

MEMORANDUM OF UNDERSTANDING

BETWEEN THE COUNTY OF NEVADA AND THE CITY OF NEVADA CITY FOR WILDFIRE PREVENTION, EMERGENCY SERVICES AND DISASTER READINESS PROGRAMS AND PROJECTS

THIS MEMORANDUM OF UNDERSTANDING, hereinafter referred to as "MOU," is made and entered into by and between the County of Nevada, hereinafter referred to as "COUNTY," and the City of Nevada City, hereinafter referred to as "CITY," collectively, the "PARTIES" and shall be effective when signed by all the Parties ("Effective Date").

Recitals:

WHEREAS, in January of 2022, the COUNTY Board of Supervisors reaffirmed "Emergency Preparedness" as a priority objective; and

WHEREAS, on August 9, 2022, the Board of Supervisors placed Measure V, the "Nevada County Wildfire Prevention, Emergency Services and Disaster Readiness Sales and Use Tax," ("Measure") on the November 8, 2022, General Election ballot; and

WHEREAS, the Measure is a ½ percent Countywide general sales tax to provide critical resources needed to save lives, reduce the threat of wildfires, and improve all-hazards disaster readiness and evacuation safety, and other general government services; and

WHEREAS, the PARTIES wish to memorialize funding commitments to support preparedness, mitigation, response, and recovery programs serving the residents of the CITY, subject to voter approval of the measure; and

WHEREAS, the PARTIES intend to collaborate and work cooperatively to deliver projects and services to be funded by the Measure.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the PARTIES, and of the promises contained in this MOU, the PARTIES agree as follows:

Section 1. RECITALS. The recitals set forth above are incorporated into this MOU.

Section 2. PURPOSE. The purpose of this MOU is to set forth the obligations and responsibilities of each PARTY with respect to funding commitments for the proposed Measure held within the General Fund.

Section 3. COOPERATION. The PARTIES shall fully cooperate with one another to attain the purposes of this MOU.

Section 4. TERM. This MOU shall become effective to each PARTY on the date that PARTY signs this MOU, and upon passage of the Measure, on the Operative Date of the Ordinance, and shall remain in effect while the Measure remains in effect and until the City of Nevada City has received final payment of its share of its proceeds under this MOU, unless earlier terminated as set forth in Section 11, below.

Section 5. PLAN SCOPE.

- a. The plan anticipates direct allocations to the CITY and other eligible entities, to support fuels reduction, defensible space programs, and other eligible uses in the categories of preparedness, mitigation, response, and recovery as described in Section 5.c. below.
- b. The County has set target allocations of 10% for planning/preparedness/prevention, 65% for mitigation, 20% for response, and 5% for recovery. CITY shall consider these target allocations but shall have no obligation to expend any funds provided hereunder in accordance with the target allocations.
- c. Eligible projects and programs in each category may include, but are not limited to, the following:

Planning, Preparedness, and Prevention includes required Countywide, municipal, and regional emergency plan development with regular updates to guide evacuation and all-hazards programs and projects; public education and outreach to residents and visitors to foster self-reliance, emergency preparedness, and evacuation planning; support for Firewise communities and neighborhoods; coordinated outreach to reduce wildfire risk by navigating unhoused people to shelter and services; and training and advocacy.

Mitigation includes Countywide and local hazardous vegetation reduction projects using science-based treatment and maintenance best practices to remove flammable brush and other fuels along roads, around municipalities and residential communities, near critical infrastructure, in recreation areas and open spaces with trails, parks, and camping areas; public safety capital improvements and infrastructure projects such as public safety buildings, fire suppression and water storage systems, and heavy equipment; green waste disposal facilities and

programs; evacuation safety route improvements such as removing fuels removal and constructing turnouts, roadway/shoulder widening, signage, etc.; defensible space and home hardening programs including education, enforcement, and abatement; and grants for neighborhood projects and programs such as expanded chipping programs and training programs, and financial assistance to low-income seniors, people with disabilities, and other residents with access and functional needs.

