

FACILITY USE AGREEMENT # 348-O1710

THE SPIRIT OF BENNY

5K/10K Fun Run and Walk

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and The Spirit of Benny, a California Public Benefit Corporation, whose principal place of business is 8946 Riverwood Drive, Placerville, California 95667 (Mailing: P.O. Box 17, Placerville, CA 95667) (hereinafter referred to as "USER").

RECITALS

WHEREAS, COUNTY is the owner of that certain real PROPERTY located in El Dorado County, California, commonly known as the parking lots and lawns of Buildings A (330 Fair Lane), Building B (360 Fair Lane), and the parking lots, lawns and restrooms of the Placerville Main Library (345 Fair Lane) all located in Placerville, California as depicted on the map attached hereto and marked as Exhibit "A" incorporated herein and made by reference a part hereof (hereinafter referred to as the "PROPERTY"); and

WHEREAS, the COUNTY desires to grant to the USER and the USER desires to receive authorization from the COUNTY to use said PROPERTY for the purpose of conducting a 5K and 10K Race/Walk ("EVENT"); and

WHEREAS, COUNTY has determined the EVENT will provide a valuable public benefit to residents of El Dorado County by raising awareness of the needs of sick children within our own community and the non-profit agencies that support them; and

WHEREAS, the COUNTY finds use of the PROPERTY for the above purpose is in the public interest and will not substantially conflict or interfere with the use of the property by the COUNTY; and

WHEREAS, use of the PROPERTY for the EVENT shall be in compliance with all applicable federal, state and local laws including any zoning or health laws or regulations.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the COUNTY and USER mutually agree as follows:

1. The COUNTY hereby grants to the USER and the USER hereby agrees to accept from the COUNTY this authorization for use of those portions of the COUNTY's PROPERTY described herein below for the purposes of conducting a 5K and 10K Race/Walk.
2. The PROPERTY shall be utilized by USER for the sole purpose of conducting the races/walks, which shall take place on Saturday March 18, 2017, from 6:00 a.m. until 12:00 p.m. The USER agrees that said use shall be only for the purpose of hosting their race/walks to members of the general public (including employees of the COUNTY). Any changes in the dates or times of use must be approved in advance by the Contract Administrator.
3. USER shall be authorized to proceed with use of the PROPERTY on the date and time noted hereinabove provided that this Agreement has been fully executed as evidenced by USER's receipt of a copy of said executed Agreement. Use of the PROPERTY shall in no way interfere with the use and occupancy by the COUNTY.
4. The USER is authorized to bring personnel and equipment onto the PROPERTY and to remove same after completion of its use of the PROPERTY.
5. USER shall obtain COUNTY's prior written consent if it becomes necessary to change, alter, or rearrange any equipment or furnishings on the PROPERTY, and USER shall return and restore said equipment or furnishings to their original place and condition, or repair it, if necessary.
6. USER shall maintain and keep the PROPERTY free of trash and litter which is generated as a result of the USER's activities. USER agrees to leave said PROPERTY free from all trash, debris or litter resulting from the USER's use of the PROPERTY. USER shall remove all trash, debris or litter from PROPERTY and dispose of said trash, debris or litter at its sole expense immediately after the EVENT.
7. USER acknowledges and agrees that it is solely responsible, and that COUNTY shall have no liability whatsoever, for any vehicles, trailers, personal property, equipment, or materials placed on or brought on the PROPERTY for or during the EVENT. Further, USER acknowledges and agrees that COUNTY makes no representations or warranties as to the condition of the PROPERTY and that USER uses the PROPERTY in an "as-is" condition.
8. Said use shall be limited to those portions of the PROPERTY described as the parking lots, and lawns. User will also have access to the public restrooms of the El Dorado County Main Library beginning at 9:00 a.m. Use shall be confined solely to the "exterior" of the buildings except to use the bathrooms at the library. At no time shall the USER conduct any activities whatsoever in any of the interior areas of the building(s) located on the PROPERTY. USER shall, at its own expense, remove all property, equipment (including portable toilets), or materials from the property within twenty-four (24) hours of conclusion of the EVENT. The PROPERTY must be surrendered to the COUNTY in the same condition as at the commencement of the use period.

