

ORIGINAL



COUNTY OF EL DORADO
FACILITY USE AGREEMENT # 957-O0810
SHERIFF'S SEARCH & RESCUE STATION

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 SOUTH TAHOE PUBLIC UTILITY DISTRICT, a California Public Agency formed in 1950 pursuant to the Public Utility District Act, whose principal place of business is 1275 Meadow Crest Drive, South Lake Tahoe, CA 96150 (hereinafter referred to as "DISTRICT");

WITNESSETH

WHEREAS, the DISTRICT is the owner of that certain real property located in El Dorado County, California, commonly known as Building B and the exterior area located approximately 30 feet south from the northern boundary and 30 feet west from the western end of said building, located at 1834 Santa Fe Road, Tahoe Paradise, CA (hereinafter referred to as the "PROPERTY"), and

WHEREAS, the DISTRICT desires to grant to the COUNTY and the COUNTY desires to receive authorization from the DISTRICT to use said PROPERTY exclusively for the purposes of operating a Sheriff's Search and Rescue Station, (SAR) such as meetings, training, storage of equipment, vehicles and other needs in conformance with the SAR activities, and

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

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

1. The DISTRICT hereby grants to the COUNTY and the COUNTY hereby agrees to accept from the DISTRICT authorization for use of those portions of the PROPERTY described herein below for the purposes of operating Sheriff's Search and Rescue Station for El Dorado County, California.
2. Both parties agree that use of the Premises will be at not cost to DISTRICT. COUNTY agrees to reimburse DISTRICT for reasonable legal expenses related to this Agreement in the amount of \$800.00. Upon execution of this Facilities Use Agreement DISTRICT will provide an accounting of such expenses and COUNTY will reimburse DISTRICT within 30 days of receipt of such accounting.
3. The PROPERTY shall be utilized by COUNTY for the sole purpose of operating said Search and Rescue operation. The Sheriff will assign both sworn and volunteer staff to work at the Sheriff's Search and Rescue Station for the purposes of conducting County business, servicing and maintaining equipment, facilitate training classes, holding meetings, and Search and Rescue operations. Hours of operation will vary at the mutual consent of the parties hereto.

All vehicles and equipment stored or parked at the PROPERTY must be in good working order, legally registered to the COUNTY, and associated with SAR activities. Vehicles belonging to employees and volunteers of COUNTY may be parked at the PROPERTY while attending to

SAR activities. COUNTY shall conduct its activities on the PROPERTY so as to not unreasonably disturb the quiet enjoyment of the nearby property owners and DISTRICT'S operations at the Building A. No toxic, hazardous, flammable or explosive materials shall be stored at the PROPERTY.

4. Said use shall be limited to those portions of the PROPERTY described as herein.
5. DISTRICT reserves the right to enter the PROPERTY at reasonable times with 24 hours notice to the COUNTY, to inspect the PROPERTY. DISTRICT reserves the right to maintain a passkey and COUNTY shall not change the PROPERTY locks without providing a county of the passkey to the DISTRICT.
6. COUNTY shall be solely responsible and pay all utility charges to the PROPERTY including but not limited to water, sewer, electric, gas, and garbage removal. Snow removal shall be provided by the COUNTY including removal of any snow on the roof which the District and County determines to be unsafe.
7. The use granted herein is personal to the COUNTY. It is non-assignable and any attempt to assign this Agreement shall terminate it.
8. This Agreement may be terminated by either party at any time for any reason by serving a thirty (30) day written notice to the other party.
9. COUNTY shall be authorized to proceed with use of the PROPERTY provided that this Agreement has been fully executed by the parties hereto.
10. This Agreement shall commence on July 1, 2008, provided however, that this Agreement has been fully executed by the DISTRICT and the COUNTY. This Agreement shall expire on June 30, 2013, unless said term is extended, by mutual agreement in writing thirty (30) days prior to the expiration date.
11. **INSURANCE REQUIREMENTS:** The COUNTY is self-insured and shall provide the DISTRICT with evidence of said self-insurance by way of a letter signed by the El Dorado County Risk Manager.

DISTRICT shall maintain at its own expense during the term hereof, insurance on or about or in connection with the PROPERTY of the types and in the minimum amounts described generally as follows:

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of the DISTRICT 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.
- C. DISTRICT shall provide property insurance on all real property owned by DISTRICT covered by this agreement under a standard "all risk" policy. The policy shall inure for

not less than ninety percent (90%) of the replacement value of the property.

- D. DISTRICT shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is in full force and effect.
 - E. The insurance shall be issued by insurance company acceptable to the El Dorado County Risk Manager, or be provided through partial or total self-insurance likewise acceptable to the COUNTY's Risk Manager.
 - F. The DISTRICT'S insurance coverage shall not be cancelled without thirty (30) days prior written notice to COUNTY.
 - G. Any deductibles or self-insured retention must be declared to and approved by the COUNTY. At the option of the COUNTY, either: insurer shall reduce or eliminate such deductibles or self-insured retention as respects the COUNTY, its officers, officials and employees; or USER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
 - H. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials and employees.
 - I. The insurance companies shall have no recourse against the COUNTY of El Dorado, its officers, officials or employees for payment of any premiums or assessments under any policy issued by any insurance company.
 - J. In the event DISTRICT cannot provide an occurrence policy, DISTRICT shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of this Agreement.
 - K. The Certificate of insurance shall meet additional standards as may be determined by the COUNTY's Risk Manager as essential for protection of the COUNTY.
12. COUNTY shall defend, indemnify and hold the DISTRICT, its directors, elected officials, officers, agents and employees harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney 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 COUNTY's activities, use of the PROPERTY, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the COUNTY, and employee(s) of any of these, except for the active negligence of the COUNTY, its officers and employees, or as expressly prohibited by statute.

