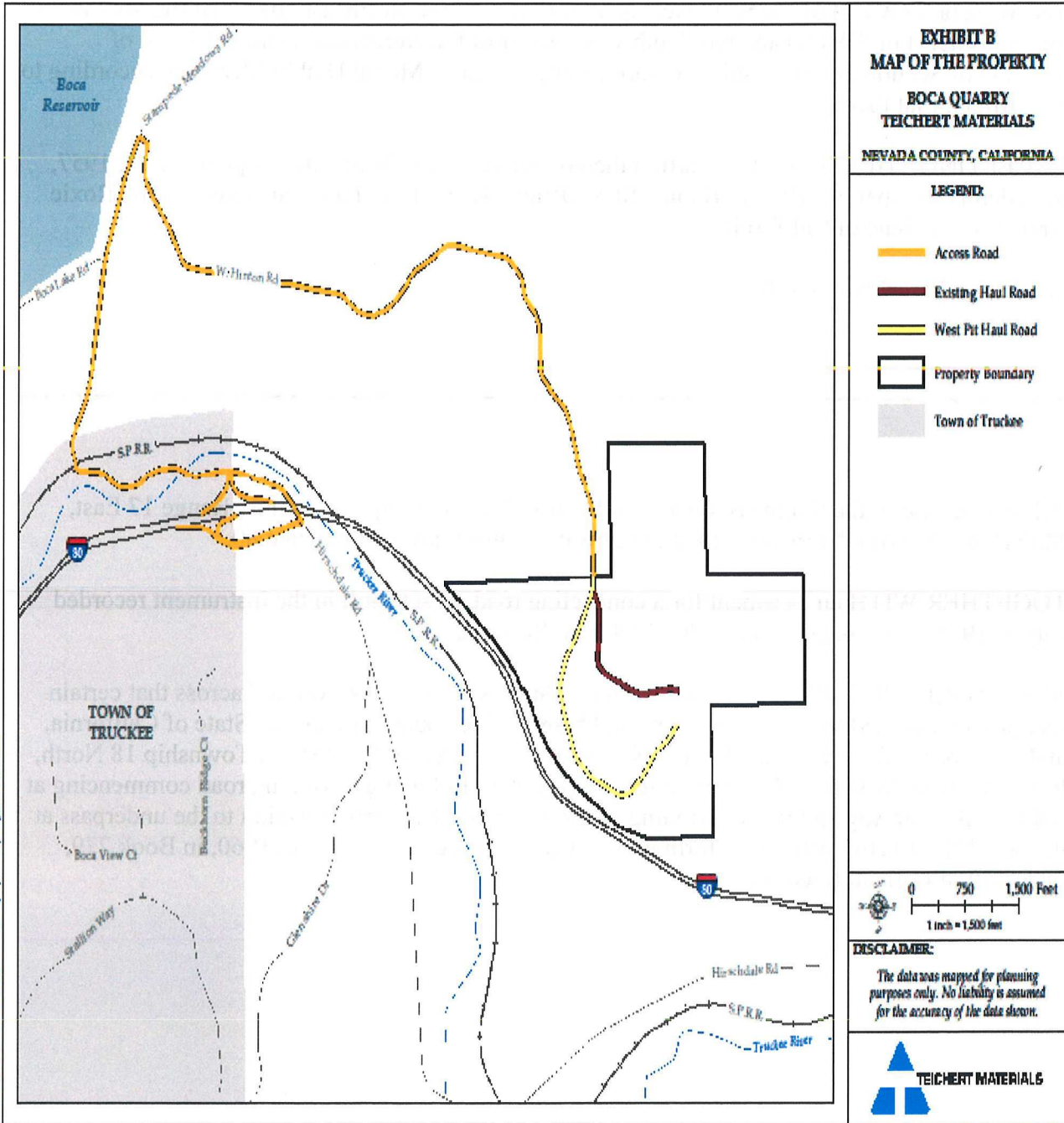


EXHIBIT C

USE PERMIT U06-012



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY**

950 MAIDU AVENUE NEVADA CITY, CA 95959-8617

Planning Department
Fax (530) 265-9851

Environmental Health
Fax (530) 265-9853

Building Department
Fax (530) 265-9854

Code Compliance
Fax (530) 265-9851

Housing Division
Phone (530) 265-1388
Fax (530) 265-9845

Agricultural Commissioner
255 S. Auburn Street
Grass Valley, CA
Phone (530) 273-2648
Fax (530) 273-1713

August 6, 2007

**REVISED NOTICE OF CONDITIONAL APPROVAL
DEVELOPMENT/USE PERMIT APPLICATION**

Teichert Aggregates
3500 American River Drive
Sacramento, CA 95864

File No. U06-012, RP06-001; EIS06-031
AP# 48-090-12 & 48-200-03

You are hereby notified that the Nevada County Planning Commission, at their regular meeting held on July 26, 2007, after public hearing, did duly consider and approve your application filed on December 22, 2006. This Use Permit authorizes the expansion of the Hirschdale Cinder Quarry operation (now known as Boca Quarry) to expand the quarry size from approximately 15 acres to approximately 40 acres (including the processing area) with a total production yield of 2.75 million yards (approximately 4 million tons). The approval of this Use Permit U06-012 and Reclamation Plan RP06-001) supersedes the prior mining Use Permit (U83-036) located at 16774 & 16616 Hinton Road, Truckee, CA.

