

GENERAL USE AGREEMENT

Between the County of Nevada and the Nevada City Chamber of Commerce

This Agreement is made and entered into by and between the Nevada City Chamber of Commerce hereinafter referred to as “Chamber” and the County of Nevada referred to as “County”. This Agreement shall be effective as of December 1, 2019 (“Effective Date”). For purposes of this Agreement, County and Chamber are referred to individually as “Party,” and collectively as the “Parties.”

Recitations and Representations

WHEREAS, the Chamber hosts the Victorian Christmas Event (“Event”) each year which involves a street fair in downtown Nevada City; and

WHEREAS, the County is not a sponsor, promoter, host, organizer, or in any way involved with the Event; and

WHEREAS, because there is a significant shortage of parking for the Event, the public utilizes the Eric Rood County building parking lot (“Property”) as an additional location to park their vehicles; and

WHEREAS, the Chamber encourages members of the public to utilize the Nevada County Government Center Trail (“Trail”) from the Property to the pedestrian crossing located at the intersection of Highway 49 and Bloomfield Road for the Event; and

WHEREAS, the Chamber wishes to provide a shuttle service to the Event from the Eric Rood Administrative Center and lighting on the Trail for the public during the Event and encourage the public to use the Trail from the Eric Rood Administrative Center to the traffic signal at the intersection of East Broad Street, Highway 49 and North Bloomfield Road by ensuring lighting on the Trail during the Event; and

WHEREAS, the County is willing to provide the electricity for the Trail lighting during the Event and permit the Chamber to organize parking and shuttle service at the Eric Rood County building parking lot during the Event subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Chamber and County agree as follow:

TERM OF GENERAL USE AGREEMENT:

This Agreement is effective for a term of Three (3) years from the Effective Date set forth above, subject to the provisions this Agreement, unless terminated sooner by mutual written agreement of the Parties or pursuant to Section 15 below. By and through this agreement, the County permits the Chamber to direct members of the public to park on the Property, organize shuttle services from the Property, place signage on the Property (once the condition precedent of the signs being approved by all City, County, State, and Federal agencies, as necessary, is satisfied), and use the Trail from the Property during the Event and agrees to provide Chamber access to one plug at the County Facilities Department building to provide electricity for the Trail lighting during the Event times as indicated in paragraph 10 of this Agreement on the following terms and conditions:

CONDITIONS OF AGREEMENT:

Chamber may not use the Property for any other purpose or business other than the Event without obtaining County's prior written consent. Additionally, the Chamber shall be bound to the following conditions:

1. Use and Occupancy. The property herein licensed shall be used and occupied in an orderly and respectable manner, without hindrance, annoyance, disturbance, detriment, injury or offense to County. The Chamber shall not commit, nor suffer to be committed, any nuisance or waste in or about the Property. The Chamber shall not bring anything onto the Property, or permit anything to be done in or about the Property, which a reasonably prudent person would believe may adversely affect fire risk or otherwise impact other insurance risks on county buildings or their contents.
2. Operation Subject to Law. The Chamber shall operate in all respects subject to all applicable rules, regulations, ordinances and laws, whether county, state or federal. The Chamber shall be required to obtain, at its expense, any and all necessary licenses and permits. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in a court of competent jurisdiction in Nevada County.
3. Operation Subject to Prior Rights. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government has affecting the control, operation and regulation of the Property. This Agreement shall be subordinate to the provisions and requirements of any existing agreement between the County and the United States and State of California relative to the operation of the Property.
4. No Interference with Right of Way. The Chamber shall not unreasonably interfere with or obstruct, any right of way over the Property owned and controlled by The County, including right of way for ingress and/or egress for pedestrian and vehicular traffic.
5. No Partnership or Agency Relationship Created. It is expressly understood and agreed that this Agreement is not intended or shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the Parties.
6. Signs and Alterations. The Chamber is solely responsible for obtaining City, County, State, and Federal permits regarding signs. The Chamber shall not install any fixtures or mark, paint, or deface any floors, walls, ceilings, partitions or pavement, without prior written approval of the Director of Facilities.
7. Manager as The County's Agent. Director of Facilities of the County of Nevada is the authorized agent for the County for purposes of this Agreement, and as to any obligations assumed herein by the Chamber, they shall be performed to the satisfaction of said Manager.

8. Fire and Life Safety. All applicable permits are the responsibility of the Chamber. Inspection and compliance of all conditions or situations connected to the event are the responsibility of the Chamber. Hazardous conditions or situations on County property shall be reported to the Director of Facilities immediately. In the event hazardous conditions or situations occur, the Director of Facilities or County Official shall have the authority to immediately terminate the event, and/or direct that the Chamber correct the hazardous condition or situation immediately at the Chamber's expense. Should the hazard be corrected, the event may, at the discretion of the Director of Facilities or County Official, be allowed to continue. Nevada County makes no warranty that the facilities are hazard free.
9. Parking. The Chamber and the public shall have the non-exclusive right to use the auto-parking areas on the Property except those parking spots already designated for other uses including but not limited to sheriff and trail parking. Parking, in conjunction with the Chamber's event, shall be limited to a period not longer than the times designated in paragraph 10 of this agreement.

10. Nevada County Government Center Trail Lighting.

Hours of Lighting: The County will provide electricity to the Chamber for the following days and time:

December:

Week Days: Wednesday

Time: Dusk to 10:00 p.m.

Weekends: Sunday

Time: Noon to 7:00pm

Lighting: Chamber shall provide a lighting plan showing where and what type of lighting is setup at the Eric Rood Center parking and/or trail section.

