

ORIGINAL

El Dorado Community Foundation

Charitable Fund Agreement

AGREEMENT FOR SERVICES #3535

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and the El Dorado Community Foundation, a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 312 Main Street, Suite 201, Placerville, California 95667; and whose mailing address is PO Box 1388, Placerville, California 95667; and whose Agent for Service of Process is William John Roby, 5262 French Creek Road, Shingle Springs, California 95667 (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, County is the governing body regulating cemeteries and burial sites within its borders; and

WHEREAS, County actively manages many historic-era public cemeteries; and

WHEREAS, County cemetery services are funded by various fees for services, donations, and County General Fund Contribution; and

WHEREAS, the cost of operations to provide maintenance, historical preservation, and improvement services to public cemeteries has steadily increased with the addition of more historic-era cemeteries, requiring additional General Fund Contribution for continuation of services at traditional levels; and

WHEREAS, generous members of our community have indicated they would like to donate funds to County specifically to maintain and improve public cemeteries within County borders; and

WHEREAS, Contractor has represented to County that it is a non-profit organization that promotes charitable giving in El Dorado County and it is able to manage a charitable fund created to benefit public cemeteries, specifically or generally, once a defined minimum level of contribution is met; and

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Definitions: The following definitions shall apply to this contract:

Available to Spend	The available to spend is calculated based on a percentage of the fair market values for the previous twelve (12) months, which can be utilized in the upcoming year.
Component Fund	Funds established by donors and owned by the El Dorado Community Foundation.
Donations	All assets donated to Contractor which are designated as being for the Cemeteries Fund shall be added to and become part of the Cemeteries Fund.
Donor	Any individual or group of individuals who makes a current or deferred gift to the Cemeteries Fund.
Endowed Funds	A gift of money or other asset that is donated to establish a permanent source of charitable funds that are used to generate interest. The interest of which is then used for charitable purposes.
Principal	The sum of the dollar values of all gifts to the endowment.
Cemeteries Fund	The charitable fund for the Community Development Services, Administration and Finance Division, Cemetery Operations Unit for activities managed by Contractor.

ARTICLE II

Creation of the Fund: Contractor hereby establishes the County of El Dorado Cemeteries Fund (Cemeteries Fund) as a Component Fund under the administration of Contractor.

Donations of any amount may be made to this Cemeteries Fund at any time. Any other person may make a subsequent contribution to Contractor designated for the Cemeteries Fund. The minimum size of a Component Fund of Contractor is \$1. Donations designated for the Cemeteries Fund are irrevocable.

ARTICLE III

Purpose of Cemeteries Fund: The Cemeteries Fund is established to charitably support the maintenance, operations, and historical preservation activities of Community Development Services, Administration and Finance Division, Cemetery Operations Unit.

ARTICLE IV

Term: This Agreement is effective upon full execution by both parties and shall continue in effect unless terminated pursuant to the provisions contained herein as identified in ARTICLE XII, Fiscal Considerations, or as set forth in ARTICLE XIV, Default, Termination, and Cancellation.

ARTICLE V

Component Funds:

- A. Funds as Component Parts of Contractor: All funds created under the terms and conditions described in this Agreement are intended to be, and will be administered as, component parts of El Dorado Community Foundation under *Treasury Regulations*, Section 1.170A-9(f)(II). As these Treasury Regulations require, and as the articles of incorporation and the bylaws of Contractor set forth, all Component Funds are specifically subject to the powers of Contractor's Board of Directors as the governing body of a community trust.
- B. Additional Contribution to the Cemeteries Fund: Donations are subject to disapproval by Contractor under the terms and conditions as set forth by County. Contractor is responsible for ensuring that all donations are lawful. Contractor is strictly prohibited from accepting contributions from illicit funds or any potentially illegal source.
- C. Holding Assets of Funds: For the purposes of investment, Contractor does not need to segregate the assets of any single fund from the assets of Contractor's other Component Funds, but may choose to do so.

If a fund's assets are pooled with those of other funds for investment purposes, Contractor's Board of Directors shall keep a separate account of that fund's assets, and all investment earnings on its assets (including interest, capital appreciation, and dividends - net of administrative fees) shall be credited to that fund.

- D. Administrative Fees: Contractor assesses an annual administrative fee on the Cemeteries Fund. This fee is 1.5% of the Cemeteries Fund's average monthly market value. Contractor shall subtract the 1.5% annual administrative fee from the annual Available to Spend total prior to the release of the annual distribution of the Available to Spend funds to County. The result is that the annual payment for the administrative fee will coincide with the annual distribution of Available to Spend funds made to County.

This fee is applied to the general operating costs of Contractor, and covers the following expenses associated with the administration of the Cemeteries Fund:

1. Customized fund design.
2. Investment/asset management services (quarterly fund statements, monitoring investment performance, setting and reviewing investment policies).
3. Administrative services (IRS reporting, acknowledgment of gifts for tax purposes).