After said hearing, and upon the evidence submitted, the Planning Commission hereby notify you that your Use Permit is granted, subject to the following Mitigation Measures and Conditions:

MITIGATION MEASURES

1. **Land Use Impacts.** To offset the potential Land Use compatibility impacts, the following mitigation measure shall be required:

Mitigation Measure 1A. Within 30 days of approval, the property corners and line (south of the quarry pit) shall be clearly established in the field (staked and flagged). Any of the associated mining equipment (storage containers, scales, equipment) that encroaches into the USFS parcel (APN 48-090-13) shall be relocated and maintained on the subject parcel (APN 48-090-12) north of the USFS parcel and in compliance with the applicable Zoning setbacks (30 feet). Since there is no Use Permit for this adjacent parcel (APN 48-090-13) an easement for equipment storage will not resolve this land use issue. (Any existing legal access, if applicable, over APN 48-090-13 is excluded from this Mitigation Measure.)

3. **Geology and Soils Impacts.** To offset the potential for excessive soil erosion to result from the daily mining operations, the following mitigation shall be required:

Mitigation Measure 3A. Any topsoil salvaged for later reclamation use, or imported for reclamation use, that is stored on site shall be contained by use of a berm or ridge of compacted soil used to contain any runoff or divert any water from erosion of the stockpiles.

Mitigation Measure 3B. Mulching may be used to temporarily and permanently stabilize cleared or freshly seeded areas. Types of mulches include organic materials, straw, wood chips, bark and other wood fibers, decomposed granite, and gravel. Mulch material used for erosion control on site shall be acceptable to the Lahontan Region of the California Regional Water Quality Control Board.

Mitigation Measure 3C. Mulching may be used to temporarily and permanently stabilize cleared or freshly seeded areas. Types of mulches include organic materials, straw, wood chips, bark and other wood fibers, decomposed granite, and gravel.

4. Hydrology and Water Quality Impacts: To offset the potential water quality impacts, the following mitigation measures shall be required:

Mitigation Measure 4A. All run-off water collected in the quarry pit (operating area) shall be captured and contained within an impound area (located against the base of the quarry wall). If necessary, suitable disposal areas may include other areas within the project site and may not be directly disposed onto any adjacent properties. The exhaust ends of any necessary culverts and/or drainpipes should be fitted with an energy dissipater such as rip-rap boulders or concrete baffles. It will be the responsibility of the operator that the drain systems be inspected and cleaned on a regular basis to ensure that they are functioning correctly.

Mitigation Measure 4B. If any off-site stormwater waste discharge results from the surface water management plan, then an NPDES General Permit for Discharges of Stormwater Associated with Industrial Activities shall be required.

Mitigation Measure 4C. During construction activity of the new haul road, there shall be no waste and/or waste water discharged into surface waters, drainage courses or wetlands. Grading plans shall note this requirement and shall be reviewed by the Regional Water Quality Control Board for compliance with waste discharge requirements or waivers, prior to grading permit approval.

5. Air Quality Impact: To minimize the potential air quality impacts associated with the new haul road construction, and the ongoing operation at this project site, the following mitigation is required:

Mitigation Measure 5A. During the construction of the new haul road joining the quarry pit with Stampede Meadows Road, the operator shall use alternatives to open burning of vegetative material on the project site unless deemed infeasible by the Air Pollution Control Officer. Among suitable alternatives are chipping, mulching, or conversion to biomass fuel.

Mitigation Measure 5B. During the construction of the new haul road joining the quarry pit with Stampede Meadows Road, the operator shall be responsible for ensuring that all adequate dust control measures are implemented in a timely manner during all phases of new road development and construction.

Mitigation Measure 5C. Fugitive dust emissions resulting from site clearing and road construction shall be minimized at all times, utilizing control measures including dust palliatives, regularly applied water, graveled or paved haul roads, etc. Control measures shall be noted on the grading plans.

Mitigation Measure 5D. When transporting any material during road construction, or during the sale of product at the quarry, measures shall be taken to prevent materials from spilling or blowing onto streets and highways. Earthen materials, if transported, shall be adequately sprayed with water prior to transport onto public roads. Vegetative material shall be tarped prior to transport.

Mitigation Measure 5E. All material excavated, stockpiled, or graded shall be sufficiently watered, treated, or covered to prevent fugitive dust from leaving the property boundaries and causing a public nuisance or a violation of an ambient air standard. Watering should occur at least twice daily, with adequate coverage to control fugitive dust.

Mitigation Measure 5F. All areas with vehicle traffic shall be watered or have dust palliative applied as necessary for regular stabilization of dust emissions.

Mitigation Measure 5G. All land clearing, grading, earth moving, or excavation activities on a project shall be suspended as necessary to prevent excessive windblown dust when winds exceed 20 mph.

Mitigation Measure 5H. If a project is located in an area that has the geological potential to contain asbestos-containing material or asbestos parent minerals, as determined by a registered geologist, or the project has identified deposits of asbestos-containing material, serpentine, or asbestos parent-material, then no person shall engage in grading and construction operations unless a dust mitigation plan has been submitted and approved by the NSAQMD. Projects where grading activity lasts no more than four calendar days in total and disturbs less than 250 cubic yards of material may be exempted by the APCO, if conditions warrant. Dust mitigation plans must conform to District Rule 226 – Dust Control.

6. Transportation and Circulation Impacts. To offset the circulation impacts resulting from heavy truck use, the following mitigation measures are recommended:

Mitigation Measure 6A. The continued shipping from the quarry shall require the construction of the new access road, as proposed, to bypass the Hirschdale Road Bridges (17C-045 and 17C-046). The road shall be constructed in a timely manner, excepting for adverse weather conditions or extreme fire danger. This mitigation recognizes that a portion of the proposed haul road does require a special permit from the USFS for the temporary road over their property before connecting to Stampede Meadows Road. In the event the USFS denies the special permit, then an alternative access to Interstate 80 shall be required and a truck cap shall be required. If Hirschdale Road is used, then the truck cap established in Condition A.8 shall apply.