11. Hold Harmless, Indemnification, Damages, and Insurance.

- a. Hold Harmless: To the fullest extent permitted by law, the Chamber shall indemnify, defend and hold harmless County and its officers, officials, employees, agents, and volunteers from any and all liabilities, claims, demands, damages, losses and expenses (including without limitation defense costs and attorney fees arising from litigation) regarding any act, error or omission by the Chamber related to its use of the Property and trail areas, and/or arising out of this Agreement.
- b. Disclaimer of Liability: To the fullest extent permitted by law, in no circumstances shall County and its elected officials, officers, volunteers, agents, contractors and employees be liable to the Chamber or any other third parties for any loss or damage or injury or death arising directly or indirectly from this Agreement, and the Chamber hereby releases County and its elected officials, officers, volunteers, agents, contractors and employees from any and all liability, whether in tort or contract (including strict liability and negligence), relating to any claims, losses, costs, damages, expenses, or liabilities resulting from personal injury to or the death of the Chamber or any employee, agent, servant, contractor,

vendor, merchant, exhibitor, entertainer, participant, invitee or guest of the Chamber, or any injury or damage to property of the Chamber, its employees, agents, contractors, vendors, merchants, exhibitors, entertainers, participants, invitees or guests of the Chamber. This obligation is independent of, and shall not in any way be limited by, the minimum Insurance obligations contained in this agreement.

- c. County Non-Liability; Force Majeure: County and its elected officials, officers, volunteers, agents, contractors and employees shall not be liable for any injury or damage which may be sustained by the person, goods, equipment, wares, merchandise or property of the Chamber, its agents, servants, employees, contractors, vendors, merchants, exhibitors, entertainers, participants, guests, or invitees resulting from an Act of God, fire, explosion, flood, strike, labor dispute, riot, wind, ice, hail, or any other cause or peril beyond the control of County.
- d. Insurance: The Chamber shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with this agreement hereunder with the Chamber, its agents, representatives, employees, or volunteers. Coverage shall be at least as broad as:
 1. Automobile Liability: Insurance Services Office Form CA 00 01 covering, Code 1 (any auto), or if Chamber has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
 2. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 3. If the Chamber maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Chamber. Any available insurance proceeds in excess of the specified minimum limits of the insurance and coverage shall be available to the County.
- e. Other Insurance Provisions: The insurance policies are to contain, or be endorsed to contain, the following provisions:
 1. Additional Insured status: The County, its officers, officials, employees, and volunteers are to be covered as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Chamber including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Chamber's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
 2. Primary Coverage. For any claims related to this Agreement, the Chamber's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its elected officials, officers, volunteers,

agents, contractors and employees. Any insurance or self-insurance maintained by the County shall be excess of the Chamber's insurance and shall not contribute with it.

3. Notice of Cancellation. Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.
 4. Waiver of Subrogation. The Chamber hereby grants to County, its elected officials, officers, volunteers, agents, contractors and employees a waiver of any right to subrogation which any insurer of said Chamber may acquire against the County, its elected officials, officers, volunteers, agents, contractors and employees by virtue of the payment of any loss under such insurance. The Chamber agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
 5. Acceptability of Insurers: Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.
 6. Verification of Coverage: Chamber shall furnish the County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to the County at least ten (10) days prior to the time such insurance as is first required to be carried. The County reserves the right to require complete, certified copies of the all required insurance policies, including endorsements required by these specifications, at any time.
 7. Subcontractors: The Chamber shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Chamber shall ensure that County is an additional insured on insurance required from subcontractors. Subcontractor requirement is limited to those subcontractors performing or executing their scope of work on County Property.
 8. Failure to Provide Insurance: Failure to provide and maintain the insurance policies (including Best's ratings), endorsements or certificates of insurance required by this Agreement shall constitute a material breach of this Agreement and, at the election of County, may result in the immediate suspension or revocation of this Agreement.
12. Severability. In the event any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such portion shall be severed from the Agreement, and the remaining parts hereof shall remain in full force and effect as fully as though such invalid, illegal or unenforceable portion had never been part of the Agreement, provided the remaining Agreement can be reasonably and equitably enforced.
13. Waivers. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision.
14. Captions. The captions and the section and subsection numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit,

construe or describe the scope or intent of such sections of this Agreement nor in any way affect this Agreement.

15. Termination. This Agreement will terminate immediately if Chamber fails to comply with any provision of the Agreement. The County shall notify the Chamber's Executive Director immediately of the termination and reason for the termination.
16. Modification. This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by both Parties.
17. Notice. Any written notices shall be made by personal delivery, or by first class United States mail, postage prepaid, to the addresses indicated above the signature lines below. Notices shall be effective immediately, if personally delivered, or five days after deposit in the U.S. mail.
18. Assignment. Neither Party shall have the right to assign, sublease or otherwise transfer its interests in this Agreement to any third party without the prior written permission of the other Party. No legal title or leasehold interest in the Property is created or vested in the Chamber by and through this Agreement.
19. Successors. This Agreement is binding on the successors or permitted assigns of the Parties hereto.
20. Authorization. Each individual executing this Agreement or its counterpart on behalf of a Party hereto warrants that he or she is authorized to do so, and that this Agreement constitutes the legally binding obligation of the Party whom he or she represents.
21. Entire Agreement. This Agreement supersedes any prior agreement and contains the entire agreement of the Parties related to the rights granted in this instrument. No other agreement, statement, or promise made by any party or to any representative, officer, employee, or agent of any party that is not in writing and signed by all the Parties to this Agreement shall be binding.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date and year first above written.

County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

Nevada City Chamber of Commerce
132 Main Street
Nevada City, CA 95959

BY: Honorable Richard Anderson
Title: Chair of the Board of Supervisors

BY: Cathy Whittlesey
Title: Executive Director

Dated: _____

Dated: _____

Attest: _____

Julie Patterson Hunter

Clerk of the Board