

Agreement # _____

Legistar # _____

AGREEMENT CONTRACT ROUTING SHEET

Date Prepared: _____

Need Date: _____

PROCESSING DEPARTMENT:

CONTRACTOR:

Department: _____

Name: _____

Dept. Contact: _____

Address: _____

Phone: _____

Phone: _____

Department _____

Head Signature: _____

Org Code: _____

Project # _____

(if applicable): _____

Funding Source: _____

CONTRACTING DEPARTMENT: _____

Service Requested: _____

Description: _____

Contract Term: _____ Contract Value: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: _____ Disapproved: _____ Date: _____ By: _____

Approved: _____ Disapproved: _____ Date: _____ By: _____

HR APPROVAL: WILL BE REVIEWED THROUGH WORKFLOW

RISK MANAGEMENT: WILL BE REVIEWED THROUGH WORKFLOW

**PLEASE EMAIL DOCUMENT TO cao-contracts-newrequests@edcgov.us
UPON COMPLETION
Thank you!**



COUNTY OF EL DORADO

FACILITY USE AGREEMENT #5195

THIS FACILITY USE AGREEMENT (FUA), entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as “County”), and El Dorado County Office of Education (EDCOE), whose local place of business is 6767 Green Valley Road, Placerville, California 95667, (hereinafter referred to as “EDCOE”) (collectively hereinafter referred to as the “Parties”).

RECITAL

WHEREAS, County owns that certain real property, commonly known as 990 Lassen Lane (Senior Center), El Dorado Hills, California 95682 (“Property”); and

WHEREAS, EDCOE is responsible for managing the extended day care programs for essential workers in El Dorado County; and

WHEREAS, allowing EDCOE to use the Property as an extended day care facilities for the children of El Dorado Union High School District employees is compatible with the use of the site and will serve a public benefit by providing a day care and learning space for their children; and

WHEREAS, it is the intent of the parties hereto that such use of the Property shall be in conformity with all applicable Federal, State, and local laws.

NOW, THEREFORE, in consideration of the performance by the parties of the covenants contained herein, County and EDCOE mutually agree as follows:

ARTICLE I

Property Use: County grants to EDCOE a non-exclusive right to use, at a monthly rate of zero dollars (\$0.00) per month plus the cost of utilities, the portions of the Property described as the El Dorado Hills Senior Center, identified on the attached floor plan as indicated in accordance with Exhibit A, marked “El Dorado Hills Senior Center,” and the parking spaces as depicted in Exhibit B, marked “Parking,” incorporated herein and made by reference a part hereof, (collectively referred to as the “Property”) for the sole purpose of providing Extended Day care.

EDCOE acknowledges and agrees that:

1. County will provide one (1) set of keys to EDCOE for access to Property. The keys may not be duplicated by EDCOE and shall be returned to County at the expiration of this Agreement.

2. County will be responsible for all Property building maintenance during the term of this Agreement.
3. EDCOE shall be responsible for the cost of all utilities including, electricity, water, sewer, garbage, propane, janitorial, cable, and building security, etc. The total cost of utilities will be invoiced to EDCOE monthly in arrears.
4. EDCOE shall use the Property Monday through Friday from the hours of 7:00 am to 6:00 pm.
5. EDCOE shall maintain and keep the location free of trash and debris resulting from the use of the Property. EDCOE shall remove and dispose of said trash and debris at the dumpster located in the Property parking lot.
6. EDCOE is solely responsible, and County will have no liability whatsoever, for any vehicles, personal property, equipment, or materials placed on or brought on the Property.
7. EDCOE shall be financially responsible for any costs incurred by County for damages to the Property arising from EDCOE's use of the Property.
8. EDCOE shall, at its sole expense, remove all property, equipment, and materials from the Property at the end of the term. The Property must be surrendered to County in the same condition as at the commencement of the use period.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties and shall expire December 31, 2020. EDCOE may have the option to extend the term for three (3) additional one (1) month terms after the initial expiration date of December 31, 2020 on the same terms and conditions, provided the Property is not needed for County's use as described herein. EDCOE shall notify County in writing at least thirty (30) calendar days prior to the expiration of the initial three (3) month term, should EDCOE elect to exercise the 1st option term. Said notice shall become part of this Agreement as an addendum upon acknowledgment in writing by County Contract Administrator and no further amendment of the Agreement shall be necessary. The ability to exercise the options will be contingent on when the director or designee of El Dorado County's Department of Health and Human Services Agency determines the Property is needed for department use and/or the resumption of the senior programs at the Property.

ARTICLE III

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 IV

Assignment: EDCOE shall not assign, sublease, encumber, or otherwise transfer its rights or interests under this Agreement without the express written consent of County first, which consent may be granted or withheld at County's sole discretion. Any attempt to assign this Agreement without complying with this provision shall immediately result in a termination of this Agreement.

ARTICLE V

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 on 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.