Mitigation Measure 6B. Upon completion of the new haul road, the operator shall post temporary signs at the east- and west-bound off-ramps of Interstate 80 and Hirschdale Road that direct the gravel trucks toward the new route over Stampede Meadows Road. These signs shall remain in place for a minimum of one year following the completion of the new road. The signs shall include the name of the operator and quarry, a direction arrow to follow, and the recommended CB channel to use along that route. Encroachment Permits for the signs shall be obtained from the Nevada County Department of Transportation.

Mitigation Measure 6C. Due to the potential significant impacts that this project could have on the public road system (Stampede Meadows Road), the road maintenance mitigation fee, currently in effect for the current operation (in the amount of \$0.05 per ton), shall remain in effect for the amended operation. This fee will be used to supplement road maintenance on Stampede Meadows Road. In the event a future alternative access to Interstate 80 is obtained (e.g., a direct on-ramp via Hinton Road under-crossing) that eliminates the regular use of the County-maintained roads, then this measure shall no longer apply.

7. Biological Impacts. To offset the potential biological impacts associated with the mining revegetation, the following mitigation shall be required:

Mitigation Measure 7A. Reclamation planning objectives and specifications shall include revegetation with species known to be used as browse or herbaceous forage by migrating or summer-resident mule deer.

- 10. Noise Impacts.** To offset the potential noise impacts resulting from truck traffic along Hirschdale Road, the following mitigation measures shall apply:

Mitigation Measure 10A. Deleted, see Planning Condition A.6.a.

Mitigation Measure 10B. Upon completion of the new haul road over to Stampede Meadows Road, the existing haul route via Hinton Road may remain available to employee use (personal or corporate vehicles), off-season property access, and emergency use. All large truck traffic (empty or full) shall use the new route whenever it is available for use. Recognizing the operator cannot control the independent trucks, the Hinton Road gate shall be closed precluding non-essential (employee) traffic from using this access and the independent trucks shall be required to drive around and re-enter the site via Stampede Meadows Road.

- 15. Cultural Resource Impacts.** To offset potentially adverse cultural or historical resources impacts associated with the activities on site, the following mitigation measure shall be required:

Mitigation Measure 15A. All equipment operators and employees involved in any form of ground disturbance shall be advised of the remote possibility of encountering subsurface cultural resources. If such resources are encountered or suspected, work shall be halted immediately and the Planning Department contacted. A professional archaeologist shall be consulted to assess any discoveries and develop appropriate management recommendations for archaeological resource treatment. If bones are encountered and appear to be human, California Law requires that the Nevada County Coroner and the Native American Heritage Commission be contacted and, if Native American resources are involved, Native American Organizations and individuals recognized by the County shall be notified and consulted about any plans for treatment.

Mitigation Monitoring Matrix:

MEASURE	MONITORING AUTHORITY	WHEN IMPLEMENTED
1A	Planning Department	Within 30 days of approval.
3A, 3B, 3C	Planning Department	Annually with Reclamation Inspection.
4A, 4B	Planning / Lahontan (CRWQCB)	Annually / If applicable.
4C	Building Department	Approval of grading permit and during inspections of completed work.
5A	Planning Department	Approval of the grading permit.
5B, 5C	Building Department	Approval of grading permit and during inspections of completed work.
5D, 5E, 5F, 5G, 5H	Northern Sierra Air Quality Management District	Annually with Permit to Operate
6A	Planning Department	Within 6 months of approval.
6B	Planning Department	Upon Completion of the New Haul Road
6C	Department of Public Works	Ongoing.
7A	Planning Department	Annually with Revegetation Activities
10A	Planning Department	Within 6 Months of Project Approval
10B	Planning Department	Upon Completion of the New Haul Road
15A	Planning Department	Ongoing.

Use Permit Conditions of Approval

A. PLANNING DEPARTMENT:

1. This Use Permit authorizes the expansion of the former Hirschdale Cinder Quarry extraction pit, permitted by U83-036, and expands the pit size from approximately 15 acres to approximately 40 acres (including the processing area), with a total production yield of 2.75 million yards (approximately 4 million tons). The approval of Use Permit U06-012 (and Reclamation Plan RP06-001) supersedes the prior Use Permit U83-036. All mining activities shall be consistent with the approved December 2006 Mining Plan, as amended by the conditions herein.
2. This Use Permit shall remain valid for 20 years from the date of approval, including any periods of Idle Mine Status, as defined in PRC Section 2727.1.
3. The new access road grading and improvement plans shall be designed by a qualified professional engineer (e.g., geotechnical engineer).
4. Pursuant to Policy 17.7 of the Mineral Management Chapter, the Mining Use Permit shall return to the Nevada County Planning Commission for a compliance review. The review shall be every five years after the commencement of operation.
5. The hours of operation shall be limited to the following:
 - a. During the interim period (prior to the completion of the new haul road) no gravel trucks shall use Hirschdale Road. Quarry extraction and processing hours shall remain from 7:00 a.m. to 6:00 p.m., Monday through Saturday.
 - b. After completion of the new haul road, the interim period shall cease. The hours of operation for the quarry extraction and truck hauling shall then be limited to 7:00 a.m. to 6:00 p.m., Monday through Saturday. During this period, the use of the Hirschdale Road access shall be limited to employee use (personal or corporate vehicles), off-season property access, and emergency use. (Spring water collection trucks are encouraged to use the new access, but are not limited to that access.)
 - c. Emergency use shall be defined as periods when weather related acts of nature require the aggregate material to protect property or public resources, and when such emergencies occur while the new access road is not available for use by gravel trucks. Any such emergencies shall only be declared by a State, County, or local public agency, and the Office of Emergency Services is opened. During such periods, no truck cap or limitations on hours of operation shall apply.
6. The mine plan and conditions may not be changed without amending this permit except that minor adjustments to the project and conditions may be made if approved by the staff and if such changes do not result in a major departure from the approval either individually or cumulatively. The staff will report all such adjustments to the Planning Commission when applicable (or during the review hearing outlined in Condition A.5 above).
7. In the event that alternative access is unavailable, then the use of Hirschdale Road shall be limited (as the sole access to this site) to two loaded gravel trucks per hour. The hours of hauling operation shall be restricted to 9:00 a.m. to 5:00 p.m. on weekdays only. No weekend gravel hauling is permitted during periods when Hirschdale Road is the only access to this site.

