

**MEMORANDUM OF UNDERSTANDING #4328
(A Nonfinancial Agreement)**

**Between
El Dorado County Cemetery Administration**

and

**Save the Graves Coalition of El Dorado County,
a project of Arts and Culture El Dorado's Arts Incubator Program**

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THIS MEMORANDUM OF UNDERSTANDING (“MOU”) made and entered into by and between El Dorado County (hereinafter referred to as “County”) and Save the Graves Coalition of El Dorado County, a project of Arts and Culture El Dorado’s Arts Incubator Program, a nonprofit 501(c)(3) corporation, duly qualified to conduct business in the State of California, whose principal place of business is 489 Main St., Placerville, CA 95667 (hereinafter referred to as “Save the Graves”).

RECITALS

WHEREAS, the Board of Supervisors is responsible for the general oversight of all cemeteries in El Dorado County, ensuring that all cemeteries, whether public, private, fraternal, or religious are being cared for according to the standards set forth in the County's Cemetery Ordinance as well as State and Federal law; and

WHEREAS, more than one hundred cemeteries and burial sites have been documented in El Dorado County and the County directly oversees activities in nineteen of these cemeteries; and

WHEREAS, the County budgets funds to provide for the operation of these nineteen cemeteries, including landscape maintenance, interment record keeping, plot sales, and arranging interments and disinterments, but does not budget funds for restoration, refurbishment, and historical preservation of these nineteen cemeteries, and

WHEREAS, Save the Graves is a California nonprofit 501(c)(3) corporation whose mission is to preserve, protect, and promote El Dorado County's pioneer cemeteries, graves and monuments by celebrating the lives and legacies of those (permanent residents) who helped shape the region; and

WHEREAS, Save the Graves celebrates the rich history of El Dorado County through living-history reenactment events that build community pride, enhance the region’s historical identity, and raise much-needed funds to help restore, refurbish, and preserve the pioneer cemeteries in El Dorado County; and

WHEREAS, Save the Graves provides a public benefit and enriches the lives of residents of El Dorado County through funding support and advocating awareness for preserving the history and culture left behind by those who are buried in El Dorado County cemeteries.

NOW, THEREFORE, County and Save the Graves mutually agree as follows:

ARTICLE 1

Obligations of the Parties: Recognizing that the County and Save the Graves are legally distinct entities subject to the control of each governing body and that the County does not have oversight of Save the Graves:

Save the Graves will:

1) engage in fundraising activities to raise money to support historical preservation activities such as headstone cleaning, leveling, repairs and preservation, repair and preservation of cemetery infrastructure, ADA improvements, parking access for El Dorado County cemeteries. The parties will meet as needed to discuss and define key fundraising efforts and goals.

2) obtain written approval of the Cemetery Director at least thirty (30) days in advance before planning programs or hosting fundraising events on County property or planning projects that may impact cemeteries or other County properties. Such requests will include a description of the planned project or fundraising event or activity to be hosted and any cost implications for the County, which could be subject to reimbursement from Save the Graves. County will use reasonable efforts to respond to the request within fifteen (15) days by approving, modifying, or rejecting the proposal.

3) obtain and comply with all applicable laws, rules, and regulations including, but not limited to, obtaining a nonprofit daily use license from the California Department of Alcoholic and Beverage Control for fundraisers where alcohol is served.

4) include a County staff member as a non-voting presence at Save the Graves meetings and to allow room on the Save the Graves agenda for a report on cemeteries.

5) maintain its own web pages, membership lists, and social media outlets.

6) provide its own office supplies for organizational and fundraising purposes.

7) transfer ownership of items purchased for the cemeteries to the County. County has sole discretion in accepting or declining any and all gifts made to Save the Graves. County will seek County Board of Supervisors' authorization to accept funds or gifts, as required.

8) keep the County free from any liens arising out of any work performed in furtherance of this MOU, material furnished or obligations incurred by Save the Graves or for the County; and will not create, permit, or suffer any liens or encumbrances affecting the County or any portion of the County's interest therein.

County agrees to:

1) provide reports as requested concerning the use of funds provided by Save the Graves.

2) allow use of County facilities, waiving any County fees, for County-approved fundraising events by Save the Graves.

ARTICLE II

A. Term: The term of this MOU shall commence upon final execution by both parties hereto and shall continue in full force and effect for one (1) year unless earlier terminated in accordance with the terms and conditions set forth herein. This MOU shall automatically renew for additional terms of one (1) year each unless either party provides the other party with notice of its intention not to renew this MOU not less than thirty (30) days prior to the termination of the then current term.

B. Termination for Convenience. Either party may terminate this MOU for convenience following thirty (30) day prior written notice to the other party.

C. Termination for Cause. Either party may terminate this MOU immediately upon written notice to the other party in the event of a material breach of this MOU by such other party.

