

California Native Plant Society

FACILITY USE AGREEMENT #6219

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 California Native Plant Society, a California domestic nonprofit public benefit corporation, duly qualified to conduct business in the State of California, whose principal place of business is 2707 K Street #1, Sacramento, California 95816 and whose local mailing address is Post Office Box 1948, Placerville, California 95667 (hereinafter referred to as "USER");

R E C I T A L S

WHEREAS, COUNTY is the owner of that certain real PROPERTY located in El Dorado County, California, commonly known as the foyer between Buildings A and B, 330 Fair Lane and 360 Fair Lane, respectively in Placerville, California as identified in Exhibit A, marked "Location A"; the outside entrance and the lawns on either side of Building C, 2850 Fairlane Court, Placerville, California 95667, as identified in Exhibit B, marked "Location B"; and the north area of the front parking lot of Building C, 2850 Fairlane Court, Placerville, California 95667, as identified in Exhibit C, marked "Location C", incorporated herein and made by reference a part hereof (hereinafter referred to as the "PROPERTY"); and

WHEREAS, the COUNTY desires to grant to USER and USER desires to receive authorization from the COUNTY to use said PROPERTY for the purpose of conducting a Plant Sale;

WHEREAS, it is the intent of the parties hereto that such use of PROPERTY be in conformity with all applicable federal, state and local laws;

WHEREAS, the use of the Premises by USER for plant sales is a public benefit to the residents of El Dorado County by promoting the use of native plants;

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

1. COUNTY hereby grants to USER and USER hereby agrees to accept from the COUNTY this authorization for use of PROPERTY for the purpose of conducting a California Native Plant Sale ("EVENT"). Use of the PROPERTY for the EVENT shall comply with all federal, state and local laws, including any zoning or health laws and regulations. The USER has the option to use any of the three locations as identified in Exhibits A, B, and C for conducting the EVENT and must notify the County seventy-five (75) days in advance of the anticipated date of the EVENT which location they will use.
2. USER shall utilize PROPERTY for the sole purpose of conducting one day EVENTS. Each EVENT shall not exceed one day in duration and shall occur not more than twice per year. The dates, times, and locations of each EVENT shall be coordinated in writing with COUNTY's Contract Administrator. The term of this Facility Use Agreement ("AGREEMENT") shall become effective upon execution and expire five (5) years thereafter.

3. Provided this AGREEMENT has not been cancelled or otherwise terminated as of the date of exercise or the commencement of the renewal term, USER shall be entitled to two (2) options (each, an "Option") to extend the term of the AGREEMENT for a period of three (3) years (each, an "Option Term"), under the same terms and conditions.
4. USER accepts PROPERTY "as is" and is solely responsible for determining whether PROPERTY is fit and proper for the uses allowed herein. 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.
5. Said use shall be limited to those portions of PROPERTY described in Exhibits A, B, and C. Use shall be confined solely to the "exterior" of the buildings. At no time shall the USER conduct any activities whatsoever in any of the interior areas of the building(s) located on the PROPERTY. Use of the PROPERTY shall in no way interfere with the use and occupancy by the COUNTY.
6. The use granted herein is personal to USER. It is non-assignable and any attempt to assign this AGREEMENT shall immediately terminate it.
7. USER agrees that said use should be only for the purpose of selling plants to members of the general public (including employees of the COUNTY).
8. The USER is authorized to bring personnel and equipment onto the PROPERTY and to remove same after completion of its use of the PROPERTY.
9. USER shall, at its own expense, remove all property, equipment, or materials from the PROPERTY within twenty-four (24) hours of conclusion of each EVENT. The PROPERTY must be surrendered to the COUNTY in the same condition as at the commencement of the use period.
10. 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.
11. USER agrees to use its best efforts to maintain and keep PROPERTY free of trash and litter which is generated as a result of USER's EVENT. USER agrees to leave said PROPERTY free from all trash, debris or litter directly 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 USER's sole expense immediately after each EVENT.
12. USER shall be financially responsible for any costs incurred by COUNTY for damages to COUNTY property and for reasonable attorney fees to enforce the provisions of any contract issued for the activity described in this AGREEMENT.

13. USER shall provide proof of a policy of insurance satisfactory to COUNTY's Risk Management Division 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 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 USER in performance of the AGREEMENT.
 - D. In the event USER is a licensed professional, 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. USER 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. USER 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, 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 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 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.
 - 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. USER's insurance coverage shall be primary insurance in respect to 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 USER'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 in respect to COUNTY, its officers, officials, employees, and volunteers; or USER 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. USER's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this AGREEMENT.
 - N. 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.
 - 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.
14. INDEMNITY: To the fullest extent permitted by law, USER shall defend at its own expense, indemnify, and hold the COUNTY harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses 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 acts or omissions of USER or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts 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.

15. 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 COUNTY, USER shall immediately cease use of PROPERTY.
16. Independent Contractor: USER agrees that the USER, and any officers, agents, employees, associates, and volunteers of USER, in the performance of this AGREEMENT shall act in an independent capacity and not as officers, employees, agents, associates, or volunteers of COUNTY. USER is solely responsible for the manner in which it uses PROPERTY and exclusively assumes responsibility for the behavior and acts of its employees, associates, agents, and volunteers and for the behavior and acts of all attendants and participants at the event/activity.
17. 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.
18. Sole and Only Agreement: This instrument constitutes the sole and only agreement between COUNTY and USER respecting PROPERTY or the granting of this AGREEMENT to USER by COUNTY, and correctly sets forth the obligations of COUNTY and USER to each other as of its effective date. Any agreements or representations respecting PROPERTY or the AGREEMENT not expressly set forth in this instrument are null and void.
19. This AGREEMENT is to be governed by and construed in accordance with the laws of the State of California.
20. USER'S use of PROPERTY shall be in accordance with all applicable federal, state, and local laws, ordinances, regulations, policies, and statutes.
21. The COUNTY Officer or employee with responsibility for administering this AGREEMENT is Russell Fackrell, Facilities Manager, Chief Administrative Office, or successor.

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 Concurrence:

By: _____
 Russell Fackrell
 Facilities Division Manager
 Chief Administrative Office

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT #6219 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Purchasing Agent
"COUNTY"

-- CALIFORNIA NATIVE PLANT SOCIETY --

By: _____

Dated: _____

Vince Scheidt
Executive Director
"USER"

By: _____

Dated: _____

Brock Wimberley
Senior Operations Director

California Native Plant Society

Exhibit A

Location A



Said use shall be limited to the area commonly known as the foyer between Buildings A and B, 330 Fair Lane and 360 Fair Lane, respectively in Placerville, California 95667.

California Native Plant Society

Exhibit B

Location B



Said use shall be limited to the area commonly known as the outside entrance and the lawns on either side of Building C located at 2850 Fairlane Court, Placerville, California 95667.

California Native Plant Society

Exhibit C

Location C



Said use shall be limited to the area commonly known as the north end of the parking lot of Building C located at 2850 Fairlane Court, Placerville, California 95667.