B. DEPARTMENT OF PUBLIC WORKS:

1. The approach of the new haul road onto Stampede Meadows Road shall be improved in conformance with Private Road Approach standards.
2. An Encroachment Permit, issued by the Nevada County Public Works Department, is required prior to any work within the Stampede Meadows right-of-way.

C. ENVIRONMENTAL HEALTH:

1. Upon approval of the Use Permit, make an application with this Department and pay permit fees for a sewage disposal permit. The system shall be installed and finalled by this Department within six (6) months of the approval of the Use Permit.
2. Upon approval of the Use Permit, provide the following for the proposed spring potable water supply:
 - a) Provide a letter from the property owner indicating approval of the proposed use.
 - b) Make application for a shared water supply permit and provide an easement agreement for review by this department. Record the approved easement agreement on the property title. A sample easement agreement document is available from this department.
 - c) Install distribution system under permit from the Nevada County Building Department.
 - d) Make application from this Department for a raw water certification.

Reclamation Plan Conditions of Approval

D. PLANNING DEPARTMENT:

1. The reclamation program approved for this quarry is defined in the June 2007 Reclamation Plan (RP06-001), and shall be consistent with the December 2006 Mining Plan (U06-012), as amended.
2. Prior to commencement of the operation, a financial assurance shall be posted with the County pursuant to Section 2773.1 of the Surface Mining and Reclamation Act of 1975 (SMARA). The amount of the financial assurance shall be 100% of the reclamation cost estimate plus 25% for contingency, pursuant to Section 2773.1 (a) (1), to reclaim the maximum area that is possible to be disturbed. The estimate shall include the cost of all drainage improvements and erosion control. The estimate shall be reviewed by the Nevada County Resource Conservation District (erosion control and revegetation), Nevada County Department of Transportation (equipment costs, operating time rates and volume of material to be moved), and approved by the Planning Department (proper form, SMARA compliance).

NOTE: Section 2773.1(1)(3) states that the bond amount shall be adjusted annually to account for new lands disturbed, inflation, and reclamation of lands accomplished in accordance with the approved plan.

3. An annual monitoring program report shall be submitted to the Planning Department no later than December 1, of each year. Said report shall include:

- a. The amount of material mined in that year from both the terrace and the river (if applicable).
- b. A summary of any reclamation and revegetation, which occurred in that year.
- c. A discussion of the success of the previous years' revegetation (when applicable).
- d. A discussion of the adequacy of the existing engineer's bond estimate (see NOTE above).
- e. Any other information deemed to be pertinent or that is required by the County.

NOTE: In the event that Planning Department is unable to perform the inspections, the operator shall hire a qualified person (as defined in Section 2774 (b)) to perform the inspections and make the required recommendations.

4. All inspections of reclamation activities by Planning Department, or its assignee shall be funded by the applicant or his successor. All staff time, including inspections will be billed at actual costs in conformance with the adopted fee schedule approved by the Board of Supervisors and in effect at that time.
5. Pursuant to Policy 17.7 of the Mineral Management Chapter, the Reclamation Plan shall return to the Nevada County Planning Commission for a compliance review. The review shall be every five years after the commencement of operation.
6. If the operator plans to maintain an "Idle" mining status, pursuant to the definition in Section 2727.1 of SMARA, the Interim Management Plan (Section 7.0 of the approved Reclamation Plan) shall become applicable to this operation. The Interim Management Plan shall comply with the provisions in Public Resources Code Section 2770(h).
7. All conditions of the Reclamation Plan, approved by Nevada County, shall be incorporated into the approved Reclamation Plan (the conditions shall be placed in the Appendix.). The applicant shall furnish the County and the State Department of Conservation with a complete final copy of the approved Reclamation Plan within sixty (60) days of approval.
8. Upon completion of the mining activities on site, the new haul road (connecting to Stampede Meadows Road) shall either be fully reclaimed or, if permitted by the USFS, shall be restored to a self-maintaining manner (hydrologically invisible) and kept available for emergency access. The reclamation standards for the new haul road, in either instance, shall be pursuant Public Resources Code Section 2772(c)(5). The grading plans for the new haul road shall also be included in the approved Reclamation Plan as an appendix.

Pursuant to the requirements of the Land Use and Development Code, you are hereby notified that this permit is not valid until the expiration of ten (10) days from the date of the Planning Commission action (**Effective Date: August 07, 2007**). If the granting of the permit is appealed or submitted to the Board of Supervisors for final action, the effective date is stayed until final action by said Board. Any appeal must be submitted on the proper form which is available from the Clerk to the Board of Supervisors, Eric Rood Administrative Center, Nevada City, California 95959 (Deadline for appeal: Monday, August 06, 2007, at 5:00 p.m.).

Construction pursuant to this permit approval must be completed and the use commenced thereon within **three (3) years** from the effective date of the approval of the permit, which would be **August 07, 2010**, unless an extension of time for reasonable cause is requested prior to the expiration date, and granted by the Planning Commission pursuant to Section 5.10 of the Nevada County Land Use and Development Code.

