

DRAFT

AMENDED AND RESTATED AGREEMENT REGARDING THE FIRE PROTECTION ASSISTANCE PROGRAM BETWEEN COUNTY OF NEVADA AND THE NEVADA-YUBA-PLACER UNIT, CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

THIS AGREEMENT is entered into as of April 01, 2019 between the COUNTY OF NEVADA, a political subdivision of the State of California, (“County”) and the NEVADA-YUBA-PLACER Unit, CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION (“CAL FIRE”). County and CAL FIRE may be referred to herein individually as “Party” and collectively as “Parties”.

I. PURPOSE

The purpose of this agreement is to increase coordination regarding the operation and management of the Defensible Space Inspectors (“DSI”), which is designed to benefit both parties to this agreement as well as all citizens of Nevada County. This agreement formalizes and continues the process followed by the County and CAL FIRE for fire prevention since the 49er Fire, as described below. In 1988, after the 49er fire, the Federal Emergency Management Agency (“FEMA”) required that the County initiate a fire prevention program. CAL FIRE and the County entered into an agreement using FEMA grant monies to hire temporary County employees to perform Public Resource Code 4291 inspections and 4290 driveway inspections under the authority and in cooperation with CAL FIRE.

II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS

This Agreement encourages greater communication, cooperation, and coordination between the County, CAL FIRE, local Fire Agencies, and Community Groups. All parties benefit from a formal process outlining each party’s responsibilities. This Agreement is consistent with expectations that the County, State agencies, local Fire Agencies, and Community Groups work together in the public interest. Since the fire season is the busiest time of the year for both parties and funding has become more difficult to secure, it is the intent of both parties to combine resources to create a high-quality Defensible Space Inspection (DSI) Program. County may engage formally with local Fire Agency(s) to represent and/or act for County’s in the DSI program.

III. TERMS AND CONDITIONS

The parties to this agreement agree to the following:

A. Term of agreement

This agreement is effective when fully executed and shall remain operative until terminated by one or both parties, or until Nevada County elects to discontinue funding for this program, pursuant to X.3 below.

B. Funding and Annual Budget

1. *Funding.* County funding for the DSI budget will be determined by County, at County’s sole discretion.
2. *Budget.* County will review and take input from CAL FIRE annually for the DSI program.

C. Defensible Space Inspector(s)

1. *Hiring Process.* County will coordinate the hiring process of the (DSI) by April of each year. County will recruit, interview, and hire the DSI using agreed upon County hiring specifications and minimum job qualifications. County, Nevada County Consolidated Fire District, and CAL FIRE will screen the candidates for compliance with minimum qualifications prior to any employment offer.
2. *Supervision; Training; Personnel Issues.* The Director of the County's Office of Emergency Services (OES) will retain daily supervision of the DSI and make every effort to coordinate with the CAL FIRE program, and CAL FIRE will be responsible for training the DSI. County will use the County Personnel Code as the guide for proper supervision of the DSI. County and CAL FIRE will advise the County Human Resources Department and the Director of OES if any performance issues or other job-related issues arise with the DSI. County and CAL FIRE will work together to resolve any personnel issues that arise, but the County ultimately will be responsible for discipline, up to and including dismissal of DSI.
3. *Salary.* Remuneration and salary increases for the DSI will be approved by County.
4. *Work Conditions and Equipment*
 - a. *Uniform.* The DSI will wear a County approved and provided official county logo shirt while on duty.
 - b. *Vehicle.* Vehicles and related costs will be provided by the County for use by the DSI's.
 - c. *Technology and Supplies.*
 - i. *Supplies.* County will provide the DSI with technology equipment and office supplies as needed.
 - ii. *CAL FIRE will provide access and training on the collector App.*
 - d. *Insurance.* County will provide General Liability Insurance and Workers' Compensation Insurance on the DSI.

D. Indemnification

Local Agency, to the extent permitted by law, agrees to indemnify, defend and save harmless the State, it's officers, agents and employees from any and all claims for economic losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with any activities under this agreement; and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by STATE in the performance of any activities under this agreement, except where such injury or damage arose from the sole negligence or willful misconduct attributable to STATE or from acts not within the scope of duties to be performed pursuant to this agreement.

State, to the extent permitted by law, agrees to indemnify, defend and save harmless the local agency, it's officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of any activities under this agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by State in the performance of any activities under this agreement.