9. USER acknowledges and agrees that it is solely responsible for the security of any personal property, equipment, or materials, including the portable toilets, placed on or brought on the PROPERTY for or during the event.
10. USER shall be responsible for any costs incurred by COUNTY for damages to the PROPERTY or other COUNTY real or personal property arising from USER's use, and for reasonable attorney fees to enforce the provisions of this Agreement.

11. INSURANCE REQUIREMENTS

USER shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that USER maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of USER as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. In the event USER is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- D. USER shall furnish a certificate of insurance satisfactory to the El Dorado COUNTY Risk Manager as evidence that the insurance required above is being maintained.
- E. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- F. USER agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, USER agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and USER agrees that no work or services shall be performed prior to the giving of such approval. In the event the USER fails to keep in effect at all times insurance coverage as herein provided, COUNTY may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- G. The certificate of insurance must include the following provisions stating that:
 - 1. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
 - H. The USER'S insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees or volunteers shall be excess of the USER'S insurance and shall not contribute with it.
 - I. Any deductibles or self-insured retentions must be declared to and approved by the COUNTY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the USER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
 - J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
 - K. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
 - L. USER'S obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
 - M. In the event USER cannot provide an occurrence policy, USER shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
 - N. Certificate of insurance shall meet such additional standards as may be determined by the contracting COUNTY Department either independently or in consultation with Risk Management, as essential for the protection of the COUNTY.
12. The USER shall defend, indemnify, and hold the COUNTY harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, COUNTY employees, and the public, or damage to PROPERTY, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the USER'S activities, use of the PROPERTY, or performance hereunder, including any hazardous substance brought onto, released, or deposited on the PROPERTY by USER or USER's agents, regardless of the existence or degree of fault or negligence on the part of the COUNTY, the USER, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the COUNTY, its officers and employees, or as expressly prescribed

by statute. This duty of USER to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.

13. Independent Contractor: USER agrees that the USER, and any agents and employees of the USER, in the performance of this Agreement shall act in an independent capacity and not as officers, employees, or agents of the COUNTY.
14. It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on either of the parties hereto.
15. The use granted herein is personal to the USER. It is non-assignable and any attempt to assign this Agreement shall immediately terminate it.
16. The COUNTY reserves the right to terminate this Agreement at any time for any reason by serving written notice to the USER. Upon receipt of such termination notice from the COUNTY, the USER shall immediately cease use of the PROPERTY.
17. Sole and Only Agreement: This instrument constitutes the sole and only agreement between the COUNTY and the USER respecting the PROPERTY or the granting of this Facility Use Agreement to the USER by the COUNTY, and correctly sets forth the obligations of the COUNTY and USER to each other as of its effective date. Any agreements or representations respecting the PROPERTY or the Agreement not expressly set forth in this instrument are null and void.
18. This Agreement is to be governed by and construed in accordance with the laws of the State of California.
19. The COUNTY Officer or employee with responsibility for administering this Agreement is Russell Fackrell, Facilities Manager, Chief Administrative Office, or successor.
20. This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

This document and the exhibit referred to herein, constitutes the entire Agreement between the parties and incorporates or supersedes all prior written oral agreements or understandings.