Response includes support for wildfire prevention and response capabilities but not wildfire suppression; emergency services communications capabilities including early warning and alert systems; sheltering support and capability improvements for people and animals/livestock; and first responder evacuation logistics support, tools, and training.

Recovery includes recovery coordination; case management to help those impacted by disasters; a recovery fund to address survivors' immediate needs; and a cleanup/debris management program to support rebuilding efforts.

In addition, and based on the principle of shared services, this MOU reflects a commitment to coordination and collaboration with Countywide partners. This includes convening partners for necessary all-hazards planning; advocating and seeking federal state, and regional funding; considering the contribution of matching funds to support prioritized projects and programs; and providing coordinated public outreach/education and PIO communications.

Section 6. TECHNICAL ADVISORY COMMITTEE.

- a. The COUNTY will establish separate eastern and western Technical Advisory Committees (TAC) comprised of multi-disciplinary subject matter experts staffed by the County Office of Emergency Services (OES), which will recommend funding priorities, subject to approval by the Board of Supervisors, as part of the COUNTY'S annual budget cycle. The western TAC (WTAC) may meet jointly or separately with the eastern TAC.
- b. WTAC recommendations will be based on expertise, adherence to approved countywide, regional, or local plans, tactical needs arising from emergencies, and a commitment to cooperation and collaboration.
- c. WTAC membership will include one seat for the City Manager or their designee.
- d. The CITY may submit recommendations or requests to the WTAC for the expenditure of funds as the WTAC develops its annual expenditure

recommendations.

- e. CITY shall consider recommendations of WTAC but shall have no obligation to expend any funds provided hereunder in accordance with those recommendations.

Section 7. CITIZENS OVERSIGHT COMMITTEE.

- a. The Board of Supervisors will appoint a Citizens Oversight Committee (COC). The COC's roles and responsibilities shall include reporting annually to the Board of Supervisors and public on the receipt and expenditures of Measure revenue, reviewing revenue and expenditures for conformity to the text of the Measure, and reporting any inconsistencies.
- b. The COC will neither evaluate spending priorities nor direct public agency staff or officials.
- c. The COC shall consist of seven members, one appointed by each of the five COUNTY Supervisors, and two to be selected by the full Board.
- d. TAX proceeds will be subject to the Annual Comprehensive Financial Report (audit) performed annually by an independent auditor.

Section 8. CITY OF NEVADA CITY FUNDING.

- a. The COUNTY will invest four-point-seventeen percent (4.17%) of the Measure revenue held within the General Fund (or approximately \$500,000 based on estimated total revenue of \$12 Million) on programs and projects that directly benefit the City of Nevada City and its sphere of influence.
- b. Of the 4.17%, the COUNTY will pay three-point-one percent (3.1%) of Measure revenue (or \$372,000 based on estimated total revenue of \$12 Million) to the CITY for programs and projects within the CITY and its sphere of influence to be used in compliance with the following:
 - i. These programs and projects will fall into the categories of "Preparedness, Mitigation, Response, and Recovery" as described in 5.c., and will be in alignment with approved local or regional plans and/or COUNTY plans such as the Community Wildfire Preparedness Plan, Local Hazard Mitigation Plan, evacuation plans, etc.
 - ii. These funds may be used to, without limitation, provide prevention and mitigation services such as fuels reduction on public properties and roadways (including those of the CITY, COUNTY, schools, airport, special districts, and critical infrastructure) within the CITY and its sphere of influence.
 - iii. These moneys shall be used to enhance and not to supplant current CITY service delivery levels set for Fiscal Year 2022/23, and shall be used for

eligible programs, services and/or projects. Costs allocated to this MOU will be reasonable within accepted allocation practices (for example, 2 CFR Part 200). This subparagraph shall not be construed to limit CITY's ability to amend its Fiscal Year 2022/23 budget in response to changes in CITY's financial condition or other circumstances.

