

**PARK AND RECREATION MITIGATION FEES
FY 2014/15 GRANT AGREEMENT
(City of Nevada City Pioneer Park Picnic Area Improvements)**

THIS GRANT AGREEMENT is made and entered into as of the ____ day of _____, 2015 by and between the COUNTY OF NEVADA, a political subdivision of the State of California (“COUNTY”), and the CITY OF NEVADA CITY, a municipal corporation (“ORGANIZATION”), and is effective as of the 24th day of March, 2015 (“Effective Date”).

WHEREAS, COUNTY collects park and recreation mitigation fees from new development within the unincorporated area of COUNTY to provide new and enhanced park and recreation facilities within the incorporated and unincorporated areas of COUNTY in order to mitigate the impacts of the development (“Mitigation Fees”); and

WHEREAS, COUNTY periodically awards grants from the Mitigation Fees to facilitate the construction and development of facilities consistent with the purposes of said fees; and,

WHEREAS, ORGANIZATION is proposing to improve and develop a picnic area at Pioneer Park, a public facility located in, owned and operated by the City of Nevada City (“Project”); and,

WHEREAS, ORGANIZATION has applied for a grant from Mitigation Fees collected within the Grass Valley/Nevada City Benefit Zone to contribute toward completion of the proposed Project; and,

WHEREAS, COUNTY has determined that this is an appropriate use of Mitigation Fees because the purpose of the proposed Project is to enhance and expand recreational uses and activities at Pioneer Park, and because the Project will be open to and used by the public, including residents of the County; and

WHEREAS, COUNTY has determined that ORGANIZATION is qualified, willing and able to provide the resources necessary to ensure timely and successful completion of the proposed Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, the parties hereto agree as follows:

1. ORGANIZATION shall perform all services and provide all staffing, equipment and materials, funding and other resources necessary to design, permit, make purchases for, construct and/or install the Project as set forth in Exhibit “A” attached hereto and incorporated herein by reference. ORGANIZATION has represented that the total estimated costs for the proposed Project are approximately FIFTEEN THOUSAND, SIX HUNDRED DOLLARS AND NO

CENTS (\$15,600.00). ORGANIZATION shall pay for all costs and expenses necessary to complete the Project, subject to reimbursement from Mitigation Fees as provided in this Agreement.

2. ORGANIZATION shall obtain all approvals for and shall execute the Project so that within eighteen (18) months after the Effective Date of this Agreement, the Project shall be completed to the satisfaction of, and accepted by, the COUNTY and the ORGANIZATION, and shall be ready and available for public use; provided, however, that said timeframe may be extended by mutual written agreement of the parties. Any funds not utilized by ORGANIZATION within this timeframe shall be retained by COUNTY and may be reallocated to other qualifying projects.
3. COUNTY shall allocate up to EIGHT THOUSAND, NINE HUNDRED TEN DOLLARS AND NO CENTS (\$8,910.00) from Mitigation Fees to be used for the proposed Project ("Grant Funding"). The Grant Funding includes a ten percent (10% or \$810) administration fee to be paid to COUNTY Planning Department upon issuance of the first payment to ORGANIZATION and up to Eight Thousand One Hundred Dollars (\$8,100) to be provided to ORGANIZATION for the purchases, construction and/or installation of the Project in accordance with the terms and conditions of this Agreement ("Construction Fund"). The Construction Fund shall be used to purchase hardware for new picnic tables, wood for new picnic tables, galvanized sink and plumbing materials, water and electricity hook-ups, lighting materials and signage as shown in Exhibit "B" attached hereto and incorporated herein by reference. COUNTY shall retain 10% (\$810) of the Construction Fund ("Retention"), which Retention shall be paid as provided in Paragraph 5.c., below.
4. The sole source of funding by COUNTY for this disbursement is Fund No. 1626 70101 325 1000/532200. No other County funding source may be held liable for any obligations set forth in this Agreement.
5. COUNTY shall issue reimbursements to ORGANIZATION from the Construction Fund, as follows:
 - a. ORGANIZATION shall submit to COUNTY written requests for reimbursement pursuant to this Agreement. Each request shall specifically identify the item(s) for which reimbursement is sought and the amount of reimbursement requested for each such item, and shall certify that the ORGANIZATION has complied with all terms and conditions of this Agreement. ORGANIZATION shall be reimbursed only for eligible expenses as identified in Exhibit "A" and in the estimated amounts set forth in Exhibit "A". However, the Planning Director, in his/her discretion, may reallocate estimated amounts between eligible expenses once actual project costs are known provided that the expenses qualify under the same expenditure category and that the total

award amount remains the same. Each reimbursement request shall be accompanied by receipts, invoices, proof of payment and other such written documentation as COUNTY may deem necessary to substantiate and support ORGANIZATION's claim for reimbursement.