Approval Letter for U06-012; RP06-001; EIS06-031Teichert Aggregates
July 30, 2007

If no extension is granted, the permit shall become null and void, as to the portion of the approved use not completed.

The Planning Commission considered the initial study and found that the project, with conditions imposed, will not have a significant effect on the environment and has directed staff to file a Notice of Determination for a Negative Declaration with the County.

NEVADA COUNTY PLANNING COMMISSION
Randy Wilson, Ex-Officio Secretary

By: _____
Janet Hayes, Clerk to the Planning Commission

RW:jh

cc: Department of Transportation & Sanitation
Environmental Health Department
Pamela Dobbas
Jim Wiley-Taylor & Wiley

PROOF OF SERVICE BY MAIL

(Code of Civil Procedure Sections 1013a and 2015.5)

I am a resident of the United States and of the State of California, County of Nevada; I am over the age of eighteen years and not a party to the within action; my business address is:

ERIC ROOD ADMINISTRATIVE CENTER
950 Maidu Avenue Nevada City, California 95959-8617

I am readily familiar with the Nevada County Planning Department's business practice for the collection and processing of correspondence for mailing with the United States Postal Service. The within documents will be deposited with the United States Mail on July 31, 2007, in the ordinary course of business.

The name(s) and address(es) of the person(s) served as shown on the envelope(s) are as follows:

Teichert Aggregates, 3500 American River Drive, Sacramento, CA 95862
Pamela Dobbas, 2945 Bell PMB258, Auburn, CA 95603
Jim Wiley, Taylor & Wiley, 2870 Gateway Oaks Drive #200, Sacramento, CA 95833

The foregoing person(s) were served with approval letter for Use Permit, File # U0-012 & EIS006-031, by placing same for collection and mailing on July 31, 2007, at Nevada City, California, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 31, 2007, at Nevada City, California.

Signature

NOTICE OF DETERMINATION

TO: _____ Office of Planning and Research
 1400 Tenth Street, Room 121
 Sacramento, CA 95814

County Recorder
 County of Nevada

FROM: Nevada County Planning Department
 950 Maidu Avenue
 Nevada City, CA 95959-8617

SUBJECT: Filing of Notice of Determination in compliance
 with Section 21108 or 21152 of the Public
 Resources Code.

Project Title: U06-012; RP06-001 & EIS06-031

AP# 48-090-12 &48-200-03

Teichert Aggregates, 3500 American River Dr., Sacramento, CA 95864

<u>State Clearinghouse</u>	<u>Contact Person</u>	<u>Telephone Number</u>
(If submitted to Clearinghouse) N/A		

Project Location: 16774 & 16616 Hinton Road, Truckee, CA

Project Description: This permit authorizes the expansion of the Hirschdale Cinder Quarry to expand the pit size from approximately 15 acres to approximately 40 acres (including the processing area) with a total production yield of 2.75 million yards (approximately 4 million tons) The approval of this Use Permit U06-012(and reclamation plan RP06-001) supersedes the prior Use Permit U83-036

This is to advise that the Nevada County Planning Commission (Lead Agency) approved the above described project on July 26, 2007, and made the following determinations regarding the above described project:

1. The project ___ will, will not, have a significant effect on the environment.
2. _____ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures were, ___ were not, made a condition of the approval of the project.
4. A statement of Overriding Considerations ___ was, was not, adopted for this project.
5. Findings were, ___ were not made pursuant to the provisions of CEQA.

This is to certify that the Negative Declaration with comments and responses, if applicable, and a record of project approval is available to the General Public at the Nevada County Planning Department, 950 Maidu Avenue, Nevada City, California 95959.

