

**Funding Agreement Between the
County of El Dorado and the Highway 50 Association
for the Funding of the Annual Wagon Train Event**

Funding Agreement #6287

THIS AGREEMENT, made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and the Highway 50 Association, a domestic non-profit public benefit corporation, duly qualified to conduct business in the State of California, whose mailing address is Post Office Box 454, Placerville, California 95667 (hereinafter referred to as "Grantee");

RECITALS

WHEREAS, County wishes to encourage tourism, agriculture, and economic development in the County by supporting promotional, cultural, and community activities; and

WHEREAS, County has appropriated funding for the purpose of providing assistance to entities to support promotional, cultural, and community activities throughout the County; and

WHEREAS, the funding provided herein will provide a valuable public service that will promote cultural activities, historical preservation activities, 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 Grantee's activities have contributed significant local economic impacts due to its tourist attraction; 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 May 31st of each contract year, County shall pay to Grantee the total annual sum of \$10,000 to be used for the Annual Wagon Train Event from Nevada through El Dorado County, including Placerville.

The total amount of this agreement shall not exceed \$20,000.

All funding shall be used for direct costs of the project and not for staff time, administrative, or overhead costs. Funding shall not be used for political advocacy of any kind and shall not be used for individual person or business promotion or

advertisement. Any person or business name mentioned in County-funded materials must be a sponsor or direct participant in the event or promotional effort. Any listing of service or product providers or co-sponsors must be inclusive. Any advertising space or time purchased by a person or business must be clearly and separately identified as paid advertising.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall continue in effect through June 30, 2023, or until the final statement of funds report has been accepted by County. Any funds that have not been expended by Grantee after the expiration of this Agreement shall be returned to County within sixty (60) days of County's request for same.

ARTICLE III

Funding Credit: Grantee agrees to credit County for the grant on all printed or internet materials generated for the project during the grant cycle by using County seal, unless otherwise requested or agreed upon with County. Electronic versions of print and web-ready County seal will be provided upon request. If there are no printed materials, credit to County is to be announced by Grantee verbally at the event or program.

ARTICLE IV

Local Sourcing: Grantee 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 V

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 VI

Reports Required: By September 1st of each contract year, the Grantee shall provide a statement, in reasonable detail, regarding the disposition of funds and shall return any unused funds. If the advanced funds have not been used for the purpose stated herein within sixty (60) days following the event, all funds shall be returned to County each contract year.

ARTICLE VII

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

ARTICLE VIII

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 IX

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 X

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, 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, 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 XI

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

With a copy to:

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

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Grantee shall be addressed as follows:

Highway 50 Association
P.O. Box 454
Placerville, CA 95667

Attn.: Steve Downer
Chief Executive Officer

or to such other location as Grantee directs.

ARTICLE XII

Termination of 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 prior to completion of the project, Grantee shall return to County all monies received by Grantee from County under this Agreement within thirty (30) days of demand by County.

ARTICLE XIII

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 XIV

Insurance: Grantee shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Grantee maintains

insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Grantee 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 Grantee in performance of the Agreement.
- D. In the event Grantee is a licensed professional or professional consultant 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. Grantee 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. Grantee 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, Grantee 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 Grantee agrees that no work or services shall be performed prior to the giving of such approval. In the event Grantee 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 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. Grantee'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 Grantee's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County.
- 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. Grantee's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Grantee cannot provide an occurrence policy, Grantee 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 XV

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 XVI

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 XVII

Interest of Grantee: Grantee covenants that Grantee 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. Grantee further covenants that in the performance of this Agreement no person having any such interest shall be employed by Grantee.

ARTICLE XVIII

Nondiscrimination:

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant 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; Consultant 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 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 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. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant'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 XIX

Public Aspect: Grantee agrees to provide a component within the Grantee's project that is open to the general public. For any performance or event resulting from Grantee's acceptance of this grant, a minimum of two complimentary tickets will be made available to the County for the purpose of assessing compliance with the Grant terms and conditions.

ARTICLE XX

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 XXI

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

ARTICLE XXII

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 XXIII

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 XXIV

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 XXV

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: _____
Board of Supervisors
"County"

Dated: _____

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

--HIGHWAY 50 ASSOCIATION--

By: Steve Downer
Steve Downer
Chief Executive Officer
"Grantee"

Dated: 2-18-22

By: Alice Schug
Alice Schug
Chief Financial Officer

Dated: 2-20-22