

MEMORANDUM OF UNDERSTANDING

BETWEEN THE NORTH TAHOE PUBLIC UTILITY DISTRICT AND THE COUNTY OF PLACER REGARDING NORTH TAHOE EVENT CENTER EMERGENCY STANDBY GENERATOR

1. Purpose. This Memorandum of Understanding (“MOU”) is entered into between the North Tahoe Public Utility District (NTPUD) and the County of Placer (“COUNTY”) (collectively, the “Parties”) for the purpose of delineating cost-sharing for a permanent emergency standby generator system (“Generator”) at the North Tahoe Event Center (“NTEC”) located at 8318 North Lake Blvd, Kings Beach, CA 96143. The NTEC is designated by Placer County Office of Emergency Services as an Emergency Shelter and Evacuation Center for the residents and visitors of the North Shore of Lake Tahoe.
2. Grant Application and Cost. NTPUD is preparing a joint agency grant application for submittal to the California Office of Emergency Services (“CalOES”) for funding through the Hazard Mitigation Grant Program (“HMGP”) for the acquisition and installation of the Generator. The HMGP Program will fund seventy-five (75) percent of project costs and require the grant recipient to fund the remaining twenty-five (25) percent. If HMGP grant funds are awarded, NTPUD and COUNTY will split evenly the twenty-five (25) percent portion of project costs not covered by grant funds. Total project costs are currently estimated at \$300,000. Final project costs will be determined upon project completion, but COUNTY’s share shall in no event exceed \$37,500. NTPUD agrees to fund up front the twenty-five (25) percent portion of project costs not covered by grant funds and invoice COUNTY for its share upon project completion. Project completion will occur upon recordation of the Notice of Completion (NOC).
3. Operation and Maintenance. It is also agreed and understood that ongoing Operation and Maintenance (O&M) activities will be necessary during the lifecycle of the Generator, which is estimated to be twenty (20) years. NTPUD agrees to endeavor to include the costs for the manufacturer’s recommended O&M activities and compliance with Air Quality District requirements in its Fiscal Year budget cycles at NTPUD’s sole cost, with no COUNTY contribution. All budget appropriations shall be subject to the sole discretion of NTPUD.
4. Repair Responsibilities and Cost-sharing. Should a Generator component break, malfunction, and/or require replacement during the Generator’s useful life, the actual cost for such repair not covered by warranty or other applicable insurance policy shall be invoiced to COUNTY on a fifty/fifty (50/50) shared cost basis. NTPUD shall provide written notice of such repair to Placer County Facilities Management: (1) prior to or concurrently with invoicing for repairs costing less than \$5,000; or (2) at least ten (10) days prior to commencement of repairs costing \$5,000 or more. Invoices shall be paid by COUNTY within Sixty (60) days of receipt.
5. COUNTY Access to NTEC. In the event that NTPUD fails to repair the Generator after thirty (30) days advance written notice from COUNTY (or such reasonable longer time period explained by NTPUD in writing), COUNTY shall have the right of non-exclusive access to the NTEC as needed for repair of the Generator, as long as such repair activities are in accordance with all applicable laws and do not materially and adversely interfere with NTPUD’s possession, occupancy, or use of the NTEC. Furthermore, if COUNTY is in possession of the NTEC during an emergency event, COUNTY

may, without advance notice to NTPUD, make any repair necessary to maintain operation of the Generator and invoice NTPUD for fifty (50) percent of the cost thereof.

6. Indemnification. COUNTY agrees to indemnify and hold harmless NTPUD and NTPUD's employees, agents and elected and appointed board members from and against any damages including costs and attorney's fees arising out of negligent or intentional acts or omissions of COUNTY, its employees or agents.

NTPUD agrees to indemnify and hold harmless COUNTY, its employees, agents and elected and appointed board members from and against any damages including costs and attorney's fees arising out of negligent or intentional acts or omissions of NTPUD, its employees or agents.

This indemnification shall extend to claims, losses, damages, injury, and liability for injuries occurring after completion of the Parties' services, as well as during the progress of rendering such services. Acceptance of insurance required by this Agreement does not relieve the Parties from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages regardless if any insurance is applicable or not.

This provision is not intended to create any cause of action in favor of any third party against the Parties or to enlarge in any way the Parties' liability but is intended solely to provide for indemnification from liability for damages or injuries to third persons or property arising from the Parties' performance pursuant to this MOU.

7. Insurance. It is agreed that NTPUD and COUNTY shall each maintain at all times during the performance of this Agreement insurance coverage or self-insurance in the amounts of not less than One Million Dollars (\$1,000,000) to cover all of their operations. Specifically, but not limited to not less than One Million Dollars (\$1,000,000) general liability, One Million Dollars (\$1,000,000) automobile liability, One Million Dollars (\$1,000,000) workers' compensation.