- iv. Payments shall be in four (4) quarterly installments. Payments will be made within thirty (30) days following the end of the quarter.
 - v. At its discretion, CITY may enter in to separate Memoranda of Understanding or contracts with other parties in order to facilitate the implementation of programs, services and/or projects to be funded by this direct allocation and in accordance with the terms of this MOU.
- c. Of the 4.17%, the COUNTY will spend one-point-zero-seven (1.07%) percent of Measure revenue (or \$128,000 based on estimated total revenue of \$12 Million) on programs, services and/or projects, that are delivered and located in the CITY and its sphere of influence, as well as for shared programs and services such as but not limited to Countywide planning, emergency communications, outreach and education programs, etc.
- i. The COUNTY shall not spend more than 5% of this amount on program management.
 - ii. The COUNTY shall not fund shared programs or services from this allocation beyond the proportionate share of benefit to be received by CITY and its sphere of influence from such programs, services and/or projects.
 - iii. The projects and programs for this 1.07 percent of Measure revenue shall be developed by the City in coordination with the WTAC pursuant to Section 6 herein, and implemented by the City, County and/or other eligible entity.
 - iv. These funds may also be used to provide local match on state and federal grants, provided that COUNTY shall not fund the local match for any state or federal grant to be used for countywide programs or services from the allocation beyond the proportionate share of benefit to be received by the CITY and its sphere of influence from such programs, services and/or projects.
 - v. These projects, services and programs will be developed by the WTAC, subject to Board approval.
- d. Unspent funds annually and at the end of the Measure's term shall remain allocated to the CITY and its sphere of influence for eligible projects and programs.
- e. The CITY agrees to publicly acknowledge projects and programs funded by the Measure in coordination with the COUNTY. For example, large-scale visible

projects may be recognized with an onsite sign, while programs may be acknowledged in printed and online communications with the “Ready Nevada County Measure V” brand to be developed.

Section 9. JOINT OBLIGATIONS.

- a. Collaboration. The PARTIES will collaborate to provide additional resources to the CITY, especially by seeking state and federal funding. Whenever possible, Measure revenue shall be leveraged to provide matching funds to state and federal grants in proportion to the benefit to be received by the CITY from the programs, services and/or projects to be funded by such grants.
- b. Documentation. The PARTIES will make a good faith effort to cooperate with one another to achieve the purposes of this MOU by providing all requested information and documentation in their possession or otherwise available for release deemed necessary to comply with the terms of a grant or to complete an approved project, or as requested by the Citizens Oversight Committee, or as requested by the COUNTY during the annual audit process.
- c. Records. Each PARTY will retain all records and documents in its possession pertaining to the MOU for a period of three years following termination or expiration of this MOU.
- d. COUNTY shall establish accounting structures within the general fund that allow for the tracking of expenditures and reporting them annually to the COC.
- e. CITY will provide expenditure reports to the COUNTY with a mid-year report (expenditures through December 31st) due February 28th and a final year-end report due August 31st.

Section 10. INDEMNIFICATION

- a. Each PARTY shall indemnify, defend, and hold harmless each other PARTY, including its elected and appointed officers, employees, agents, attorneys, and designated volunteers from and against any and all liability, including, but not limited to demands, claims, actions, fees, costs, and expenses (including reasonable and actual attorney's and expert witness fees), arising from or connected with the indemnifying PARTY's acts arising from or related to this MOU; provided, however, that no PARTY shall indemnify another PARTY for the indemnified PARTY'S own negligence or willful misconduct.
- b. In light of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said

Code), each of the PARTIES hereto, pursuant to Sections 895.4 and 895.6 of that Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act or omission occurring in the performance of this MOU to the same extent such liability would be imposed in the absence of Section 895.2 of that Code. To this end, each PARTY shall indemnify, defend, and holds harmless each other PARTY for any liability, cost, or expense that may be imposed upon such other PARTY solely by virtue of Government Code Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part of this MOU as if incorporated herein.

