



## COUNTY OF EL DORADO

### FACILITY USE AGREEMENT #5003

**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 ("Property"); and

**WHEREAS**, the Property 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**, 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 the County-exclusive portion of the Property to temporarily store items donated to the Foundation is compatible with the Judicial Council's use of the Property as a court facility and will serve as 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 Property 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 Property designated as 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 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 Property 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 Property. 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 Property.
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 Property 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 Property at the end of the term. The Property must be surrendered to County in the same condition as at the commencement of the use period.
7. County makes no representations or warranties as to the condition of the Premises, and Cal Fire uses the Premises in an "as-is" condition.

## **ARTICLE II**

**Term:** This Agreement shall become effective when fully executed by both parties and shall cover the period of October 1, 2020 through December 28, 2020.

## **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.

- B. Bankruptcy: This Agreement, at the option of 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 day's written notice without cause.

#### 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**

**Change of Address:** In the event of a change in address for The Foundation's principal place of business, The Foundation's Agent for Service of Process, or Notices to The Foundation, The Foundation shall notify County in writing as provided in ARTICLE VI, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

## **ARTICLE VIII**

**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 Foundation's activities, use of the Property, or performance of this Agreement, including any hazardous substance brought onto, release, or deposited on the Property by the Foundation, regardless of the existence or degree of fault or negligence on the part of County, its officers, agents and employees, except for the sole or active negligence of 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 IX**

**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;
  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;
  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 X**

**Administrator:** County Officer or employee with responsibility for administering this Agreement is Russell Fackrell, Facilities Division Manager, Chief Administrative Office, or successor.

#### **ARTICLE XI**

**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 XII**

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

#### **ARTICLE XIII**

**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 XIV**

##### **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 Property 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. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

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 #5003 on the dates indicated below.

--COUNTY OF EL DORADO--

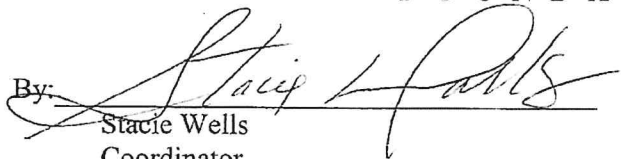
By: \_\_\_\_\_

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

Purchasing Agent  
"County"

-- MARINE TOYS FOR TOTS  
FOUNDATION --

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



Stacie Wells  
Coordinator

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

08272020