E. Objectives and Reporting Requirements

In an effort to ensure that the program is effective, County and CAL FIRE agree to the following objectives and reporting parameters:

- *Citation Process.* CAL FIRE will work with the County to streamline the citation process. CAL FIRE may utilize the citation process to obtain compliance as a last resort. Compliance is the primary goal and every effort shall be made to educate and obtain compliance through education and administrative means prior to citation.
- *Identification of target areas.* CAL FIRE will coordinate annually with the Fire Marshal and the Local Fire Protection Districts to identify target areas for the DSI program. CAL FIRE will provide a list of target areas to the Director of OES prior to the commencement of the program and as the target areas are updated. Inspection areas will be coordinated with CAL FIRE through the FC Specialist supervising the CAL FIRE DSI Program (DSI Coordinator) to avoid overlapping inspection areas between County and CAL FIRE inspectors.
- *Data entry.* All County DSI's will utilize the CAL FIRE Collector App and enter information daily into the App and run error reports weekly. Any data gathered in this process and requested by the County for statistics can be produced by CAL FIRE through Crystal Reports for the County.
- *Outreach and Education.* CAL FIRE can coordinate with County and the local Fire Safe Council on providing outreach and education in County target areas.
- *Reporting Requirements.* CAL FIRE will provide the following reports to the Director of OES.
 - Quarterly-CAL FIRE DSI Coordinator will meet with the Director of Emergency Services to review the effectiveness of the DSI Program.
 - Annual-DSI Program Report by January 1st from prior year, County DSI's will provide OES and CAL FIRE with an annual report on the DSI Program, including a summary of inspections, compliance and inspections turned over to CAL FIRE for citations, as well as summary of outreach and education provided in coordination with community partners. This report will be made available prior to the County Board of Supervisors annual workshop (mid-January) to assist the Board of Supervisors in determining the effectiveness of the program.

IV. NON-DISCRIMINATION

During the performance of this Agreement, no Party shall unlawfully discriminate against any employee or applicant for employment, or recipient of services, because of race, religion, color, national origin, ancestry, physical disability, medical condition, sexual orientation, marital status, age or gender, pursuant to all applicable State and Federal statutes and regulations.

V. RECORDS, AUDITS AND INSPECTIONS

Each party shall, at any time upon reasonable notice during business hours, and as often as may be deemed reasonably necessary, make available for examination by the other Party, State, local, or federal authorities all of its records and data with respect to the matters covered by this Agreement as may be required under State or federal law or regulation or a Party's contract with a State agency.

VI. GOVERNING LAW AND FORUM

This Agreement shall be subject to and interpreted in accordance with the laws of the State of California and any action to enforce the terms of the Agreement for the breach thereof shall be brought in County of Nevada.

VII. NO THIRD PARTY RIGHTS

The terms and provisions of this Agreement are intended solely for the benefit of each party hereto, and it is not the intention of the parties to confer third-party beneficiary rights upon any other party.

VIII. SEVERABILITY

If any provision, or any portion of any provision hereof, is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IX. COMPLETE AGREEMENT

This Agreement is to be read as a whole. This is an integrated Agreement that contains all of the terms, considerations, understanding and promises of the parties as well as the fees, charges, and authorized expenses to be paid under the terms of this Agreement.

X. ANNUAL REVIEW; MODIFICATION; TERMINATION

1. *Annual Review.* County and CAL FIRE agree to review this agreement each year, no later than February 1st and prior to the County's annual budget development.
2. *Modifications.* Written modifications to the scope of this agreement may be made by either party upon written agreement of both parties.
3. *Termination.* Either party may terminate this agreement, in whole or in part, by giving the other party thirty days' written notice.

XI. NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and mailed postage prepaid by certified or registered mail to the appropriate address indicated below.

Jim Mathias, Assistant Unit Chief - Nevada-Yuba-Placer Unit
California Department of Forestry and Fire Protection
13760 Lincoln Way Auburn, CA 95603
(530)277-2303

Steve Monaghan, Director
Information and General Services Office of Emergency Services
950 Maidu Avenue, Suite 130
Nevada City, CA 95959
(530) 265-1239

IN WITNESS WHEREOF, the COUNTY OF NEVADA and the NEVADA COUNTY CONSOLIDATED FIRE DISTRICT have executed this Agreement on the day and year set forth below.

County of Nevada

Nevada-Yuba-Placer Unit

California Department of Forestry and Fire Protection

Richard Anderson
Chairman, Board of Supervisors

Brian Estes, CAL FIRE Unit Chief

Dated: _____

Dated: _____

Attest:

Clerk of the Board of Supervisors

Approved as to Form:

County Counsel