

**COUNTY OF EL DORADO  
FACILITIES USE AGREEMENT  
#332-O0711**

**THIS AGREEMENT**, made and entered into by and between the **COUNTY OF EL DORADO**, ("County"), a political subdivision of the State of California and **EL DORADO ROD & GUN CLUB INC.** ("Rod & Gun Club"), a California Non Profit Corporation (hereinafter collectively referred to as the "Parties").

**RECITALS**

**WHEREAS**, County is the owner of certain real property located in the County of El Dorado, State of California, consisting of a 40-acre portion of Assessor's Parcel Number 92-010-27 (the "Property"), which is adjacent to and south of the El Dorado County Landfill Site on Union Mine Road; and,

**WHEREAS**, Rod & Gun Club is the holder of a Special Use Permit No. 77-82 by which the Rod & Gun Club has been operating and improving skeet, trap, rifle and pistol range facilities since 1977; and,

**WHEREAS**, on January 9, 1996, the County and Rod & Gun Club entered into a ten-year Concession Agreement whereby the County granted Rod & Gun Club the right to use, manage, and control the Property as a rifle, pistol, archery, and shotgun range; and,

**WHEREAS**, County desires to continue to allow Rod & Gun Club to use, manage, and control the Property, and Rod & Gun Club desires to continue to use, manage, and control the Property for the purpose of firearms safety, training, proficiency, competition and recreation and for other purposes as described further herein; and,

**WHEREAS**, this Agreement will facilitate the County's procurement of essential services and promote local law enforcement since the Rod & Gun Club facilities are utilized by State, Federal and Local law enforcement agencies for their firearms training and proficiency programs; and,

**WHEREAS**, the providing of the Property by County is deemed to be in the public interest since the Rod & Gun Club facilities comprise one of the few expert-staffed range facilities for firearms safety training in El Dorado County.

**NOW, THEREFORE**, in consideration of the mutual promises and conditions set forth herein, County and Rod & Gun Club hereby agree as follows:

**I. PROVISION OF PROPERTY.**

**A. THE PROPERTY:**

The County hereby allows Rod & Gun Club to use, manage, and control the Property, and Rod & Gun Club hereby agrees to use, manage, and control the Property upon the terms and conditions set forth in this Agreement.

**B. USE OF PROPERTY:**

Subject to the terms of its Special Use Permit, Rod & Gun Club is authorized to occupy, manage, and use the Property for the purpose of a firing range and for firearms safety, training, proficiency, competition, recreation and for law enforcement use by State, Federal and Local law enforcement agencies for their firearms training and proficiency programs consistent with State and Federal statutes and regulations.

**C. TERM, OPTION TO EXTEND, AND TERMINATION:**

The term of this Agreement shall commence upon final execution of this Agreement and shall continue for three (3) years thereafter, at which time it shall expire, unless extended pursuant to the terms of this Paragraph. Commencing on the one-year anniversary date of final execution of this Agreement and annually thereafter during the term of this Agreement (the "Renewal Date"), the term of this Agreement shall be extended automatically, without action of the parties, for a period of one (1) year beyond its then current expiration date, unless, at least thirty (30) days prior to any Renewal Date, either party to this Agreement gives written notice to the other of its intent not to renew this Agreement. In the event such notice is given in accordance with this Paragraph, then the term of the Agreement shall not be extended upon that or any subsequent Renewal Date and the Agreement shall expire at the end of its then remaining term, it being the intent of the parties that notice of nonrenewal be given not less than two (2) years prior to expiration of the Agreement.

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 breach, provided, however, that if the nature of the default cannot reasonably be cured within ten (10) days, then the Time to Cure shall be extended for a reasonable period of time. The Time to Cure may also 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 in which the extension of Time to Cure expires. Should the party in default fail to cure the default within ten (10) days of notice thereof, the Agreement may be terminated by the other party upon thirty (30) days' written notice.