ARTICLE III

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
Cemetery Administration
2850 Fairlane Court
Placerville, CA 95667
ATTN: Cemetery Director

With a copy to:

COUNTY OF EL DORADO
Chief Administrative Office
Procurement and Contracts Division
330 Fair Lane
Placerville, CA 95667
ATTN: Purchasing Agent

Notices to Save the Graves shall be addressed as follows:

Save the Graves Coalition
Arts and Culture El Dorado
489 Main Street
Placerville, CA 95667
ATTN: Andrew Vonderschmitt

Or to such other location as Save the Graves directs.

ARTICLE IV

Indemnity: Save the Graves shall defend, indemnify, and hold the County harmless against and from any and all claims, suits losses, damages and liability for damages 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 use by Save the Graves, its officers, employees, agents, contractors or subcontractors (collectively "Agents"), its invitees, guests or business visitors (collectively "Invitees"), of County facilities or other County property; any activities conducted thereon by Save the Graves, its Agents, or Invitees in connection with performance of this MOU, regardless of the existence or degree of fault or negligence on the part of the County, except for the sole, or active negligence of the County, its officers, employees and or as expressly prescribed by statute. This duty of Save the Graves to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE V

INSURANCE: Save the Graves shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Save the Graves maintains, throughout the term of this MOU, insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Save the Graves as required by law in the state of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Business Automobile Liability Insurance of not less than \$1,000,000.00 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles. Any deductible under such policy shall not exceed \$10,000 for each occurrence, as applicable.
- D. A certificate of insurance satisfactory shall be furnished to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- E. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- F. In the event said insurance coverage expires at any time or times during the term of this MOU, 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 this MOU or for a period of not less than one (1) year shall be provided to the County. New certificates of insurance are subject to the approval of Risk Management and Save the Graves agrees that no work or services shall be performed prior to the giving of such approval. In the event that Save the Graves 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.

- G. 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.
- H. Save the Graves' insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Save the Graves' insurance and shall not contribute with it.
- I. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or Save the Graves shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- K. 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.
- L. Save the Graves' obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- M. In the event that Save the Graves cannot provide an occurrence policy, Save the Graves 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.
- N. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.
- O. If Save the Graves will use any subcontractors(s) to engage in the activities contemplated by this MOU on County property, Save the Graves shall require the subcontractor(s) to provide all necessary insurance and to name the County, its officers, agents and employees and Save the Graves as additional insureds.

ARTICLE VI

Administrator: The County Officer or employee with responsibility for administering this Agreement is Creighton Avila, Deputy Chief Administrative Officer and Cemetery Director, or successor.

ARTICLE VII

Authorized Signatures: The parties to this MOU 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 VIII

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

ARTICLE IX

Venue: Any dispute resolution action arising out of this MOU, 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 X

No Third Party Beneficiaries: Nothing in the MOU is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XI

No Amendment: No alteration, addition, or variation of the terms of this MOU shall be made or binding unless made in writing and signed by both parties.

ARTICLE XII

No Assignment: Save the Graves may not assign this MOU in whole or in part without obtaining the prior written consent of the County, which the County may give or withhold in its sole and absolute discretion. Any attempted assignment in violation of this provision shall be null and void.

ARTICLE XIII

Waiver: A waiver by either party of a breach of any of the covenants to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this MOU. In addition, the failure of either party to insist upon strict compliance with any provision of this MOU shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach.

ARTICLE XIV

Independent Contractor: Save the Graves and its officers, employees and agents shall act in an independent capacity in the performance of this MOU, and not as officers, employees or agents of the County. Save the Graves has no authority to bind or incur any obligation on behalf of the County. Neither the making of this MOU, nor the performance of its provisions, shall be construed to constitute either of the parties hereto as an agent, employee, partner, joint venture, or legal representative of the other, and the relationship of the parties under this MOU is that of independent

contractors. Employees, officers or volunteers of Save the Graves shall under no circumstances be deemed employees of the County. Save the Graves shall be responsible for any employer taxes and liabilities relating to its employees.


ARTICLE XV

Audit: County or a duly authorized agent or representative of the County shall have the right to examine the books and records of Save the Graves associated with Save the Graves' in-kind gifts and services and cash monies to the County, consistent with federal and state guidelines at any time upon prior reasonable notice during normal business hours.

ARTICLE XVI

Entire Agreement: This MOU constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and terminates all prior written or oral understandings, discussions, offer and/or agreements between the parties, relating in any way to the subject matter hereof.

Requesting Contract Administrator Concurrence:

By: 
Creighton Avila, Deputy Chief Administrative Officer
El Dorado County Cemetery Director

Dated: 9/20/19

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

-- COUNTY OF EL DORADO --

By: 
second-vice Chair, Board of Supervisors, John Hidahl
El Dorado County

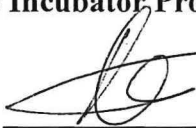
Dated: 9/30/19

ATTEST: Kim Dawson
Clerk of the Board of Supervisors

By 

-- CONTRACTOR --

Save the Graves Coalition of El Dorado County, a project of Arts and Culture El Dorado's Arts Incubator Program

By: 
Andrew Vonderschmitt
Program Manager

Dated: 9/18/19