

El Dorado Hills Chamber of Commerce

Funding Agreement #5734

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and El Dorado Hills Chamber of Commerce, a non-profit organization duly qualified to conduct business in the State of California whose mailing address is 2085 Vine Street, Suite 105 El Dorado Hills, California 95762 (hereinafter referred to as "Recipient").

RECITALS

WHEREAS, County wishes to encourage economic development in County by supporting and promoting tourism, entertainment, business, and leisure travel activities through County's Economic Development Program; and

WHEREAS, County has appropriated funding for the purpose of providing Economic Development funding to private non-profit organizations and public agencies; and

WHEREAS, the funding provided herein will serve a public purpose and provide a valuable public benefit in that it will promote cultural activities, historical preservation activities, and/or promotional activities which enhance tourism and industry, and/or local community events which encourage a sense of community to the people of the County of El Dorado; and

WHEREAS, the parties agree the funding will be in conformity with all applicable federal, state, and local laws and use of the funding shall be in conformity with the stated Scope of Work.

NOW THEREFORE, the parties do hereby agree as follows:

ARTICLE I

Scope of Work: Recipient is engaged in the business of doing the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Recipient agrees to furnish, at Recipient's own cost and expense, all personnel, equipment, materials, and services necessary to perform the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work. It is understood that funding provided by County is not intended to fully fund the services and deliverables described in Exhibit A. Recipient is responsible for securing other sources of funding necessary to fully fund and deliver the services and deliverables described in Exhibit A.

All deliverables required by County shall be submitted via electronic file and Recipient shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to County's computer, and that are acceptable to County Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in ARTICLE XIII, Default, Termination, and Cancellation, herein.

Recipient shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Recipient is responsible for ensuring that its employees perform the services and tasks required under this Agreement accordingly.

ARTICLE II

Term: This Agreement shall become effective when fully executed by the parties hereto and shall cover the period of July 1, 2021 through June 30, 2023.

ARTICLE III

Payment and Use of Funds: County agrees to pay Recipient in equal installments of \$27,580.00 each in accordance with the following schedule:

Fiscal Year 2021-22:

- Installment 1: Within thirty (30) days of execution of this Agreement
- Installment 2: Not later than November 1, 2021
- Installment 3: Not later than February 1, 2022
- Installment 4: Not later than May 1, 2022

Fiscal Year 2022-23:

- Installment 1: Not later than August 1, 2022
- Installment 2: Not later than November 1, 2022
- Installment 3: Not later than February 1, 2023
- Installment 4: Not later than May 1, 2023

Funding shall be used solely for the purposes described in Exhibit A. Recipient expressly agrees that any funds paid by County under this Agreement shall not be used, directly or indirectly, for any other purposes, without prior written approval from County.

The total amount of this Agreement shall not exceed \$220,640.00.

ARTICLE IV

Reports Required: Recipient shall submit a written Annual Report to County's Contract Administrator no later than September 1st for each previous contract year. The Annual Report shall include a narrative summary of the activities and deliverables identified in Exhibit

A, as well as an analysis demonstrating the County's Return on Investment (ROI) of the funding provided under this Agreement.

Recipient shall maintain records, books, documents, and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses, all of which will be deemed to constitute "records" for purposes of this section. Such records shall clearly reflect the cost and scope of the services provided.

Recipient's facility or office or such part thereof as may be engaged in the performance of this Agreement and its records shall be subject at all reasonable times to inspection, audit, and reproduction by County, the state or any of its duly authorized representatives.

The provisions of this ARTICLE IV, Reports Required, shall survive termination of this Agreement.

ARTICLE V

Recognition of County: Recipient agrees to credit County for the funding on all printed or internet materials generated for the Scope of Work during the term of the Agreement by using County seal and text ("Funded [in part] by El Dorado County's Economic Development Program") unless otherwise requested or agreed upon with County. Electronic versions of print and web-ready logo will be provided upon request. If there are no printed materials, credit to County is to be announced by Recipient verbally at the event or program.

ARTICLE VI

Local Sourcing: Recipient shall make every reasonable effort to secure and/or purchase materials, supplies, and labor from local businesses and the local labor pool. For purposes of this Agreement, a local business is one that maintains a current business license from the Treasurer Tax Collector of El Dorado County.

ARTICLE VII

Political Activity: Pursuant to California Government Code §54964, §54964.5, and §54964.6, Recipient shall not expend or authorize the expenditure of any funds provided to it pursuant to this Agreement, or use any property owned or funded in whole or in part by County, in support of any political activity including but not limited to support or opposition of a candidate for public office or any ballot measure.

ARTICLE VIII

Taxes: Recipient certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Recipient to County. Recipient agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE IX

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 X

Assignment: This Agreement is not assignable by Recipient in whole or in part without the express written consent of County.

ARTICLE XI

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XII

Audit by California State Auditor: Recipient acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Recipient shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XIII

Default, Termination, and Cancellation:

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
 2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. 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.