_____	_____	<u>SENIOR PLANNER</u>
Signature (Public Agency)	Date	Title

FISH & GAME FEE: \$1,800.00
 ADM. FEE PD. YES ___ N/A

EXHIBIT D
MAP OF THE EAST PIT

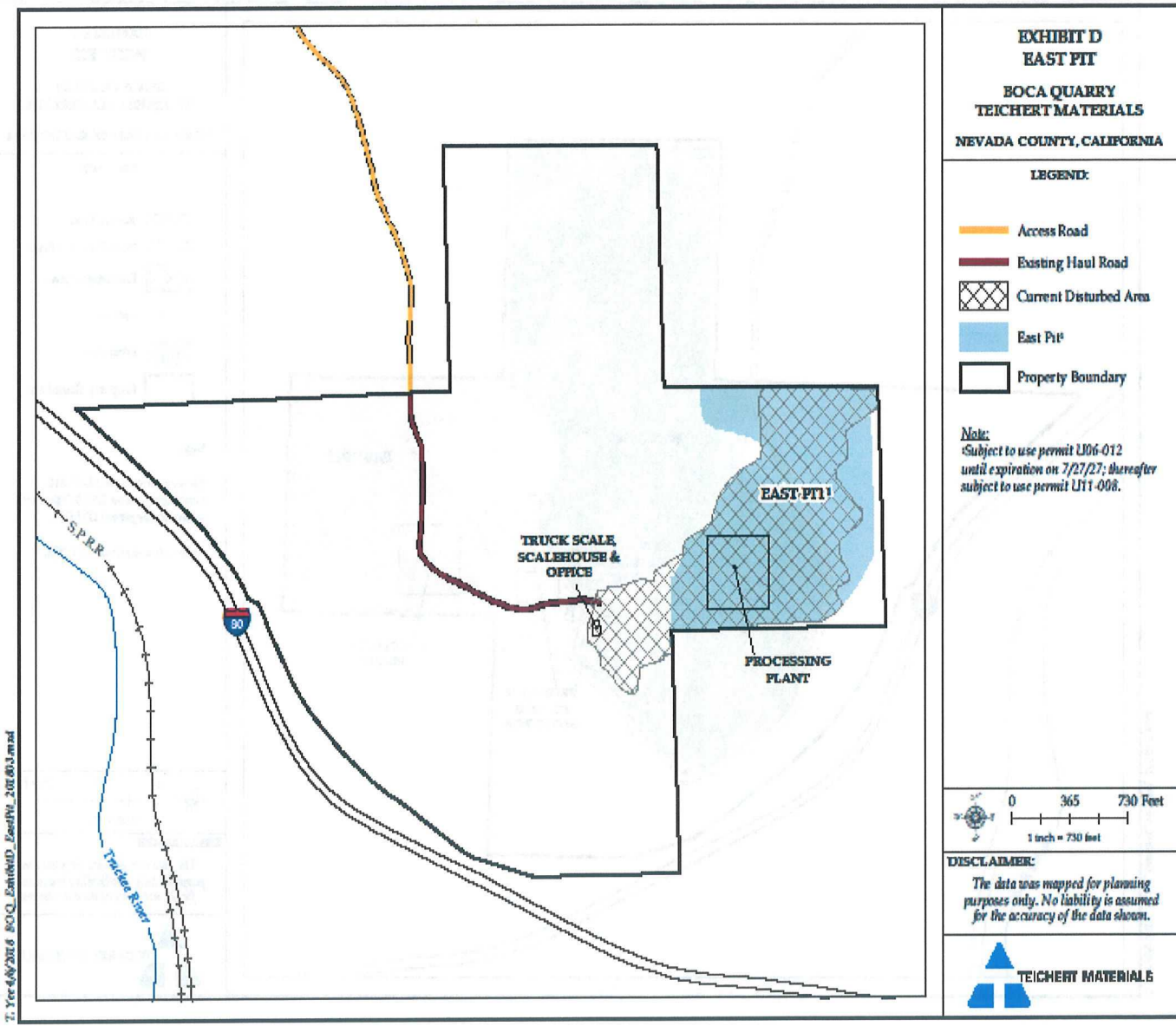


EXHIBIT E
MAP OF THE WEST PIT

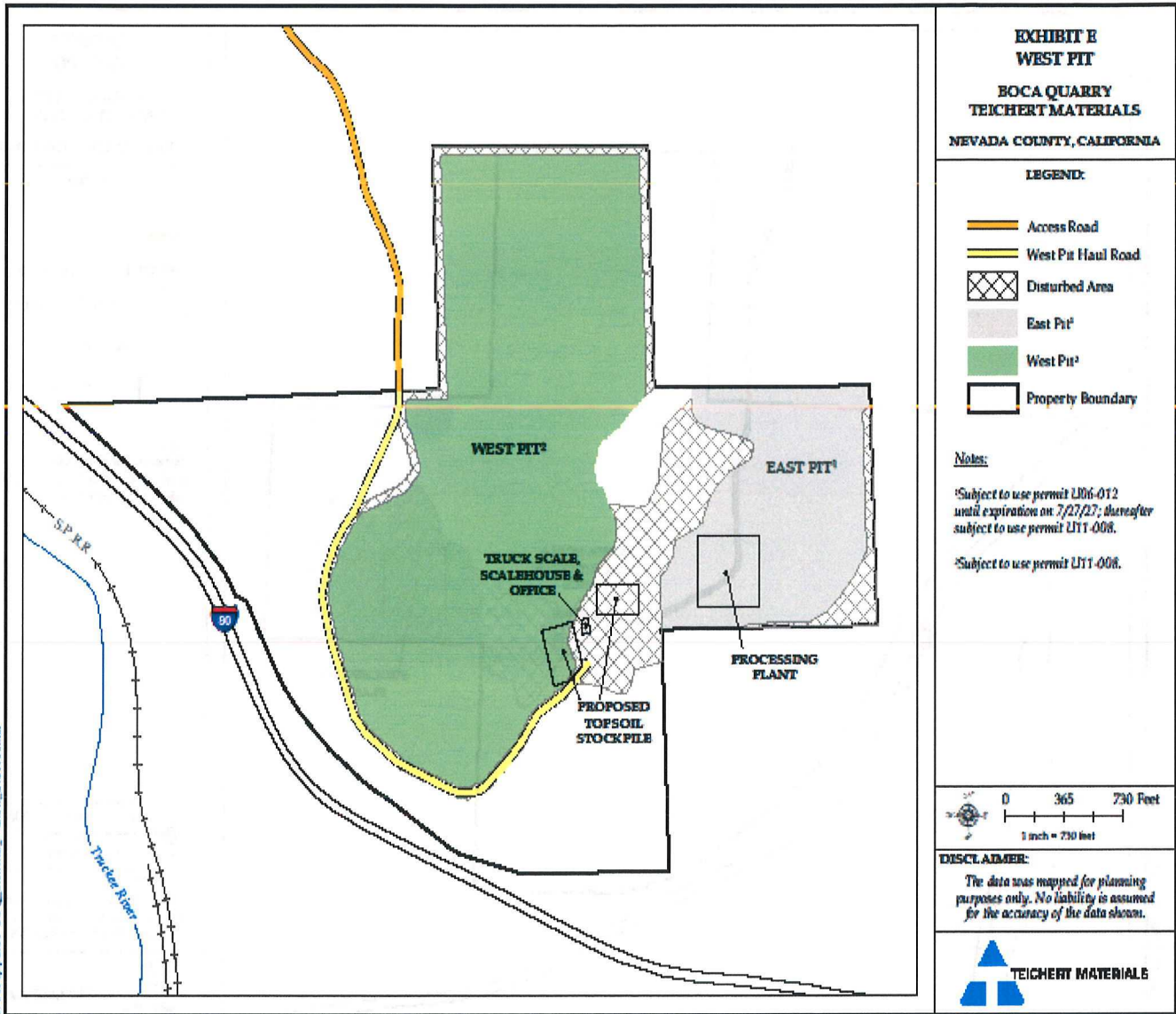


EXHIBIT F

USE PERMIT U11-008

<Copy of Conditional Approval Letter- To be added following Project Action>

EXHIBIT G

RECLAMATION PLAN RP11-001

<https://www.mynevadacounty.com/DocumentCenter/View/11396/Appendix-B-Amended-Reclamation-Plan-PDF>