4. Quarterly, detailed accountings to County, itemizing contributions, withdrawals, and net earnings/loss.
5. Address pressing community needs or important civic issues through convening community leaders and targeted initiatives.
6. Attracting funds from larger private foundations and other outside sources.

Donors are responsible for payment of all fees to their professional advisors (attorney, accountant, financial advisor, etc.) involved in the set-up of their donation/contribution.

ARTICLE VI

Endowed Funds: It is intended for the Endowed Funds to be held in perpetuity with the following exceptions:

- A. **Distributions:** For all Endowed Funds, the Available to Spend amount for the upcoming calendar year shall be determined based on a rate of 4% of the average fair market values for the previous twelve quarter ending balances, as of September 30 of the previous year. New funds must be in existence for at least four quarters by September 30 of the prior year in order to receive an amount Available to Spend for the next year. For purposes of this provision, a gift received on any day within a quarter shall be considered to be held by Contractor for the entire quarter.

The available to spend amount shall be transferred by Contractor to the County on an annual basis on or about January 30th each year. The County shall deposit all funds received from Contractor pursuant to this agreement in a County maintained trust account designated to the purpose of benefitting and preserving the cemeteries within the County.

The Available to Spend amount for the Cemeteries Fund is to be used only for purposes of direct support of the Community Development Services, Administration and Finance Division, Cemetery Operations Unit maintenance, historical preservation, and improvement activities. Administrative fees charged by Contractor shall be in addition to the Available to Spend amount each year.

Any Available to Spend amount not spent in prior years is to be added to the current year Available to Spend amount.

- B. Funds donated for a specific cemetery project shall be held separately from the general donation funds.

ARTICLE VII

Taxes: Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE VIII

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE IX

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation for County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during the term hereof.

ARTICLE X

Confidentiality: Contractor shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Contractor, and all Contractor's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Community Development Services, Administration and Finance Division, for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

ARTICLE XI

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE XII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE XIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XIV

Audit by California State Auditor: Contractor acknowledges that if total compensation under this Agreement is greater than \$10,000, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XV

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement in the event Contractor ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days' written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Contractor, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XVI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Community Development Services
Administration and Finance Division
Cemetery Operations Unit
2850 Fairlane Court
Placerville, California 95667

Attn.: Sherrie Busby
Administrative Services Officer
Operations Unit

With a copy to:

County of El Dorado
Chief Administrative Office
2850 Fairlane Court
Placerville, California 95667

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

El Dorado Community Foundation
312 Main Street, Suite 201
Placerville, California 95667

Attn.: Executive Director (or President)

or to such other location as Contractor directs.

ARTICLE XVII

Change of Address: In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing as provided in ARTICLE XV, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XVIII

Indemnity: Contractor shall defend, indemnify, and hold County and its officers, agents, employees, and representatives harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' 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 Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of County, its officers, agents, employees, and representatives, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIX

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Contractor in performance of the Agreement.

- D. In the event Contractor is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Contractor shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required herein 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, Contractor 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 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 Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event Contractor 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.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.

- L. 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.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor 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.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

ARTICLE XX

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XXI

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XXII

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in ARTICLE XIV, Default, Termination, and Cancellation, herein.

ARTICLE XXIII

California Residency (Form 590): If Contractor is a California resident, Contractor must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Contractor will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXIV

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXV

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXVI

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXVII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Creighton Avila, Deputy Chief Administrative Officer, Community Development Services, Administration and Finance Division, or successor.

ARTICLE XXVIII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

ARTICLE XXIX

Partial Invalidity: If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXX

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.


ARTICLE XXXI

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXII

Entire Agreement: 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.


Requesting Contract Administrator and Department Concurrence:

By:  _____
Creighton Avila
Deputy Chief Administrative Officer
Administration and Finance Division
Community Development Services

Dated:  _____

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

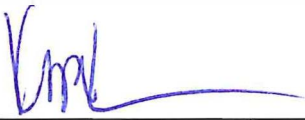
--COUNTY OF EL DORADO--

By: 

Dated: 2/12/2019

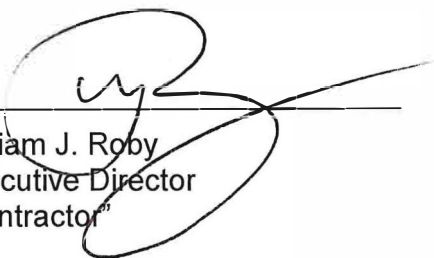
Board of Supervisors
"County"

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 2/12/2019

--EL DORADO COMMUNITY FOUNDATION--

By: 
William J. Roby
Executive Director
"Contractor"

Dated: 2-1-19