1. If County terminates this Agreement, in whole or in part, for default: County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Recipient shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Recipient, the excess costs to procure from an alternate source.
2. County shall pay Recipient the sum due to Recipient under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Recipient under this Agreement and the balance, if any, shall be paid to Recipient upon demand.
3. County may require Recipient to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 2. A representation or warranty made by Recipient in this Agreement proves to have been false or misleading in any respect.
 3. Recipient fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 4. A violation of ARTICLE XXII, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Recipient.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Recipient ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Recipient, and for any other services that County agrees, in writing, to be

necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Recipient shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XIV

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:

To County:

With a copy to:

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, California 95667

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Kyle Zimbelman
Economic and Business Relations
Manager

Attn.: Michele Weimer
Procurement and Contracts Manager

Notices to Recipient shall be addressed as follows:

El Dorado Hills Chamber Of Commerce
2085 Vine Street, Suite 105
El Dorado Hills, California 95762

Attn: Debbie Manning, President/CEO

or to such other location as Recipient directs.

ARTICLE XV

Change of Address: In the event of a change in address for Recipient's principal place of business, Recipient shall notify County in writing pursuant to the provisions contained in this Agreement under the ARTICLE XIV, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by the County 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 XVI

Indemnity: To the fullest extent permitted by law, Recipient shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses 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 acts or omissions of Recipient or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Recipient to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVII

Insurance: Recipient shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Recipient maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Recipient as required by law in the State of California.
- B. 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.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Recipient in performance of the Agreement.
- D. In the event Recipient is a licensed professional or professional Recipient and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Recipient shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. 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.
- G. Recipient agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Recipient 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 term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Recipient agrees that no work or services shall be performed prior to the giving of such approval. In the event Recipient 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.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days 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.
- I. Recipient's insurance coverage shall be primary insurance in respect to 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 Recipient's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Recipient shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. 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.
- M. Recipient's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Recipient cannot provide an occurrence policy, Recipient 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.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

ARTICLE XVIII

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XIX

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XX

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Recipient under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XXI

Interest of Recipient: Recipient covenants that it presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Recipient further covenants that in the performance of this Agreement no person having any such interest shall be employed by Recipient.

ARTICLE XXII

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Recipient and performing work for County and who are considered to be Recipient within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are Recipients within the meaning of the Political Reform Act and

County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

ARTICLE XXIII

Nondiscrimination:

- A. In completing the scope of work, employing personnel, or in any other respect to this Agreement, Recipient shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Recipient and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Recipient shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Recipient and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Recipient shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Recipient's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

ARTICLE XXIV

County Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Recipient warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXV

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Kyle Zimbelman, Economic and Business Relations Manager, Planning and Building Department, Economic Development Division, or successor.

ARTICLE XXVI

Partial Invalidity: If any provision, sentence, or phrase of the 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 XXVII

California Forum and Law: Any dispute resolution action arising out of this Agreement, 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 XXVIII

No Third Party Beneficiaries: 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.

ARTICLE XXIX

No Joint Venture: This Agreement shall not create a joint venture, partnership or any other relationship of association between the County and Recipient.

ARTICLE XXX

No Grant of Agency: Except as the parties may specify in writing, neither party shall have authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent. Neither party shall have any authority, express or implied, pursuant to this Agreement, to bind the other party to any obligation whatsoever.

ARTICLE XXXI

Compliance with Laws, Rules and Regulations: Recipient shall, at all times while this Agreement is in effect, comply with all applicable laws, ordinances, statutes, rules, and regulations governing its conduct.

ARTICLE XXXII

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 XXXIII

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.

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

--COUNTY OF EL DORADO--

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

--EL DORADO HILLS CHAMBER OF COMMERCE--

By: *Debra H Manning*
Debra H Manning (Jun 9, 2021 13:51 PDT)
Debbie Manning
President/CEO
"Recipient"

Dated: 06/09/2021

By: *Kelly Seymour*
Kelly Seymour (Jun 9, 2021 15:18 PDT)
Kelly Seymour
Vice Chairman

Dated: 06/09/2021

El Dorado Hills Chamber of Commerce

Exhibit A

Scope of Work

Upon execution of this Agreement, Recipient shall perform the following services and/or provide deliverables as detailed below for the duration of the Agreement.

ACTIVITY:	SCOPE OF WORK AND DELIVERABLES:	ACTIVITY DURATION:
<p>Operation of the California Welcome Center-El Dorado Hills ("Center") which provides information regarding recreational and tourism activities in El Dorado County area, as well as statewide tourism information. The Center shall be open during regular business hours, seven (7) days a week, Monday – Friday, 9 – 5PM, Saturday and Sundays – 10-4. Closed on New Year's Day, Easter Sunday, Thanksgiving, and Christmas Day per contract with Visit CA.</p>	<ol style="list-style-type: none"> 1. Operation of the Center during normal visitor's hours as stated in "Activity". <ol style="list-style-type: none"> a. Keep the Center stocked with appropriate local and state visitor materials. b. Keep the Center staffed to answer questions on an as-needed basis. c. Highlight El Dorado County wines, Rubicon Trail, Gold Bug Mine, arts, and other El Dorado County tourism assets. d. Promote local products when appropriate in the gift store. e. Refer as many local businesses and tourism asset businesses to guests when appropriate. 2. Attraction of at least ten thousand (10,000) annual visitors to the Center. <ol style="list-style-type: none"> a. A majority of guests from outside El Dorado County as demonstrated by a visitor survey. A best effort to attract fifty percent (50%) of visitors from outside the local region. 3. To continue, if asked by County, to be a Voting Center for El Dorado County serving as a community wide benefit. 	<p>July 1, 2021 - June 30, 2023</p>