

## FACILITY USE AGREEMENT #2705

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**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 Military Family Support Group, a California Nonprofit Benefit Corporation, whose principal place of business is 130 Placerville Drive, Placerville, California 95762, and whose mailing address is P.O. Box 973, Placerville, California 95762 (hereinafter referred to as “MFSG”) (collectively hereinafter referred to as the “Parties”).

### R E C I T A L S

**WHEREAS**, County owns that certain real property, commonly known as the 330 Fair Lane (Building “A”) and 360 Fair Lane (Building “B”), Placerville, California 95667 (“Premises”); and

**WHEREAS**, pursuant to Military and Veterans Code section 1261, the County is authorized to lease a portion of a building for a term not exceeding 20 years, to a nonprofit veteran service agency to be used for the purposes of the nonprofit veteran service agency, with rent to be determined by the Board of Supervisors and may be nominal in amount; and

**WHEREAS**, MFSG as a 501(c)(3) nonprofit corporation whose mission is to offer support and assistance to local military families and veterans qualifies as a nonprofit veteran service agency; and

**WHEREAS**, allowing MFSG to use a portion of the Premises to store donated items to MFSG will serve a public benefit by assisting delivery of services to local military families and veterans residing in El Dorado County; and

**WHEREAS**, it is the intent of the parties hereto that such use of the Premises 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 MFSG mutually agree as follows:

### **ARTICLE I**

**Property Use:** County grants to MFSG a non-exclusive right to use a portion of the Premises for the sole purpose of providing storage of donated items received by MFSG. Storage locations

are indicated in Exhibit "A" marked "Storage Locations", incorporated herein and made by reference a part thereof.

MSFG acknowledges and agrees that:

1. County will provide four (4) key(s) to MSFG to the storage location. Keys may not be duplicated by MSFG. Use of the property by MSFG shall in no way interfere with the use and occupancy by the County.
2. MSFG shall maintain and keep the storage location free of trash and debris resulting from MSFG's use of or activities on the Premises. MSFG shall remove and dispose of said trash, debris, or litter at its sole expense immediately after each use.
3. MSFG is solely responsible, and County shall have no liability whatsoever, for any vehicles, trailers, personal property, equipment, or materials placed on or brought on the Premises.
4. County makes no representations or warranties as to the condition of the storage locations and that MSFG uses the storage locations in an "as-is" condition.
5. MSFG shall be financially responsible for any costs incurred by County for damages to the Premises arising from MSFG's use of the storage locations.
6. MSFG shall, at its sole expense, remove all property, equipment, or materials from the Premises at the end of the term. The Premises 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 cover the period of March 20, 2018 through February 28, 2023. MSFG shall have the option to extend the term for two (2) additional five (5) year terms after the initial expiration date of February 28, 2023. Such options(s) shall be on the same terms and conditions as provided herein unless otherwise amended by both parties per Article III. MSFG shall notify County in writing approximately sixty (60) days prior to the expiration of the initial term and each additional optional term thereafter, should MSFG elect to exercise said option(s).

## **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.** MSFG shall not assign, sublease, encumber, or otherwise transfer its rights or interests under this Agreement without the express written consent of the 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. In the event of termination for default, the County reserves the right to take over and provide the services by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of MFSG.
- C. Ceasing Performance: County may terminate this Agreement in the event MFSG ceases to operate as a special district, 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 ninety (90) calendar days written notice for any reason.

## 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 MFSG shall be addressed as follows:

MILITARY FAMILY SUPPORT GROUP  
P.O. Box 973  
Placerville, CA 95667  
ATTN: Julie Leconte, Chief Executive Officer

or to such other location as MFSG directs.

#### **ARTICLE VII**

**Indemnity:** MFSG shall defend, indemnify and hold County, its officers, employees and agents, harmless from and against any and all liability, loss, expense or claims, including attorneys' fees and costs incurred, which are claimed to or in any way arising out of or are connected with MFSG's activities, use of the Premises, or performance of this Agreement, including any hazardous substance brought onto, release, or deposited on the Premises by MFSG, regardless of the existence or degree of fault or negligence on the part of the County, its officers, agents and employees, except for the sole or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty to indemnify and hold County harmless includes the duties to defend set forth in California Civil Code section 2778.

#### **ARTICLE VIII**

**Insurance:** MFSG shall furnish to County proof of a policy of insurance issued by an insurance company that is acceptable and satisfactory to County's Risk Manager and documentation evidencing that MFSG 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 MFSG in performance of the Agreement
- C. Workers' Compensation and Employers' Liability Insurance covering all employees of MSFG as required by law in the State of California.
- D. The Certificate of insurance must include the following provisions stating that:
  1. The insurer will 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 MFSG's insurance and shall not contribute with it.
- E. 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.

MFSG 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, MFSG 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 the County. If MFSG 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.

#### **ARTICLE IX**

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

#### **ARTICLE X**

**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 XI**

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

#### **ARTICLE XII**

**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 XIII**

**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 Premises 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. Severability. If any provision, clause, or part of this Agreement, or the application thereof under certain circumstances, is held invalid, the remainder of this agreement or the application of such provisions, clauses, or parts under other circumstances shall not be affected thereby.
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 MSFG 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.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Facilities Use Agreement #2705 on the dates indicated below.

**-- COUNTY OF EL DORADO --**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Chair  
Board of Supervisors  
"County"

ATTEST:  
James S. Mitrising  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

**- MILITARY FAMILY SUPPORT GROUP -**

By: \_\_\_\_\_  
Julie Leconte  
Chief Executive Officer

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Aurora Mullet  
Corporate Secretary

Dated: \_\_\_\_\_

# EXHIBIT A - STORAGE LOCATIONS

