

**SACRAMENTO MUNICIPAL UTILITY DISTRICT
DONATION AGREEMENT**

DONATION RECIPIENT NAME ("Recipient"): County of El Dorado
PROPERTY TO BE DONATED ("Property"): FSBO 2007 1FDAF57Y27EA96007 (01538)
LOCATION OF PROPERTY TO BE DONATED: ECOC 9762 Kiefer Boulevard, Sacramento, CA

In consideration of the mutual covenants contained herein, Recipient and Sacramento Municipal Utility District ("SMUD") agree as follows:

1. This Agreement shall be effective as of the date of last execution by the parties ("Effective Date").
2. The Property is currently located at SMUD's premises. Recipient agrees to pick-up the Property at SMUD's facility at ECOC in Sacramento. Recipient is solely responsible for any and all transportation costs of the Property. Once the Property is removed from SMUD's facility, Recipient will not return the Property to any SMUD facility or location without SMUD's prior written approval.
3. SMUD reminds Recipient that the Property should be used with caution and safety in mind. Recipient acknowledges and agrees that there are inherent dangers associated with the use, maintenance, operation, storage, service, and repair of the Property. Recipient agrees to use the Property in a safe manner consistent with the above reminders. Recipient acknowledges it is familiar with the safe operation of this equipment and needs no instruction from SMUD. Recipient takes responsibility to seek out on its own any additional training that may be needed.
4. SMUD is donating the Property to Recipient at no cost to Recipient, with the understanding and agreement from Recipient that Recipient shall assume full and total responsibility for the Property. Therefore, SMUD cedes ownership of Property to Recipient, on a no warranty basis. Recipient, by signing below, expressly accepts the Property in "as-is" condition and without warranty, including, without limitation, any express or implied warranty of merchantability or fitness for a particular purpose.
5. Recipient acknowledges and agrees that SMUD has made no representations or warranties to Recipient of any kind or character concerning the suitability, fitness, merchantability, or condition of Property and hereby assumes full risk and responsibility for any action, accident, claim, loss, cost, or damage of any kind which might arise, or liability for injury to any other person or persons.
6. Recipient, for itself and assigns, hereby agrees to release and hold and save harmless SMUD, its directors, officers, agents and employees, from any and all claims loss, cost, or damage of every kind, nature or description arising out of or in any way relating to the Property donated by SMUD. This Agreement shall be binding upon Recipient and assigns, and shall inure to the benefit of SMUD and its successors, assigns, affiliates, agents, employees.
7. Recipient agrees that the above terms adequately represent Recipient's understanding of the Agreement as it relates to all present, past, and future claims against SMUD, whether those claims are known or unknown and waives application of California Civil Code section 1542 which states:

"A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her

must have materially affected his or her settlement with the debtor or released party.”

Recipient hereby waives application of California Civil Code Section 1542 and acknowledges that this means if Recipient should suffer any injuries, damages, or losses arising out of or relating to the Property described above, but of which Recipient is not currently aware and which if known would materially affect the decision to execute this release, Recipient will not be able to make any claim for those injuries, damages, or losses.

- 8. Recipient hereby agrees to indemnify, defend, and hold harmless, SMUD, its directors, officers, agents, and employees against all claims, expenses, and liabilities asserted against SMUD by any third party arising from or related to the Property.
- 9. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective predecessors in interest, successors, assignees, heirs, and personal representatives.
- 10. Should any party hereto institute any action or proceeding to enforce any provision of the Agreement, or for damages by reason of any alleged breach of any provision of this Agreement, or for any other judicial remedy, including but not limited to equitable relief, the prevailing party shall be entitled to all costs and expenses thereby incurred, including but not limited to reasonable attorneys' fees.
- 11. Recipient and SMUD warrant that no promise, inducement or agreement, not expressed herein, has been made to either party in connection with this Agreement. Except as expressly stated above, this Agreement shall not be construed as creating obligations or rights with regard to either party to this Agreement.
- 12. This Agreement is the entire agreement between the parties hereto with respect to the subject matter herein. This Agreement may be amended only by a written amendment executed by the parties hereto and stating that it is an amendment to this Agreement.

By signing and dating below, the parties agree to the conditions set forth in this Agreement as detailed herein.

_____ - Authorized Representative


Signature: _____

Date: _____

Name: _____

Title: _____

Sacramento Municipal Utility District - Authorized Representative

Signature: 

Date: 10.28.2019

Name: Jacob Berks

Title: Fleet Operations Manager