



**Volunteers of America Northern California
and Northern Nevada, Inc.**

FACILITY USE AGREEMENT #7132

THIS FACILITY USE AGREEMENT (FUA), 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 Volunteers of America Northern California and Northern Nevada, Inc., a nonprofit religious corporation, duly qualified to conduct business in the State of California, whose principal place of business is 3434 Marconi Avenue, Sacramento, California 95821 (hereinafter referred to as "USER").

RECITALS

WHEREAS, COUNTY owns that certain real property, commonly known as the temporary Navigation Center located at 299 Fair Lane, Placerville, California 95667 as shown in Exhibit A, marked "Facility Use Area," incorporated herein and made by reference a part hereof (hereinafter referred to as the "PROPERTY");

WHEREAS, USER was established locally in 1911 to reach and uplift families with children, seniors, the homeless, former foster youth, and people with substance abuse issues with a goal to end homelessness, support the most vulnerable populations and transform the community into a better place. USER provides services that include community re-entry programs, homeless services and shelters, permanent supportive housing, transitional housing, and treatment and recovery services;

WHEREAS, COUNTY desires to grant to USER, and USER desires to receive authorization from COUNTY to use PROPERTY for the purpose of assisting COUNTY's Health and Human Services Agency (HHS) by providing housing-focused, person centric case management and operation services for up to sixty (60) unsheltered adults at a time;

WHEREAS, COUNTY has determined that allowing the use of PROPERTY will provide a public benefit to residents of COUNTY by improving the lives of local less fortunate homeless individuals and aid in their transition from PROPERTY into permanent housing;

WHEREAS, use of PROPERTY 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, COUNTY and USER mutually agree as follows:

ARTICLE I

Property Use: COUNTY hereby grants to USER, at no rental or lease charge, and USER hereby agrees to accept from COUNTY this authorization for use of PROPERTY described herein for the purposes of providing management and operation services for unsheltered adults.

USER acknowledges and agrees that:

1. COUNTY will provide key(s) to the USER for access to the PROPERTY. The number of keys provided will be determined by COUNTY's Contract Administrator. The original key(s) may not be duplicated by the USER and shall be returned to the COUNTY at the expiration of this Agreement.
2. All appliances, fixtures, or other items currently located in PROPERTY shall remain the COUNTY's property and ownership of items will not transfer to USER at the end of the Agreement.
3. USER shall maintain and keep PROPERTY free of trash and litter which is generated as a result of USER's activities. 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 its sole expense.
4. USER acknowledges and agrees that it is solely responsible, and that COUNTY shall have no liability whatsoever, for any vehicles, trailers, equipment, materials, or personal property placed on or brought on PROPERTY by USER or HHSA clients. USER and HHSA clients are not authorized to park/store vehicles, trailers, equipment, materials, or personal property beyond the property boundary line defined in Exhibit A, and any unauthorized items will be removed by COUNTY at USER's expense.
5. COUNTY makes no representations or warranties as to the condition of PROPERTY and that USER uses PROPERTY on an "as-is" condition.
6. USER shall be responsible for any costs incurred by COUNTY for damages to 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.
7. USER 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 term of this FUA.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall expire two (2) years thereafter.

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: The USER 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

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 PROPERTY.

ARTICLE VI

Default, Termination, and Cancellation:

- A. **Termination by Default:** If either party becomes aware of an event of default, including the breach of any term of this Agreement, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
 2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default. The party giving notice may extend the Time to Cure at their discretion. 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.

- B. **Bankruptcy:** COUNTY may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of USER.
- C. **Ceasing Performance:** COUNTY may terminate this Agreement immediately in the event USER 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:** Either party may terminate this Agreement in whole or in part upon thirty (30) calendar day's written notice without cause.

ARTICLE VII

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:

With a copy to:

County of El Dorado
Chief Administrative Office
Facilities Division
3000 Fairlane Court, Suite One
Placerville, California 95667

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Charles Harrell
Facilities Division Manager

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as COUNTY directs.

Notices to USER shall be addressed as follows:

Volunteers of America Northern California
and Northern Nevada, Inc.
3434 Marconi Avenue
Sacramento, California 95821

Attn.: Leo McFarland, Chief Executive Officer

or to such other location as USER directs.

ARTICLE VIII

Change of Address: In the event of a change in address for USER's principal place of business, USER's Agent for Service of Process, or Notices to USER, USER shall notify COUNTY in writing as provided in ARTICLE VII, 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 IX

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 active negligence, 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 Civil Code section 2778.

The insurance obligations of USER are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

ARTICLE X

Insurance: 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. Commercial General Liability Insurance (providing scope of coverage equivalent to ISO policy form CG 00 01) of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$3,000,000 aggregate limit. COUNTY, including, without limitation, its officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.
- B. 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.
- C. USER shall furnish a certificate of insurance satisfactory to COUNTY's Risk Management Division as evidence that the insurance required above is being maintained.
- D. 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.
- E. 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. 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.
- F. The certificate of insurance must include the following provisions stating that:
 1. The insurer will not cancel the insured's coverage without thirty (30) days 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.

- G. 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.
- H. 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.
- I. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to COUNTY, its officers, officials, employees, or volunteers.
- J. 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.
- K. USER's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- L. 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.
- M. 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 XI

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XII

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XIII

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.

ARTICLE XIV

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 XV

Contract Administrator: The COUNTY Officer or employee with responsibility for administering this Agreement is Charles Harrell, Facilities Division Manager, Chief Administrative Office, or successor.

ARTICLE XVI

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 XVII

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Civil Code sections 1633.1 to 1633.17) as amended from time to time.

ARTICLE XVIII

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 XIX

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 XX

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 XXI

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.

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: _____

**-- VOLUNTEERS OF AMERICA NORTHERN CALIFORNIA
AND NORTHERN NEVADA, INC. --**

By: _____
Leo McFarland
Chief Executive Officer
"USER"

Dated: _____

By: _____
Joel Rusco
Chief Financial Officer

Dated: _____

Volunteers of America Northern
California and Northern Nevada, Inc.
Exhibit A
Facility Use Area