NTPUD will provide and maintain in full force and effect one or more policies of property insurance to insure the Generator against those risks covered in an All Risk property insurance policy, with coverage amounts equal to at least one hundred (100) percent Replacement Cost (the "Property Insurance Policies"). NTPUD will pay all costs of maintaining the Property Insurance Policies, including premiums. If the Generator is damaged or destroyed ("Generator Loss") through an event covered by the Property Insurance Policies ("Generator Claim"), COUNTY will pay up to fifty (50) percent of any insurance deductible amount not exceeding \$25,000 (i.e., COUNTY contribution of up to \$12,500) as long as NTPUD uses the insurance proceeds to fully restore or replace the Generator. If NTPUD uses the insurance proceeds to restore other property in addition to the Generator, COUNTY's contribution toward the insurance deductible shall be reduced on a proportional basis. Under no circumstances shall COUNTY be obligated to contribute more than \$12,500 toward repair or replacement of the Generator if damaged or defective. If NTPUD receives insurance proceeds in connection with a Generator Loss, but fails to use those proceeds to restore or replace the Generator, NTPUD shall pay COUNTY fifty (50) percent of said insurance proceeds.

While NTPUD is providing and maintaining the Property Insurance Policies under this Agreement, upon COUNTY's request, NTPUD will provide COUNTY with written verification of coverage or certificates of insurance and, upon COUNTY's request, copies of all Property Insurance Policies, evidencing that the Property Insurance Policies are in full force and effect, as the Property Insurance Policies are issued and modified from time to time.

8. Incorporation of Additional Provisions. Additional terms of this Agreement are set forth in Exhibit A, attached hereto and incorporated herein by this reference as though fully set forth herein.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE
TO
NORTH TAHOE PUBLIC UTILITY DISTRICT AND COUNTY OF PLACER
MEMORANDUM OF UNDERSTANDING

NORTH TAHOE PUBLIC UTILITY DISTRICT

COUNTY OF PLACER

By: _____
Bradley A. Johnson, P.E.
General Manager/CEO

By: _____

Approved as to form:

Approved as to form:

NTPUD Legal Counsel

County of Placer Legal Counsel

ATTACHMENTS

Exhibit A: Additional Provisions

EXHIBIT A
ADDITIONAL PROVISIONS

1. ENTIRE AGREEMENT.

This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of the agreement among the PARTIES hereto concerning the subject matter addressed herein, and supersede all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

2. EXHIBITS.

Any and all exhibits referred to in and/or attached to this Agreement are hereby incorporated into this Agreement as if set forth in full herein.

3. AMENDMENTS.

No revision or amendment to this Agreement shall be valid unless made in writing and signed by duly authorized representatives of all PARTIES.

4. FURTHER ASSURANCES.

From time to time, either PARTY, at the request of the other PARTY, and without further consideration, shall execute and deliver further instruments and take such other actions as the requesting PARTY may reasonably require to complete more effectively the transactions contemplated by this Agreement.

5. TIME OF THE ESSENCE.

Time is of the essence with respect to the obligations to be performed under this Agreement.

6. SUCCESSORS IN INTEREST.

The covenants herein contained shall apply to and bind the successors and assigns (to the extent assignment is permitted) of the PARTIES hereto.

7. NO THIRD PARTY BENEFICIARY.

This Agreement is made and entered into for the sole protection and benefit of the PARTIES and their successors and assigns. This Agreement is not intended to, and shall not be construed to, create any right on the part of any third party to bring any action or otherwise enforce any of its terms.

8. STATUS OF EMPLOYEES.

All persons performing services for NTPUD shall be solely employees or contractors of NTPUD and not employees of COUNTY, except those persons expressly and directly employed by COUNTY. Furthermore, NTPUD is not an agent of COUNTY.

9. CONSTRUCTION AND INTERPRETATION.

It is agreed and acknowledged by the PARTIES that the provisions of this Agreement have been arrived at through negotiation, and that each of the PARTIES has had a full and fair opportunity to review the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

10. CAPTIONS.

The captions in this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section or paragraph of this Agreement. All references to section numbers refer to sections in this Agreement.

11. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when affixed together shall constitute but one and the same instrument.

12. SEVERABILITY.

The invalidity of any term or provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof. Each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. WAIVER.

The failure of any PARTY to insist upon strict performance of any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any right or remedy that said PARTY may have, and shall not be deemed a waiver of said PARTY's right to require strict performance of all terms, covenants, and conditions thereafter, nor a waiver of any remedy for the subsequent breach of any of the terms, covenants or conditions.

14. FORCE MAJEURE.

If any PARTY hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, or other cause without fault and beyond the control of the PARTY obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

15. LEGAL JURISDICTION.

The PARTIES hereto expressly agree that this Agreement shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of California. Venue for any disputes shall be the Superior Court for the State of California, in Placer County. The PARTIES hereby waive any federal court removal rights and/or original jurisdiction rights that they may have.

16. AUTHORITY OF DIRECTOR.

The Director of Facilities Management (Director), or designee, shall administer this Agreement on behalf of COUNTY. Unless otherwise provided herein or required by applicable law, the Director shall be vested with all rights, powers, and duties of COUNTY hereunder.

17. AUTHORITY OF EXECUTION.

Each person executing this Agreement on behalf of a PARTY represents and warrants that such person is duly and validly authorized to do so on behalf of the entity which it purports to bind.