

**Funding Agreement Between the
County of El Dorado and [applicant name]**

Agreement #XX-XXXX

THIS AGREEMENT, made and entered by and between the County of El Dorado, a political subdivision of the State of California ("County") and [applicant name] a legal corporation, duly qualified to conduct business in the State of California, whose mailing address is [applicant address] ("Grantee");

RECITALS

WHEREAS, the County General Plan and the Countywide Strategic Plan encourages the development of economic development incentives;

WHEREAS, County of El Dorado Board of Supervisors Policy J-9, Startup and Entrepreneur Technical Assistance Program, authorizes the use of Transient Occupancy Tax funds for technical assistance to eligible El Dorado County startups and entrepreneurs formally enrolled in an accelerator/incubator program;

WHEREAS, Growth Factory, a nonprofit public benefit corporation, is a cohort of top tier mentors, investors, and partners providing educational and informational opportunities to venture backable startup companies accepted into a Growth Factory accelerator/incubator program.

WHEREAS, in conformity with Policy J-9, County has collaborated with Growth Factory to provide technical assistance grants in amounts up to \$50,000 to eligible high growth startup companies within El Dorado County;

WHEREAS, Grantee has been accepted into a Growth Factory accelerator/incubator program and has submitted a J-9 application for funds in the amount of [spell and write out amount] for technical assistance for [business name], Grantee's startup company.

WHEREAS, the County Economic Development Division, Chief Administrative Office, and the County Board of Supervisors have reviewed Grantee's J-9 application and have found that Grantee is eligible for the J-9 Funds because it would provide a community benefit by providing prosperity to the County through the creation of local jobs and/or tax base; and

WHEREAS, the funds provided by this Agreement will provide a valuable service to the County by encouraging economic development and effectuating the Economic Development element of our General Plan as well as the Countywide Strategic Plan; 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 applicant's stated purpose;

NOW, THEREFORE, County and Grantee do hereby agree as follows:

ARTICLE I

Payment and Use of Funds: No later than one hundred eighty (180) days after the execution of this Agreement, County shall disperse funds to the Accelerator/Incubator, Growth Factory, for use by Grantee, in the amount of [amount]. Grantee acknowledges that amount as the sum total that County shall fund under this Agreement.

Grantee acknowledges that funding provided under this Agreement shall not be used for the purposes of political advocacy of any kind.

Grantee hereby certifies and reaffirms that all representations and other information contained in this Agreement, as well as all documentation submitted as part of the application for J-9 Funds, are true and accurate, to the best of Grantee's knowledge, as of the date of this Agreement. Grantee acknowledges that all such representations and information have been relied on by County to provide the funding under this Agreement.

Grantee shall promptly notify County, in writing, of the occurrence of any event or any material change in circumstances which would make any Grantee representation or information untrue or incorrect. If County becomes aware that Grantee made any representation that was materially inaccurate, County will require Grantee to return all or a portion of funds provided by this Agreement. If any of the funds have not been used for the purpose stated herein, all funds shall be returned to County within sixty (60) days following County's request for repayment.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall continue in effect for two (2) years thereafter, or until the final Certification of Use of Funds (Exhibit A) has been received by County and County acknowledges that receipt, whichever is later. If at the time that the Agreement expires Grantee has not expended the funds allocated, Grantee shall return those funds to the County within sixty (60) days of the Date that the County requests the funds returned.

Reporting and document retention requirements shall extend beyond the term of this Agreement to the extent required by Government Code Section 8546.7.

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

Report and Audit Required: Within two (2) years after payment is released to the Accelerator/Incubator, Grantee shall provide to County's Contract Administrator a signed and notarized copy of Exhibit A, Certification of Use of Funds. The Contract Administrator shall acknowledge receipt of that document.

If requested, Grantee shall submit to County a year-end financial statement covering all fiscal years during which Grantee expends funds provided pursuant to this Agreement. Grantee shall maintain client records, books, documents, and other evidence, accounting procedures and practices 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. Grantee'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 their duly authorized representatives.

ARTICLE V

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

ARTICLE VI

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 VII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado 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 the County, this Agreement may be deemed to be canceled in its entirety.

ARTICLE VIII

Audit by California State Auditor: Grantee acknowledges that if total compensation under this Agreement is greater than \$10,000, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years following final payment, 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, Grantee shall maintain, for a period of at least three (3) years following final payment, 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 IX

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 in duplicate and addressed as follows:

To County:

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

Attn.: Kyle Zimbelman
Economic and Business
Relations Manager

or to such other location as County directs.

Notices to Grantee shall be addressed as follows:

[name and address of business]

Attn.: [insert]
President

or to such other location as Grantee directs.

ARTICLE X

Termination by Agreement: This Agreement may be terminated at any time by either party upon seven (7) days written notice to the other party. If the Agreement is terminated by Grantee before the Agreement expires, Grantee shall return to County all monies received by Grantee from County under this Agreement within thirty (30) days of demand by County.

ARTICLE XI

Indemnity: To the fullest extent permitted by law, Grantee 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 Grantee 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 Grantee to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

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 XIII

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 XIV

Interest of Grantee: Grantee covenants that during the term of this Agreement neither it, or any officer or employee of Grantee, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.

3. Any officer or employee of County that are involved in this Agreement.

If Grantee becomes aware of a conflict of interest related to this Agreement, Grantee shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination.

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Grantee shall complete and sign the attached Exhibit B marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by Grantee, if any, to any officer of County.

ARTICLE XV

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.

ARTICLE XVI

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

ARTICLE XVII

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

ARTICLE XVIII

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 XIX

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, or successor.

ARTICLE XX

Political Activity: Pursuant to California Government Code §54964, §54964.5, and §54964.6, Grantee 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 XXI

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: _____

Karen L. Garner
Director of Planning and Building
"County"

-- APPLICANT NAME --

By: _____

Dated: _____

[name]
President
"Grantee"

Exhibit A

Certification of Use of Funds

By signing below, Grantee certifies, under penalty of perjury, that Grantee used the funds allocated by this Agreement consistent with the terms of this Agreement.

By: _____

[name]
President
"Grantee"

Dated: _____

(Grantee)

Exhibit B

California Levine Act Statement

California Levine Act Statement

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclose of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, and any elected official (collectively "Officer"). It is the Contractor's/Consultant's responsibility to confirm the appropriate "officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

_____ YES _____ NO

If yes, please identify the person(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

_____ YES _____ NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

_____ Date

_____ Signature of authorized individual

_____ Type or write name of company

_____ Type or write name of authorized individual