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Agreement # 4373

Legistar # NA

FACILITIES USE AGREEMENT CONTRACT ROUTING SHEET

Date Prepared: 10/4⁴ / 19

Need Date: 10/9/19

PROCESSING DEPARTMENT:

CONTRACTOR:

Department: Procurement & Contracts
Dept. Contact: Kristen Germond
Phone: x5974
Department
Head Signature: S. R. Ewert
Sandy Ewert
Administrative Analyst Supervisor

Name: Marine Toys for Tots Foundation
Address: PO Box 591
Shingle Springs, California 95682
Phone: _____
Org Code: 06FACMAINT
Funding Source: n/a

CONTRACTING DEPARTMENT: CAO - Facilities

Service Requested: Review and Approve

Description: Facilities Use Agreement for 299 Fair Lane Court for Toys for Tots Donation Storage and Disbursement

Contract Term: Oct 19, 2019 – Dec 31, 2019 Contract Value: \$0

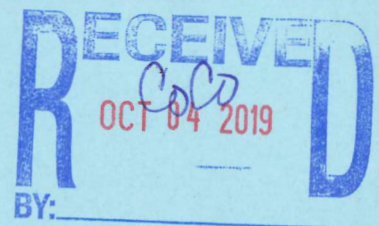
COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: Date: 10/8/19 By: JDS
Approved: Disapproved: Date: _____ By: _____

See email.

HR APPROVAL: WILL BE REVIEWED THROUGH WORKFLOW

RISK MANAGEMENT: WILL BE REVIEWED THROUGH WORKFLOW



PLEASE EMAIL FOR PICK-UP cao-contracts-newrequests@edcgov.us Thank you!



COUNTY OF EL DORADO

FACILITY USE AGREEMENT #4373

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 Marine Toys for Tots Foundation, a Virginia Nonprofit Benefit Corporation, whose principal place of business is 18251 Quantico Gateway Drive, Triangle, Virginia 22172, and whose mailing address is Post Office Box 591, Shingle Springs, California 95682 (hereinafter referred to as "the Foundation") (collectively hereinafter referred to as the "Parties").

RECITALS

WHEREAS, County owns that certain real property, commonly known as 299 Fair Lane (Juvenile Hall), Placerville, California 95667 ("Premises"); and

WHEREAS, the Premises is a shared use space between the County and the Judicial Council, subject to a Joint Occupancy Agreement dated December 29, 2008 ("JOA"); 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, ~~t~~The Foundation is a 501(c)(3) nonprofit corporation whose mission is to collect new, unwrapped toys during October, November and December each year, and distribute those toys as Christmas gifts to less fortunate children in the community in which the campaign is conducted; and

WHEREAS, allowing the Foundation to use ~~at the County-exclusive~~ portion of the Premises to temporarily store items donated to the Foundation is compatible with the Judicial Council's use of the Premises as a court facility and will serve a public benefit by assisting delivery of services to local less fortunate children 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 the Foundation mutually agree as follows:

ARTICLE I

Property Use: County grants to the Foundation a non-exclusive right to use, at no rental charge, a portion of the Premises designated as the County exclusive area and common area, as defined

in the JOA, for the sole purpose of providing storage and public distribution of donated items received by the Foundation.

The Foundation acknowledges and agrees that:

1. County will provide one (1) key to the Foundation for access to the Facility. The original ~~key~~ keys may not be duplicated by the Foundation and shall be returned to the County at the expiration of this Agreement. Use of the property by the Foundation shall in no way interfere with County and Judicial Council's use in any way and shall not deteriorate or diminish Judicial Council's use of the Premises as a court facility.
2. The Foundation shall maintain and keep the location free of trash and debris resulting from the Foundation's use of or activities on the Premises. The Foundation shall remove and dispose of said trash, debris, or litter at its sole expense immediately after use.
3. The Foundation 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 the Foundation uses the location in an "as-is" condition.
5. The Foundation shall be financially responsible for any costs incurred by County for damages to the Premises arising from the Foundation's use of the locations
6. The Foundation 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 October 19, 2019 through December 31, 2019.

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 Foundation 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 The Foundation.
- C. Ceasing Performance: County may terminate this Agreement in the event the Foundation 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 thirty (30) 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 the Foundation shall be addressed as follows:

Marine Toys for Tots Foundation
Post Office Box 591
Shingle Springs, CA 95682

ATTN: Stacie Walls, Coordinator

or to such other location as The Foundation directs.

ARTICLE VII

Indemnity: The Foundation 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 ~~the~~ The Foundation's activities, use of the Premises, or performance of this Agreement, including any hazardous substance brought onto, release, or deposited on the Premises by ~~the~~ The Foundation, 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: The Foundation 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 the Foundation 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. 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 the Foundation's insurance and shall not contribute with it.
- C. 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.

The Foundation 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, the Foundation 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 County. If the Foundation 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: County Officer or employee with responsibility for administering this Agreement is Russell Fackrell, Facilities Division Manager, Chief Administrative Office, 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 the Foundation 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.

IN WITNESS WHEREOF, the parties hereto have executed this Facilities Use Agreement #4373 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Purchasing Agent
"County"

**- - M A R I N E T O Y S F O R T O T S
F O U N D A T I O N - -**

By: _____

Dated: _____

Stacie Wells
Coordinator