ORDINANCE No. 2471

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE COUNTY OF NEVADA, PAMELA DOBBAS, AND TEICHERT AGGREGATE, INC., FOR THE BOCA QUARRY EXPANSION PROJECT AND OFF-SITE ROADWAY IMPROVEMENTS LOCATED AT 16616 AND 16774 WEST HINTON ROAD, EAST OF TRUCKEE, UNINCORPORATED NEVADA COUNTY

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I:

The Development Agreement submitted by Teichert Aggregate, Inc. for Assessor's Parcel Numbers 048-090-012 and 048-200-003, which are located at 16616 and 16774 West Hinton Road, east of Truckee, in Nevada County, be approved, based on the following findings A-E:

- A. Teichert Aggregate, Inc., ("Developer") filed a Development Agreement application pursuant to Government Code section 65864, et seq. and Nevada County Land Use Development Code section L-II 5.18 for the 230-acre Boca Quarry Expansion Project located at 16616 and 16774 West Hinton Road, east of Truckee, in Nevada County; and
- B. That the proposed Development Agreement (the "Development Agreement"), a copy of which is attached as Exhibit "A," was duly reviewed and recommended for approval by the Planning Commission after a public hearing on August 22, 2019, on a 4-0, 1 absent vote; and
- C. That the Planning Commission's recommendation has been received; the Environmental Impact Report has been certified by the Board of Supervisors on October 8, 2019, included a review of the Development Agreement; and the public hearing has been held and concluded as required for approval of the Development Agreement; and
- D. That the Development Agreement complies with the requirements of Government Code section 65856.2 and Nevada County Land Use Development Code section L-II 5.18; and
- E. That the Board finds that the information presented or obtained at the public hearing substantiates all of the facts necessary for approval of the Development Agreement and that the Development Agreement:
 1. Is consistent with the goals, objectives, policies and applicable land use designations of the Nevada County General Plan; and

2. Complies with all of the provisions of the Nevada County Land Use and Development Code; and
3. Is consistent with the public convenience, general welfare and good land use practice, making it in the public interest to enter into the development agreement with the applicant; and
4. Will not:
 - a. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area; and
 - b. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site; and
 - c. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare; and
 - d. Adversely affect the orderly development of property or the preservation of property values.

SECTION II:

Pursuant to Government Code section 65856.2 and Nevada County Land Use Development Code section L-II 5.18, the Development Agreement is approved, and the Chair of the Board of Supervisors is hereby authorized upon the effective date of this Ordinance to execute, on behalf of the County of Nevada, the Development Agreement by and between the County of Nevada and Teichert Aggregate, Inc, in the form attached, with authorized changes, if any, approved by the Board prior to adoption of this Ordinance and subject to such minor and clarifying changes consistent with the terms thereof as may be necessary and approved by County Counsel prior to execution thereof. Within ten (10) days after execution of the Development Agreement on behalf of the County, the Clerk of the Board of Supervisors shall record the Development Agreement and this Ordinance with the Recorder of the County of Nevada.

SECTION III:

If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION IV:

This Ordinance shall take effect and be in full force thirty (30) days from and after introduction and adoption, and it shall become operative on the 7th day of November, 2019, and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in the Union, a newspaper of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by a majority vote of the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 8th day of October, 2019, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 


_____ Richard Anderson, Chair

10/8/2019 cc: GIS*
Union*
COB*
CoCo*
QC*
Planning*

EXHIBIT I

CENTS PER TON FUNDING TABLE

**CENTS PER TON FUNDING FOR ROADWAY MAINTENANCE
APPLICABLE TO SALES OF MATERIAL FROM THE WEST PIT**

Tier 1 (All sales from 0 to 152,250 tons during any calendar year)

19.66 cents/ton total, composed of:

- 9.24 cents/ton Nevada County share
- 10.42 cents/ton Town of Truckee share

Tier 2 (All sales from 152,250 tons to 1,000,000 tons during any calendar year)

5.02 cents/ton total, composed of:

- 2.36 cents/ton Nevada County share
- 2.66 cents/ton Town of Truckee share

Annual Adjustments

Cents per ton funding for roadway maintenance subject to an annual adjustment based on the Engineering News Record (ENR) index.

EXHIBIT J

DEFENSE AND INDEMNIFICATION AGREEMENT

This Defense and Indemnity Agreement ("Agreement") is made and entered into between the County of Nevada, a political subdivision of the State of California ("County"), and A. Teichert & Son, Inc. ("Applicant"), and is effective as of _____, 2019. This Agreement is made with regard to the following facts:

RECITALS

WHEREAS, Applicant is a developer who has a legal interest in the property located in the unincorporated area of Nevada County near Truckee, on APNs 048-090-012, and 048-200-003, for which the Applicant has applied for approval of a Conditional Use Permit (U11-008), a Reclamation Plan (RP11-001), EIR (EIR11-001), and Development Agreement ("Project Approvals"), and

WHEREAS, the Project is a land use project for which a defense and indemnification agreement is required pursuant to the County's Land Use and Development Code and/or the conditions of the Project Approval; and

WHEREAS, it is in the public interest for County and Applicant to enter into this Defense and Indemnification Agreement as Applicant will benefit from the County's processing of the application and the Project Approvals that may result therefrom.