- c. Notwithstanding the foregoing provisions of this Section 10, COUNTY shall defend at its sole cost any challenge to the validity of the Measure.
- d. This indemnification clause shall survive the termination of the MOU.

Section 11. TERMINATION OR AMENDMENT

- a. This MOU may be terminated by either PARTY following a default, notice of that default, and a failure to cure. A default is the failure of either PARTY to comply with any of its obligations under this MOU. Notice of default is written notice to the defaulting party specifying the nature of the alleged default. Failure to cure is the failure to remedy the alleged default within 30 days, unless the default requires more than 30 days to cure, in which case the defaulting party must immediately commence to remedy the default and thereafter diligently proceed until the default is remedied.
- b. If the Measure is repealed, this MOU shall terminate without further action of the PARTIES, upon the receipt and distribution of the final Measure revenues in accordance with this MOU.
- c. This MOU may be terminated at any time by either PARTY upon four-fifths vote of that PARTY'S governing body.
- d. This MOU may be amended at any time upon the mutual agreement of the PARTIES.

Section 12. GENERAL PROVISIONS

- a. NOTICES. Any notices, requests, or other communication required or permitted hereunder shall be in writing and shall be delivered to the representatives of the PARTIES at the addresses set forth below. The PARTIES shall promptly notify each other of any change of contact information. Written notice shall include notice delivered via e-mail. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by an

acknowledged e-mail; or (b) on the third (3rd) business day following mailing by registered or certified mail (return receipt requested).

City of Nevada City

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County of Nevada

Alison Lehman, CEO

Alison.Lehman@nevadacountyCA.gov

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Nevada City, CA 95959

(530) 265-1290

- b. RELATIONSHIP OF THE PARTIES. The PARTIES are, and shall at all times remain as to each other, wholly independent entities. No PARTY to this MOU shall have power to incur any debt, obligation, or liability on behalf of any other PARTY. No employee, agent, or officer of a PARTY shall be deemed for any purpose whatsoever to be an agent, employee, or officer of another PARTY.
- c. BINDING EFFECT; NO THIRD PARTY BENEFICIARIES. This MOU shall be binding upon and shall be to the benefit of the respective successors, heirs, and permitted assigns of each PARTY; provided, however, no PARTY may assign its respective rights or obligations under this MOU without prior written consent of the other PARTY. The PARTIES hereby disclaim intent to benefit third parties or to allow any person other than PARTY to enforce or benefit from this MOU.
- d. SEVERABILITY. If any provision of this MOU is determined by any court to be invalid, illegal, or unenforceable to any extent, then the remainder of this MOU will not be affected, and this MOU will be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.
- e. ENTIRE AGREEMENT. This MOU constitutes the entire agreement of the PARTIES with respect to the subject matter hereof.
- f. WAIVER. Waiver by either PARTY to this MOU of any term, condition, or covenant of this MOU shall not constitute a waiver of any other term, condition, or covenant. Waiver by any PARTY of any breach of the provisions of this MOU shall not

constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this MOU.

- g. COUNTERPARTS; ELECTRONIC SIGNATURES. This MOU may be executed in counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument, provided, however, that such counterpart shall have been delivered to the other PARTY or PARTIES to this MOU. Signatures may be given by emailed pdf or other electronic means with the same force as original, wet signatures.
- h. CONSTRUCTION. Both PARTIES have been represented by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU shall be construed according to its fair language. Any ambiguities shall be resolved in a collaborative manner by the PARTIES and shall be rectified by amending this MOU as described in Section 11.

IN WITNESS WHEREOF, the PARTIES hereto have caused this MOU to be executed by their duly authorized representatives and affixed as of the date of signature of the PARTIES:

City of Nevada City

County of Nevada

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

Attest:

By: _____
Town Clerk

By: _____
Clerk of the Board

Date: _____

Date: _____

Approved as to form:

By:

Dean Pucci
City Attorney, City of Nevada City

Date:

Approved as to form:

By:

Katharine L. Elliott
County Counsel, County of Nevada

Date: