

**A REGIONAL TRANSPORTATION MITIGATION FEE AGREEMENT
BETWEEN THE
NEVADA COUNTY TRANSPORTATION COMMISSION
AND
CITY OF GRASS VALLEY**

This Agreement is made between the City of Grass Valley, a political subdivision of the State of California, (hereinafter "Grass Valley") and the Nevada County Transportation Commission, a regional transportation planning agency in the State of California (hereinafter "NCTC"). The City of Grass Valley and the NCTC may be referred to herein individually as "Party" or collectively as the "Parties."

This Agreement is made in consideration of the following facts:

- A. WHEREAS, City of Grass Valley and the NCTC are each empowered by law to conduct, participate in and provide regional transportation planning activities and desire to cooperate in the exercise of those powers; and
- B. WHEREAS, City of Grass Valley adopted and enacted Resolution No. ****_*****, which established a Regional Transportation Mitigation Fee (RTMF) and authorized City of Grass Valley to impose and collect said fee; and
- C. WHEREAS, the RTMF will provide funds for the construction of transportation improvements throughout Western Nevada County, as that term is defined in Resolution No. ****_*****; and
- D. WHEREAS, City of Grass Valley desires the NCTC to administer the RTMF in accordance with Resolution No. ****_***** and the Administrative Plan referenced herein.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements and covenants contained herein, the Parties do hereby agree as follows:

1. Definitions. Unless the context otherwise requires, the terms defined in this section and initially capitalized in the text, shall for all purposes of the Agreement have the meanings herein specified.

- a. Administrative Plan - "Administrative Plan" is defined as the Administrative Plan for the Western Nevada County RTMF Program, adopted by NCTC on July 19, 2023 (and as amended from time to time by NCTC), which serves as the guideline for implementation of the RTMF Program.
- b. Agreement - "Agreement" shall mean this agreement as the same now exists and as it may from time to time be amended by supplemental agreements entered into, pursuant to the provisions hereof.
- c. City of Grass Valley/ NCTC - "Grass Valley" and "NCTC" are defined in the preamble.
- d. Resolution - "Resolution" shall mean City of Grass Valley Resolution No. ****_*****.
- e. Party/Parties - "Party" and "Parties" are defined in the preamble.
- f. Regional Transportation Mitigation Fee or RTMF - "Regional Transportation Mitigation Fee" or "RTMF" shall mean the Regional Transportation Mitigation Fee component of the total road development fee established by Resolution No. ****_***** and subsequent modifications to that component, as imposed and collected by City of Grass Valley.

2. Purpose; Supersedes Prior Agreements. This Agreement is made pursuant to the law and its purpose is to provide for the exercise of powers by the Parties to provide regional transportation planning and to provide for NCTC's administration of the RTMF in accordance with the Administrative Plan attached hereto as Attachment "A", as it may be amended from time to time by NCTC. In the event of any conflict between the provisions of the

Administrative Plan and this Agreement, the Administrative Plan shall control. This Agreement supersedes any and all prior agreements between the Parties concerning the RTMF.

3. Term and Termination.

- a. The term of this Agreement commences on the date it is executed by the Parties, and it shall continue until and unless terminated, rescinded, canceled or modified by agreement of the Parties.
- b. Either party may terminate this Agreement for any reason by giving thirty (30) calendar days written notice to the other, which notice shall be sent by registered mail to the address set forth in Section 15.
- c. Impose and collect all the RTMF due under Resolution No. ****_*****.
- d. Deliver to the NCTC all the RTMF collected quarterly.
- e. Cooperate with the NCTC to meet their obligations under this Agreement.
- f. Other responsibilities as set forth in the Administrative Plan.

4. Responsibilities of NCTC. NCTC shall have the following responsibilities:

- a. Accept, deposit and hold all of the RTMF delivered to it pursuant to this Agreement. NCTC may invest all of the RTMF held by it pursuant to this Agreement in accordance with NCTC's investment policy/guidelines.
- b. Account for all of the RTMF delivered to it by keeping and maintaining separate books and accounts pursuant to this Agreement, without co-mingling any RTMF received, collected or held pursuant to this Agreement with any other funds or accounts of NCTC.
- c. Report all receipts and disbursements of the RTMF to the Commission.
- d. Administer the RTMF and disburse the RTMF in accordance with the Administrative Plan.
- e. Designate and appoint its Executive Director to serve as the person who has charge of, handles and has access to all money and property delivered to NCTC pursuant to this Agreement, from whatever source.
- f. Contract for an independent financial audit of its books and accounts each year.
- g. Cooperate with Grass Valley to permit them to meet their obligations under this Agreement.

5. Programming and Disbursement of Funds. The programming and funding of projects within the RTMF program will be established through a five-year Transportation Mitigation Capital Improvement Program. The structure and guidelines for this program are set forth in the Administrative Plan.

6. Inspection of Records. All books, documents, records, accounts and files relating to the RTMF collected by Grass Valley and to the management and administration of the property and RTMF by the NCTC pursuant to this Agreement shall be open to inspection at all reasonable times by Grass Valley and its designated representatives.

7. Fiscal Year. The fiscal year for the reporting and accounting for all moneys and the RTMF managed and administered by NCTC pursuant to this Agreement shall be the same as the fiscal year for NCTC.

8. Disposition of Property. On the termination of this Agreement, any property acquired as the result of the exercise of powers will be distributed to Grass Valley in proportion to the contributions made by Grass Valley.

9. Return of Surplus Moneys. Upon completion of the purpose of this Agreement and termination of this Agreement, any surplus money on hand shall be returned to Grass Valley as set forth in the Administrative Plan.

10. Indemnification. Grass Valley shall indemnify NCTC, its officers, agents and employees against all claims and hold them harmless from any and all liability attributed to Grass Valley's active or passive negligence whether on account of injury to person or persons or death or damage to property resulting from or in any way arising out of Grass Valley's operation or conduct under this Agreement, and shall reimburse NCTC, its officers, agents and employees for all costs of any such claims, demands, or causes of action which may be brought or asserted against NCTC, its officers, agents, or employees, including all costs of defense, attorney's fees, court costs and any adverse judgments.

NCTC shall indemnify Grass Valley, its officers, agents and employees against all claims and hold them harmless from any and all liability attributed to NCTC's active or passive negligence whether on account of injury to person or persons or death or damage to property resulting from or in any way arising out of NCTC's operation or conduct under this Agreement, and shall reimburse Grass Valley's, its officers, agents and employees for all costs of any such claims, demands, or causes of action which may be brought or asserted against Grass Valley's, its officers, agents, or employees, including all costs of defense, attorney's fees, court costs and any adverse judgements.

11. Agreements. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in subsequent written modification signed by the Parties. This Agreement may be amended at any time by mutual agreement of the Parties, but any amendment must be in writing and signed by the Parties.

12. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

13. Captions. The captions or paragraphs and subparagraphs of this Agreement are for reference only and not to be construed in any way as part of the agreement.

14. Assignment. No Party to this Agreement shall assign, sell, transfer or delegate any of its rights or duties under this Agreement without the prior written consent of the other Party.

15. Notices. Any notice, demand or other communication required or permitted under the provisions of this Agreement shall be effective when in writing and either personally delivered or addressed and placed in the mail as follows:

City of Grass Valley
125 East Main St.
Grass Valley, CA 95945

Nevada County Transportation Commission
101 Providence Mine Road, Suite 102
Nevada City, CA 95959

16. Attorneys' Fees. In the event, that either Party hereto shall institute any legal proceeding or arbitration pursuant to the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs to be determined by the court or arbitrator, as the case may be.

17. Controlling Law. California law shall be considered the law applicable to and controlling interpretation of this Agreement.

18. Interpretation. No provision of this Agreement shall be interpreted for or against any Party because that Party or that Party's legal representative drafted the provision.

IN WITNESS HEREOF, this Agreement has been executed by the parties hereto the day and year shown below.

NCTC:

Ed Scofield, Chair
Nevada County Transportation Commission

Dale Sayles,
Administrative Services Officer

Date

Date

Approved as to Form:

Osman I. Mufti
Sloan Sakai Yeung & Wong LLP
General Council

CITY OF GRASS VALLEY:

Mayor, City of Grass Valley

Date

Approved as to Form:

Michael G. Colantuono
City Attorney