NOW THEREFORE, in consideration of the above-referenced Project Approval and the mutual promises and agreements contained herein, and in satisfaction of an express condition of the Project Approval, the Applicant hereby agrees as follows:

1. The Applicant agrees to defend, indemnify, and hold harmless the County and its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees (collectively "County Parties") to attack, set aside, void or annul the above-referenced project approval or any prior or subsequent project related approvals or conditions imposed by the County or any of its agencies, departments, commissions, agents, officers, or employees concerning said project, or to impose personal liability against such agents, officers, or employees based upon the project approval. Applicant's obligation to defend and indemnify under this Agreement shall apply to any lawsuit or challenge against the County Parties alleging failure to comply with California Environmental Quality Act or with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Application's obligations under this Agreement to defend and indemnify the County Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgements or awards against the County, all settlement costs and/or any claim for private attorney general fees claimed by or awarded to any party from the County. Applicant further agrees to cooperate in good faith with County in performance of obligations as set forth in this Agreement.

2. The County shall notify the Applicant promptly of any claim, action or proceeding and cooperate fully in the defense. Upon receipt of such notification, Applicant shall assume the defense of the claim, action, or proceeding, including the employment of counsel reasonable satisfactory to the County Counsel's Office and Applicant, and the prompt payment of the attorney's fees and costs of such counsel. In the event of a disagreement between the County and Applicant over litigation issues, County shall have the authority to control the litigation and make litigation decisions, including but not limited to, settlement or other disposition of the matter. If County reasonably determines that having common counsel would present such counsel with a conflict of interest, or if Applicant fails to promptly assume the defense of the claim, action, proceeding or to promptly employ counsel reasonable satisfactory to County, then County may employ separate counsel to represent or defend the County, and Applicant shall pay the reasonable attorneys' fees and costs of such counsel within 30 days of receiving an itemized billing therefore. At its sole discretion, the County may participate in the defense of any such claim, action, or proceeding in good faith either through County Counsel's Office at the Applicant's expense or through outside counsel at the County's expense; but such participation shall not relieve Applicant of his obligations under this Agreement.

3. Applicant's obligations to defend and indemnify under this Agreement shall apply whether or not there is concurrent, active, or passive negligence on the part of County Parties. Applicant's obligations under this Agreement shall be effective regardless of whether any or all Project approvals and/or action by the County regarding the Project remain valid or are invalidated by the court.

4. Failure to promptly defend or indemnify the County is a material breach which shall entitle County to all remedies available under the law, including but not limited to specific performance and damages. Moreover, failure to defend or indemnify shall constitute grounds upon which the County decision-making body may rescind its approval(s) associated with the Project, and a waiver by Applicant of any right to proceed with the Project or any portion thereof.

5. Applicant shall be and remain personally obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise transfer all of any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of ownership of the real property upon which the Project is located (or any interest therein). However, the Applicant may be released from such obligations if the Applicant obtains the County's prior written consent to such transfer, which consent shall not be unreasonable withheld.

6. All notices required under this Agreement shall be in writing and shall be deemed given as of the date of actual delivery if by personal delivery or sent by a nationally recognized overnight carrier, or three days after deposit in the United States mail, first class postage prepaid, to the addresses indicated below:

For Applicant: A. Teichert & Son, Inc.
[contact info]

For County: Planning Director
Nevada County Planning Department
950 Maidu Avenue
Nevada City, CA 95959
Attn: Brian Foss

With a copy to: County Counsel
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

Either party may change the place for the giving of notice to it by thirty (30) days prior written notice to the other party, as provided herein.

7. This Agreement shall be binding upon Applicant and their heirs, executors, administrators, assigns and successors in interest.

8. Upon execution of this Agreement, it may be recorded with the County Recorder's Office and become a lien on any real property attached to the Project Approvals.

9. This Agreement shall constitute the complete understanding of the parties with respect to the matters set forth herein. Neither party is relying on any other representation, oral or written. This Agreement may be not be changed except by a written amendment signed by all parties.

10. It is agreed and understood that this Agreement shall be interpreted fairly in accordance with its terms to effectuate the intent of the parties and not strictly for or against any party by reason of authorship that none of them is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

11. Each party executing this Agreement represents and warrants that it has been duly authorized to enter into this Agreement, that it has full and complete authority to do so, that it has consulted with or had the opportunity to consult with an attorney prior to executing this Agreement, that it enters into this Agreement knowingly and voluntarily, and that it agrees to be bound by the terms of the Agreement.

IN WITNESS WHEREOF, the County and Applicant have caused this Agreement to be duly executed, as of the date first set forth above.

IN WITNESS WHEREOF, County and Developer and Property Owner have executed this Development Agreement as of the date first set forth above.

DEVELOPER:

A. Teichert & Son, Inc.
a California Corporation

By: _____
Name

Title

By: _____
Name

Title

APPROVED AS TO FORM:

By: _____
[Teichert Attorney signature]
Attorney for Developer

COUNTY:

County of Nevada, a political subdivision of the State of California

By: _____
Honorable Richard Anderson, Chair
Nevada County Board of Supervisors

ATTESTATION:

By: _____
Julie Patterson-Hunter
Clerk of the Board

APPROVED AS TO FORM:

By: _____
Alison A. Barratt-Green
County Counsel

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____,
Date *Here insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above