- B. Bankruptcy: This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of EDCOE.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event EDCOE ceases to operate as a public agency of El Dorado County, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation Without Cause: Either party may terminate this Agreement in whole or in part upon thirty (30) calendar day's written notice without cause.

ARTICLE VI

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 addressed as follows:

COUNTY OF EL DORADO
Chief Administrative Office
Facilities Division
3000 Fairlane Court, Suite One
Placerville, CA 95667

ATTN.: Russell Fackrell, Facilities Manager

Or to such other location as County directs.

Notices to EDCOE shall be addressed as follows:

El Dorado County Office of Education (EDCOE)
6767 Green Valley Road
Placerville, CA 95677

ATTN.: Wendy Frederickson, Associate Superintendent

Or to such other location as EDCOE directs.

ARTICLE VII

Change of Address: In the event of a change in address for EDCOE's principal place of business, or Notices to EDCOE, EDCOE shall notify County in writing as provided in ARTICLE VI, 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 VIII

Indemnity: EDCOE shall defend, indemnify, and hold County, its officers, employees, and agents, harmless from and against any and all liability, loss, expense, or claims arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the EDCOE, its officers, agents, or employees; provided that a party's duty to indemnify the other party shall not exceed the amount paid by the indemnifying party's insurer.

County shall defend, indemnify, and hold EDCOE, its officers, employees, and agents, harmless from and against any and all liability, loss, expense, or claims arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the County, its officers, agents, or employees; provided that a party's duty to indemnify the other party shall not exceed the amount paid by the indemnifying party's insurer.

ARTICLE IX

Insurance: EDCOE shall furnish to County proof of a policy of insurance issued by an insurance company (or coverage provided by a Joint Powers Agency) that is acceptable and satisfactory to County's Risk Manager and documentation evidencing that EDCOE maintains insurance that meets the following requirements:

- A. 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.
- B. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by EDCOE in performance of the Agreement

- C. Workers' Compensation and Employers' Liability Insurance covering all employees of EDCOE as required by law in the State of California.
- D. The Certificate of insurance must include the following provisions stating that:
 - 1. The insurer shall not cancel the insured's coverage without 30-day 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 all general and excess liability insurance policies; and.
 - 3. 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 EDCOE insurance and shall not contribute with it.
- E. The insurance shall 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.

EDCOE shall maintain the required insurance in effect at all times during the Term of this Agreement. In the event said insurance expires at any time during the Term, EDCOE 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 not less than one (1) year. New certificates of insurance are subject to the approval of County. If EDCOE fails to maintain in effect at all times the insurance coverage specified herein, County may, in addition to any other remedies it may have, terminate this Agreement.

County agrees to purchase and/or maintain through the duration of this Agreement insurance or liability coverage (such as liability coverage provided by a Joint Powers Agency) ensuring their ability to meet their respective defense and indemnity obligations set forth above. Such insurance or liability coverage shall have a limit of liability of no less than \$1,000,000.00 per claim/occurrence, and \$2,000,000.00 in the aggregate. The insurance or coverage shall include, as may be reasonable and appropriate given the acts and activities contemplated by this Agreement, commercial general liability, Property liability, automobile liability (owned, non-owned, and hired), professional liability/errors and omissions, employer's liability, product liability, completed operations, and/or educator's legal liability coverages. To the full extent of County's respective indemnity obligations, but only up to the agreed limit of liability set forth above, the insurance or County's liability coverage agreements shall also be endorsed to extend "additional insured" or "additional covered party" status to all proposed indemnitees, with such coverage to be provided on a "primary" basis. With respect to such coverage(s), County shall provide evidence of such coverage by way of a Certificate of Insurance or Certificate of Coverage.

ARTICLE X

Administrator: County Officer or employee with responsibility for administering this Agreement is Russell Fackrell, Facilities Division Manager, Chief Administrative Office, or successor.

ARTICLE XI

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 to the obligations set forth herein.

ARTICLE XII

Partial Invalidity: If any provision, sentence, or phrase of this 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 XIII

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.

ARTICLE XIV

Miscellaneous Provisions:

1. California Forum and Law. This Agreement is to be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of this Agreement shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.
2. Attorney's Fees. Should any litigation commenced between the Parties concerning the Property or this Agreement, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in the litigation which all be determined by the court in such litigation or in a separate action brought for that purpose.
3. 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.
4. Waiver. The waiver of any breach of any of the provisions of this Agreement by County shall not constitute a continuing waiver or a waiver of any subsequent breach by the EDCOE either of the same or of another provision of this Lease.
5. No Third Party Beneficiary. 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.

Requesting Contract Administrator Concurrence:

By: _____
Russell Fackrell, Facilities Division Manager
Chief Administrative Office

Dated: _____

Department Concurrence:

By: _____
Don Semon,
Health & Human Agency, Director

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Facilities Use Agreement #5195 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Don Ashton
Chief Administrative Officer
"County"

-- EL DORADO COUNTY OFFICE OF EDUCATION --

By: _____

Dated: _____

Kevin Monsma
Deputy Superintendent