**D. MONTHLY RENT:**

Rod & Gun Club shall have no obligation to pay any cash rent to County; however, in consideration for Rod & Gun Club's use of the Property, Rod & Gun Club shall, at its sole expense and at no cost to the County or any other law enforcement agency enumerated herein, maintain and make available the Property to the El Dorado County Sheriff's Department, the Amador County Sheriff's Department (for purposes of co-training with the El Dorado County Sheriff's Department only), and other El Dorado County departments as follows:

- Exclusive use of the firing range on Tuesdays, Wednesdays, and the first and third Monday of each month during daylight hours;
- Exclusive use of the firing range during nighttime hours for no more than two one-week periods (Monday through Friday) each year for night shoot training and qualification; and
- Exclusive use of the unimproved middle firing range on Tuesdays, Wednesdays, and the first and third Monday of each month during daylight hours.

## **II. SPECIAL PROVISIONS.**

### **A. REASONABLE ACCESS FOR ROD & GUN CLUB:**

County agrees to allow and provide for reasonable access to the Property, and to place no unreasonable encumbrance upon Rod & Gun Club's free use and enjoyment of the Property by Rod & Gun Club, Rod & Gun Club personnel, authorized visitors and any other persons having reasonable need to go in or upon the Property. Notwithstanding the foregoing, the County reserves the right to make improvements to the Property, subject to Rod & Gun Club's prior written consent, which shall not be unreasonably withheld. In addition, County shall not make any permanent improvements to the middle firing range without Rod & Gun Club's prior written consent, which shall not be unreasonably withheld.

### **B. UTILITIES AND SUPPORT SERVICES:**

County shall waive any and all fees for building permits, inspections, taxes (other than any applicable personal property taxes) and other County charges arising from and in connection with Rod & Gun Club's use and improvement of the Property. Rod & Gun Club, at its sole cost and expense, shall be responsible for security, gates, fences, roads, grounds, maintenance, water, gas, electricity, septic and sewage services to the current standard of such; provided however the Rod and Gun Club shall not be obligated to extend utility or sewage services to the premises where such do not currently exist.

### **C. INSTALLATIONS, ARRANGEMENTS, REARRANGEMENTS, MODIFICATIONS AND CONSTRUCTION:**

Upon review and approval by the County, Rod & Gun Club, at its own expense or as otherwise funded under a separate contract with County, shall be permitted to construct or install any fixed improvements or structural alterations or modifications to the Property necessary for Rod & Gun Club to perform its obligations under the Contract or in connection with other work approved by the County (hereinafter, "Fixtures"). This shall include, but not be limited to, bringing utilities to its existing buildings and providing for separate metering thereof, and making architectural/structural, mechanical, electrical, or other renovations or alterations to the Property/facility, and making improvements (including stabilization and drainage) to any open storage areas to accommodate the work to be performed under the Contract or other approved work. Title to such Fixtures shall vest in County immediately upon completion of construction of the Fixture. If required by law, such work shall be performed in accordance with applicable public contracting and prevailing wage laws. County reserves its right, upon proper approval by the County's Board of Supervisors, to assist Rod & Gun Club with any mutually beneficial improvements to the Property.

### **D. PERIODIC INSPECTIONS:**

County reserves the right to access the Property at any time for any purpose, including, but not limited to the performance of periodic preventive maintenance, fire protection, and all other types of inspections of the Property. This shall include, but not be limited to, County's right to perform compliance and safety inspections of records, facilities and operations.

### **E. CONDITION OF PROPERTY:**

County makes no warranty, express or implied, regarding the condition or fitness for use of the Property.

## **F. COMPLIANCE WITH LAWS:**

### **1. IN GENERAL:**

Rod & Gun Club, at its sole cost and expense, shall conduct its activities hereunder on the Property in compliance with all applicable laws, regulations, rules, orders, decrees, permits and agreements, including without limitation those which are promulgated by the County or any division or related agency thereof, and including without limitation those which relate to health, safety, environmental protection, waste disposal, and water and air quality with respect to the use of the Property and the rights granted hereunder (all of which are hereinafter referred to as the "Requirements"). Further, Rod & Gun Club shall conduct its activities in compliance with all Requirements to which County may be subject with respect to the Property. The parties agree that to the extent that any new Requirements are imposed, or any of the existing Requirements are changed during the term of this Agreement, Rod & Gun Club may meet and confer with the County to discuss a potential amendment or other appropriate change under the Agreement as may be permitted by law.