- b. COUNTY shall issue reimbursements to ORGANIZATION within thirty (30) days after all of the following events have occurred: (i) the portion of the Project for which reimbursement is sought has been completed to the satisfaction of COUNTY and (ii) COUNTY has received a written request for payment and copies of all written documentation required pursuant to Paragraph 5.a above.
- c. ORGANIZATION shall submit to COUNTY a final written request for up to, but not to exceed the amount of the Retention and any amounts remaining in the Construction Fund, within thirty (30) days after: (i) the COUNTY has determined the Project has been satisfactorily completed and the Project has passed a final COUNTY inspection, (ii) ORGANIZATION has accepted the Project as complete, and (iii) the facilities are available for use by the public ("Completion Date"). The final reimbursement request shall comply with all requirements and conditions set forth under Paragraph 5.a., above.
- d. COUNTY may withhold all or any portion of a reimbursement payment if it determines, in its sole discretion, that: (i) the reimbursement request includes ineligible activities, services or items, (ii) the reimbursement request is untimely or inaccurate, (iii) the ORGANIZATION has failed to provide receipts or other appropriate documentation to support the reimbursement request, (iv) the ORGANIZATION has not complied with applicable federal, state or local laws, ordinances or regulations in connection with its activities under this Agreement, (v) the ORGANIZATION has failed to obtain or maintain a necessary license or permit in connection with its activities under this Agreement, or (vi) the ORGANIZATION has otherwise failed to comply with a material term or condition of this Agreement.
- e. If ORGANIZATION fails to satisfactorily execute or complete the Project in accordance with the terms and conditions of this Agreement, then COUNTY may, in its discretion, require ORGANIZATION to repay all or any portion of the grant funds provided under this Agreement. Any funds paid to, but not expended by, ORGANIZATION for the purposes stated or in accordance with the terms and conditions of this Agreement shall be refunded to COUNTY. ORGANIZATION shall repay all such sums within thirty (30) days after ORGANIZATION receives a repayment request from COUNTY.
- f. Any portion of the Construction Fund which COUNTY does not pay to ORGANIZATION and any grant funds returned to COUNTY shall be

retained by COUNTY as Mitigation Fees and may be reallocated to other qualifying projects.

6. The Project, and all facilities and equipment to be funded pursuant to this Agreement shall remain property of the ORGANIZATION and shall be made available for public use as set forth herein for a minimum of ten (10) years after the Completion Date. If the Project or any portion thereof is closed, materially damaged, destroyed or otherwise made unavailable for general public use prior to the expiration of this ten (10) year period, the ten (10) year period shall be extended by the amount of time the Project or portion thereof is not available for public use; provided, however, that closures for brief periods to perform routine maintenance and repairs shall not extend this ten (10) year period. ORGANIZATION shall notify COUNTY in the event of any such closures, whether temporary or permanent. In the event that the Project or any portion thereof is permanently closed to the public before the expiration of the ten (10) year period and any extension thereof, ORGANIZATION shall refund a pro-rata share of COUNTY's contribution under this Agreement based upon the percentage of the ten (10) year period that the Project will not be available for public use.
7. COUNTY is a funding source only, and has no right, title, obligation or interest in the Project, nor any control over the design, permitting, purchases, construction and/or installation, operation or maintenance of the Project. ORGANIZATION shall be solely responsible for the proper execution of and on-going operation and maintenance of the Project, and for full compliance with all legal requirements including, but not limited to, safety codes, accessibility laws, development regulations and permitting requirements, CEQA/NEPA, and legal requirements relating to public contracting and construction, public bidding, and prevailing wages.
8. ORGANIZATION shall pay all costs and expenses associated with maintenance and operation of the Project, and shall keep the Project and all portions thereof in a good, safe and useable condition.
9. ORGANIZATION shall hold COUNTY, its agents, employees, officers and volunteers harmless from and save, defend and indemnify them against any and all claims, losses, liabilities, and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorneys' fees, and all costs and expenses, arising directly or indirectly out of any act or omission of ORGANIZATION, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement. ORGANIZATION's obligation to defend, indemnify, and hold COUNTY harmless under the provisions of this Paragraph 9 shall survive the termination of this Agreement and is not limited to or restricted by any requirement that ORGANIZATION procure and maintain a policy of insurance.