CONTRACT ADMINISTRATOR:

By: 

Russell Fackrell, Facilities Manager
Chief Administrative Office

Dated: 12/21/16

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: _____
Don Ashton, MPA
Chief Administrative Officer

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____
Purchasing Agent
Chief Administrative Office
"COUNTY"

Dated: _____

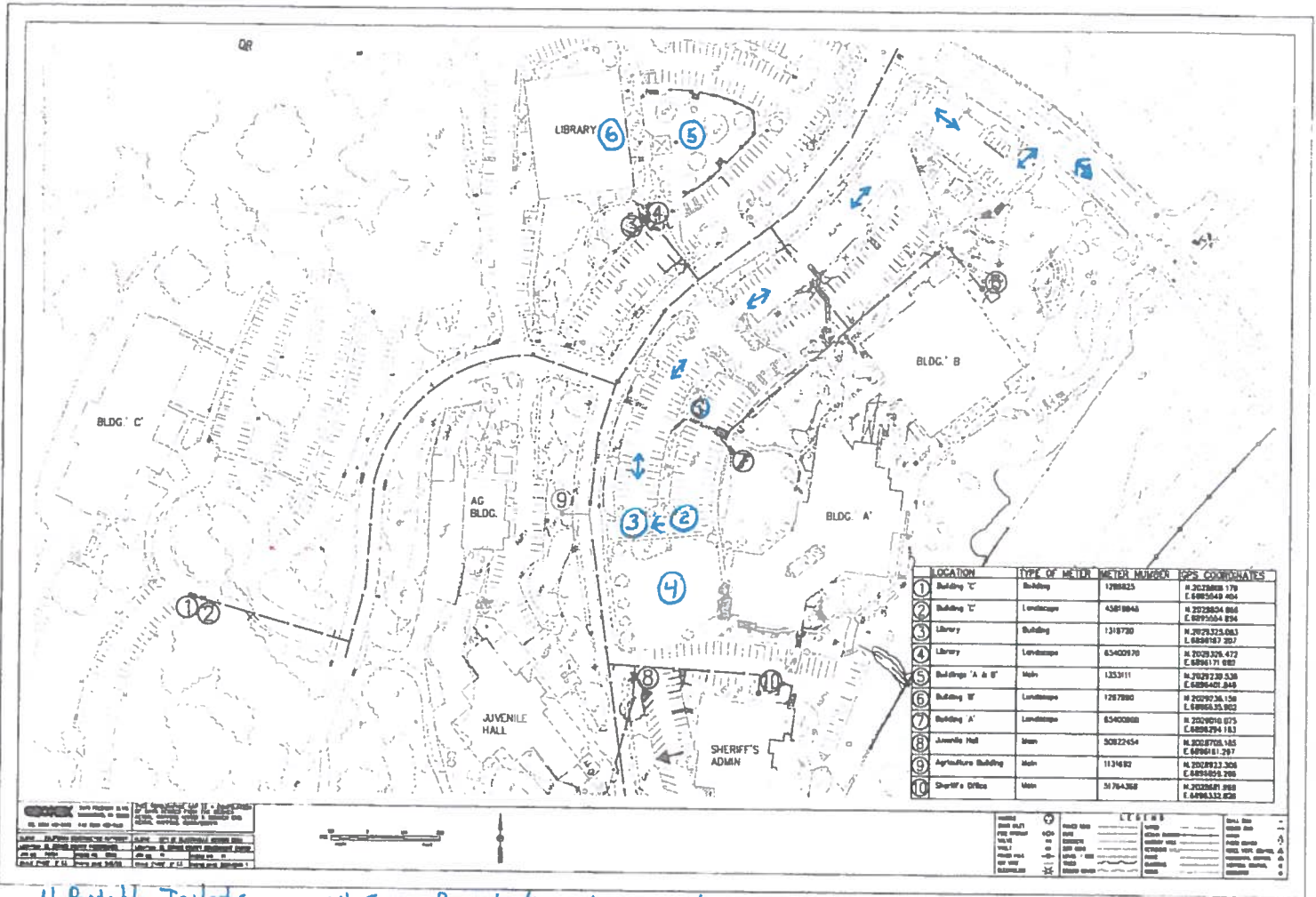
-- USER --

THE SPIRIT OF BENNY
A California Public Corporation

By: Nancy A Milla
Nancy Milla
President

Dated: 12/15/14

Exhibit "A"



- 1) Portable Toilets
- 2) Start Line
- 3) Finish Line
- 4) Expo, Registration, Live Band
- 5) Library lawns
- 6) Library restrooms