DISTRICT shall defend, indemnify and hold the COUNTY, its directors, elected officials, officers, agents and employees harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney fees and costs

incurred, brought for, or on account of injuries to or death of any person, including but not limited to workers, County or DISTRICT'S employees, and the public, or damage to other property including the PROPERTY, or any economic or consequential losses, which are claimed to or in any way or manner arise out of or are connected with the DISTRICT'S activities or use of the PROPERTY and are not connected with or related to the COUNTY'S use of the PROPERTY.

13. **NOTICES:** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement, shall be in writing and be deemed duly served and given when personally delivered to the party to whom it is directed or, in lieu of such personal service, when deposited in the United States mail, first-class, postage prepaid, addressed to:

DISTRICT: South Lake Tahoe Public Utility District
 1275 Meadow Crest Drive
 South Lake Tahoe, CA 96150
Attention: Richard Solbrig, General Manager

With copy to: Bradley J. Herrema
 Brownstein Hyatt Farber Schreck
 21 East Carrillo Street
 Santa Barbara, CA 93101

COUNTY: General Services Department
 360 Fair Lane
 Placerville, CA 95667

Attention: George Sanders, Interim Director

14. COUNTY agrees to use its best efforts to maintain and keep the PROPERTY free of trash and litter which is generated as a result of the COUNTY'S use of the PROPERTY. COUNTY agrees to leave said PROPERTY free from all trash, debris or litter directly resulting from the COUNTY'S use of the PROPERTY.
15. COUNTY shall, at all times during the term of the agreement and any extension thereof, maintain, at COUNTY'S sole cost and expense, the PROPERTY, in a good, clean, and safe condition, and shall on expiration or sooner termination of this agreement COUNTY shall leave to DISTRICT said PROPERTY in as good condition and repair as they are in on the date of this agreement, reasonable wear and tear and damage by the elements excepted. COUNTY shall remove all personal property, fixtures and other improvements to the PROPERTY, if any, upon termination of this agreement. DISTRICT reserves the right to maintain or alter the PROPERTY, so long as said maintenance or alterations do not frustrate COUNTY'S use of PROPERTY.
16. 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.

17. **Sole and Only Agreement:** This instrument constitutes the sole and only agreement between the COUNTY and the DISTRICT respecting the PROPERTY or the granting of this Facility Use Agreement to the COUNTY by the DISTRICT, and correctly sets forth the obligations of the COUNTY and DISTRICT to each other as of its effective date. Any agreements or representations respecting the PROPERTY or the Agreement not expressly set forth in this instrument are null and void.
18. This Agreement is to be governed by and construed in accordance with the laws of the State of California with venue for all purposes proper only in the County of El Dorado, State of California.
19. Time is of the essence of this Agreement and the performance of each and every provision hereof.
20. The County Officer or employee with responsibility for administering this Agreement is the Director of General Services Department, or successor.
21. If any term, provision, covenant or condition of this Agreement shall be or become illegal, null void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired, or invalidated thereby. The term, provision, covenant or condition that is so invalidated, voided or held to be unenforceable shall be modified or changed by the parties to the extent possible to carry out the intentions and directive stated in this Agreement.
22. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any of such completely executed counterparts shall be sufficient proof of this Agreement.
23. No waiver of any provision or consent or to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically stated in writing. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material by the party making the waiver.
24. If any legal action including an action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover actual attorney's fees and costs, which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees award by the court shall be made as to fully

reimburse for all attorney's fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorneys' fees, paralegal fees, cost and expenses paid or incurred in good faith.

25. All individuals executing this and other documents on behalf of the respective parties certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the entity so indicated.
26. The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party, as each party has participated in the drafting of this Agreement and has the opportunity to have their counsel review it. Whenever the context and construction so requires, all words used in this singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.
27. Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations due to strikes, failure of public enemy, accidents, fires, explosions, or acts of God, including without limitations, earthquakes, floods, winds or storms. In such an event the intervening cause must not be through the fault of the party asserting such and excuse and the excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.
28. Whenever in this Agreement a party has the right to approve an act of the other party, the former shall exercise such discretion in good faith. Similarly, where a party is required to satisfy a condition or complete an act in a certain fashion or within a specified time period, that party shall pursue such objectives in good faith and make all reasonable efforts to accomplish that same; the other party shall likewise in good faith cooperate and assist the other party in accomplishing this task to cause the consummation of the Agreement as intended by the parties and evidenced by this Agreement.

This document and the exhibit referred to herein, constitutes the entire Agreement between the parties and incorporates or supersedes all prior written or oral agreements or understandings.

DEPARTMENT CONCURRENCE:

Dated: _____

Signed: _____
Jeff Neves, Sheriff

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

SOUTH TAHOE PUBLIC UTILITY DISTRICT

Dated: May 15, 2008

By: Mary Lou Mosbacher
Mary Lou Mosbacher, President
Of the Board of Directors

ATTEST:

By: Kathy Sharp
Kathy Sharp
Clerk of the Board

COUNTY OF EL DORADO

Dated: _____

By: _____
Chairman

Board of Supervisors

ATTEST:

By: _____
Cindy Keck, Clerk of the
Board of Supervisors