10. ORGANIZATION has, or shall acquire, and shall maintain adequate liability insurance, or similar coverage, in forms acceptable to COUNTY's Risk Manager to handle any claims or losses which might occur with respect to said facilities. At a minimum, ORGANIZATION shall maintain (a) broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the amount of \$1,000,000, (b) commercial automobile liability coverage for protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the amount of \$1,000,000 for each vehicle used including non-owned and hired automobiles, and (c) worker's compensation coverage as required by State law. ORGANIZATION shall promptly provide proof of insurance as evidenced by a certificate of insurance with properly executed endorsements attached naming the County of Nevada, its officers, employees and agents as additional insureds.
11. Throughout the term of this Agreement, ORGANIZATION shall possess or secure all licenses, permits, qualifications and approvals legally required to design, make purchases for, construct and/or install the Project and shall comply with all applicable federal, state, and local laws, ordinances and regulations. Prior to commencement of construction, ORGANIZATION shall obtain any and all land use and building entitlements necessary to complete the Project, including without limitation all zoning, development and site plan approvals, rights of entry, and appropriate building, environmental health or other permits. Upon COUNTY's request, ORGANIZATION shall provide COUNTY with copies of all final permits, documents or other approvals required to design, make purchases for, construct and/or install the Project.
12. Upon request, COUNTY or its authorized representative shall have access to and the right to examine all records, books, papers or documents of ORGANIZATION related to the Project and use of COUNTY funds provided under this Agreement. ORGANIZATION shall retain such records, books, papers and documents for a period of not less than three (3) years from the Completion Date.
13. The Parties to this Agreement hereby certify that they are acting as independent contractors and not as agents, employees, or joint ventures with each other. Neither Party nor its officers, employees or volunteers are employees of the other.
14. The terms and conditions of this Agreement, including any exhibits hereto, may not be amended except in writing, signed by both parties. Any amendment or addendum to this Agreement shall expressly refer to this Agreement.
15. The waiver of any provision of this Agreement shall be in writing, signed by the party granting the waiver, and such waiver shall not operate or be construed as a waiver of any other provision of the Agreement.

16. ORGANIZATION warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with performance of its obligations under this Agreement, or with the expenditure of Mitigation Fees as provided in this Agreement. ORGANIZATION further warrants that it will not employ or contract with any person or entity having such interest and that it will adopt appropriate safeguards to prohibit members, officers, employees, agents, contractors or volunteers from (a) having any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project or (b) using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

17. Any notices that either Party desires to or is required to give to the other Party or to any other person shall be in writing and either served personally or sent by prepaid first class mail. Such notices shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Notice shall be deemed received within seventy-two hours from the date of mailing, if mailed as provided in this Paragraph.

To City:
Parks and Recreation Supervisor
317 Broad Street
Nevada City, CA 95959

To County:
Planning Director
950 Maidu Avenue, Suite 170
Nevada City, CA 95959

18. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party. This Agreement is to be deemed to have been prepared jointly by the parties hereto and shall not be interpreted or construed against either party as the drafter.

19. This Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof and supersedes all prior discussions, agreements, proposed agreements, or conditions, whether written or oral.

20. Should all or any portion of any provision of this Agreement be held unenforceable or invalid for any reason, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then the remaining portions or provisions shall be unaffected.

21. This Agreement may not be assigned by either party. This Agreement is made and entered into for the sole protection and benefit of COUNTY and

ORGANIZATION and their respective successors. No other person or entity shall have any right of action based upon any provision of this Agreement.

22. This Agreement shall be governed by the laws of the State of California and venue shall be in the appropriate Superior Court in Nevada County, California.

23. Each person executing this Agreement on behalf of a Party represents and warrants to the other Party that he or she has authority to bind and commit each such Party to this Agreement.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the dates hereinafter set forth.

Dated: _____

COUNTY OF NEVADA

ATTEST:

By: _____

Chair, Board of Supervisors

By: _____

Julie Patterson-Hunter, Interim Clerk

Dated: _____

CITY OF NEVADA CITY

ATTEST:

By: _____

Mayor, City of Nevada City

By: _____

Niel Locke, Clerk

APPROVED AS TO FORM:

By: _____

County Counsel

Hal Degraw, City Attorney