- 2. COOPERATION IN OBTAINING PERMITS & UTILITIES.** Rod & Gun Club shall obtain any and all otherwise required permits, licenses, and other authorizing documents as may be necessary for the use and possession of the Property as allowed herein. County shall cooperate in good faith with Rod & Gun Club to the extent reasonably necessary for Rod & Gun Club to obtain such permits, licenses, authorities and utilities. Notwithstanding the foregoing, to the extent the County is the decisionmaking body concerning any permits, licenses, or other authorizing documents sought by Rod & Gun Club, the County retains its full discretion to decide the issue based on information available at the time of application.

## **G. PUBLIC ACCESS:**

The characteristics of firearms training do not permit free and uncontrolled access by the public to the Property. For safety reasons, Rod & Gun Club shall have the right to control public access to the Property and its facilities. Individual members of the public may be excluded from use of the Property by the Sheriff of El Dorado County, the Board of Directors of the Rod & Gun Club, or the Range Safety Officer on duty.

## **H. ENVIRONMENTAL REMEDIATION.**

### **1. POTENTIAL FOR CONTAMINATION AND INTENT TO APPORTION LIABILITY.**

Rod & Gun Club agrees to indemnify, defend (with counsel reasonably acceptable to County and at Rod & Gun Club's sole cost), and hold County and County's officers, employees, and agents free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements, response costs, remediation costs, removal costs, or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against County or any of them in connection with or arising from or out of: (a) any hazardous material on, in, under, or affecting all or any portion of the Premises; (b) any violation or claim of violation by Rod & Gun Club of

any of those statutes, laws, regulations, and ordinances identified in subparagraph (2) all as amended and modified from time to time (collectively, "Environmental Laws"); or (c) the imposition of any lien for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of hazardous material; provided, however, such indemnification agreement shall not apply to and shall specifically exclude any and all liability caused in whole or in part by the actions of the County, its agencies, employees, officers or invitees including other law enforcement agencies that utilize the facilities in cooperation with the County. This indemnification shall survive termination of this Agreement.

## **2. HAZARDOUS MATERIAL**

For purposes of this Agreement, "hazardous material" means: (i) "hazardous substances" or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9601 et seq., or the Hazardous Materials Transportation Act, 49 U.S.C. §1801, all as amended and amended after this date; (ii) "hazardous wastes," as that term is defined by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 et seq., as amended and amended after this date; (iii) any pollutant or contaminant or hazardous, dangerous, or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, all as amended or amended after this date; (iv) crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (v) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §§2011 et seq., as amended and amended after this date; (vi) asbestos in any form or condition; and (vii) polychlorinated biphenyls (PCBs) or substances or compounds containing PCBs.

## **3. RESERVATION OF RIGHTS:**

Except as provided in the foregoing provisions of this Agreement, Rod & Gun Club and the County hereby reserve any and all rights, remedies and defenses available under the Special Use Permit 77-82, any law or any other contract between the parties that may apply to any liability to a third party, including without limitation other federal, state or local County agencies, relating to or arising from environmental conditions existing on, emanating from or relating to the Property on the effective date of this Agreement.

## **4. LIMITATION OF LIABILITY:**

Except as provided in Paragraph I.5 below, with respect to Rod & Gun Club's indemnity obligations in Paragraph I.1, above, the County agrees not to execute against Rod & Gun Club beyond the limits of its available insurance coverage.

## **5. LEAD REMOVAL:**

As to their respective uses of the Property, the Parties agree to implement Best Management Practices (BMPs) concerning lead recovery in a form substantially similar to that recommended by the U.S. Environmental Protection Agency, Region Two. Should Rod & Gun Club fail to implement such BMPs, the limitation of liability provided in Paragraph H.4 above shall not apply and Rod & Gun Club shall indemnify and defend the County to the full extent provided by Paragraph H.1 above.

**I. INDEMNIFICATION FOR THIRD PARTY CLAIMS:**

1. Rod & Gun Club shall indemnify and defend the County and its officers, employees, and agents against and hold it harmless from any and all claim, loss, damage, and liability for damages, including attorneys' fees and other costs of defense incurred by County, whether for damage to or loss of property, or injury to or death of any person, including, but not limited to, the property of County and/or injury to or death of Rod & Gun Club's invitees and County officers, agents, and employees, which shall in any way arise out of or be connected with Rod & Gun Club's operations hereunder, unless such damage, loss, injury, or death shall be caused in whole or in part by the negligence of County.

County shall indemnify and defend Rod & Gun Club and its officers, employees, and agents against and hold it harmless from any and all claim, loss, damage, and liability for damages, including attorneys' fees and other costs of defense incurred by Rod & Gun Club, whether for damage to or loss of property, or injury to or death of any person, including, but not limited to, the property of Rod & Gun Club and/or injury to or death of County's invitees and Rod & Gun Club officers, agents, and employees, which shall in any way arise out of or be connected with County's operations hereunder, unless such damage, loss, injury, or death shall be caused in whole or in part by the negligence of Rod & Gun Club.

2. Rod & Gun Club shall procure and maintain the following insurance coverage which will have endorsements naming the County (and its officers and employees) as an additional insured:

Comprehensive General Liability Insurance for both property damage and personal injury of not less than two million dollars (\$2,000,000) combined single limit per occurrence.

3. The insurance specified herein must provide that any termination or cancellation of this policy of insurance must be preceded by a 30-day advance written notice to the County at the office of the El Dorado County Risk Manager, 330 Fair Lane, Placerville, CA 95667.

4. The insurance specified herein shall be primary.

5. The insurers shall have no recourse against the County for premiums, costs of defense, cost of indemnity, deductibles or other policy costs.

6. Proof of the policy of insurance described herein shall be provided to the office of the Risk Manager for El Dorado County described above at least once every twelve months.

**III. MISCELLANEOUS PROVISIONS.**

**A. HEADINGS:** The section headings of this Agreement are inserted only for reference and do not affect the terms and provisions hereof.

**B. NOTICES:** Except as otherwise provided in this Agreement, any notice required or permitted to be given hereunder shall be delivered personally or sent by mail with postage pre-paid to the following addresses or to such other places as may be designated by the parties hereto from time to time.

Rod & Gun Club: Rob Charny  
P.O. Box 99  
Placerville, California 95667  
Telephone: (530) 621-1509

County: County Of El Dorado, General Services Department  
360 Fair Lane  
Placerville, California 95667  
Attention: Director  
Telephone: (530) 621-5846

Copy to: El Dorado County Sheriff's Department  
300 Fair Lane  
Placerville, California 95667  
Attention: Undersheriff Fred Kollar

Either party, Club or County, may change its address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

**C. WAIVERS and MODIFICATIONS:**

The waiver of any breach, covenant or condition of this agreement shall not constitute a waiver of any other breach, covenant or condition. Amendments, updates or modifications of any term hereof must be in writing and signed by representatives of both parties.

**D. RECORDS EXAMINATION AND AUDIT:**

Rod & Gun Club shall maintain all books, documents, papers, accounting records, and other documents pertaining to its use of the Property and performance of this Agreement. Rod & Gun Club shall provide the County with access to audit, inspect, and/or examine such materials at all reasonable times during the Term of this Agreement and for three (3) years following expiration or earlier termination of this Agreement.

**E. ASSIGNMENT:**

With the exception of those items referenced in Paragraph II.B. above, Rod & Gun Club shall not subcontract, delegate, or assign its obligations herein, in whole or in part, to any other person or entity without the County's prior written consent.

**F. CONTRACT ADMINISTRATOR:**

The County officer or employee with responsibility for administering this Agreement is Undersheriff Fred Kollar, or successor.

**G. 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.

**H. 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 will continue in full force and effect without being impaired or invalidated in any way.

**I. ENTIRE AGREEMENT:**

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they supersede all prior written or oral agreements or understandings.

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

**EL DORADO COUNTY ROD AND GUN CLUB INC.**

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

**Signed:** \_\_\_\_\_  
**Rob Charny, President**

**COUNTY OF EL DORADO**

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

**Signed:** \_\_\_\_\_  
**Rusty Dupray, Chairman**  
**Board of Supervisors**

**ATTEST:**  
**Suzanne Allen de Sanchez**  
**Clerk of the Board of Supervisors**

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

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