

# ORIGINAL

## FUNDING AGREEMENT #090-F1811

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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 Arts Council, a non-profit organization duly qualified to conduct business in the State of California whose mailing address is P.O. Box 2400, Placerville, California 95667 (hereinafter referred to as “Recipient”).

### RECITALS

**WHEREAS**, County wishes to encourage economic development in the County by supporting and promoting tourism, entertainment, business, and leisure travel activities through the 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 1

**Scope of Work:** Recipient shall perform services and provide deliverables described in Exhibit “A” marked “Scope of Work”, incorporated herein and made by reference a part hereof. 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”.

## ARTICLE 2

**Term:** This Agreement shall become effective when fully executed by the parties hereto and shall cover the period of July 1, 2017 through June 30, 2019.

The parties may mutually agree to extend the Agreement for one additional two-year term. County shall notify Recipient at least sixty (60) days prior to the termination date of this Agreement if it does not intend to extend the Agreement.

## ARTICLE 3

**Payment and Use of Funds:** County agrees to pay Recipient in equal installments of \$23,952.75 each in accordance with the following schedule:

### Fiscal Year 2017-18:

- Installment 1: Within thirty (30) days of execution of this Agreement
- Installment 2: Not later than November 1, 2017
- Installment 3: Not later than February 1, 2018
- Installment 4: Not later than May 1, 2018

### Fiscal Year 2018-19:

Funding for Fiscal Year 2018-19 is subject to the County's receipt and acceptance of a detailed Scope of Work for that year. Such Scope of Work shall be submitted to the Contract Administrator no later than April 1, 2018.

- Installment 1: Not later than August 1, 2018
- Installment 2: Not later than November 1, 2018
- Installment 3: Not later than February 1, 2019
- Installment 4: Not later than May 1, 2019

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 \$191,622.00.

## ARTICLE 4

**Reports Required:** Recipient shall submit a written Annual Report to the Contract Administrator no later than September 1<sup>st</sup> of each contract year. The Annual Report shall include a narrative summary of the activities and deliverables identified in Exhibit "A", Scope of Work, as well as an analysis demonstrating the 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, including the Comptroller General of the United States.

The provisions of this Article 4 shall survive termination of this Agreement.

#### **ARTICLE 5**

**Public Aspect:** Recipient agrees to provide a component within the Recipient’s Scope of Work that is open to the general public. For any performance or event resulting from Recipient’s acceptance of this funding, a minimum of two complimentary tickets will be made available to the County for the purpose of assessing compliance with the Funding Agreement terms and conditions.

#### **ARTICLE 6**

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

#### **ARTICLE 7**

**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 Contract, a local business is one that maintains a current business license from the Treasurer Tax Collector of El Dorado County.

#### **ARTICLE 8**

**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 the 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 9**

**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 10**

**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 11**

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

## **ARTICLE 12**

**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 subject to payment for services performed prior to cancellation.

## **ARTICLE 13**

**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 contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

## **ARTICLE 14**

### **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. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Recipient.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Recipient ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

## **ARTICLE 15**

**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  
330 Fair Lane  
Placerville, CA 95667  
ATTN: Don Ashton, Chief Administrative Officer

or to such other location as the County directs.

Notices to Recipient shall be addressed as follows:

EL DORADO ARTS COUNCIL  
P.O. Box 2400  
Placerville, CA 95667  
ATTN: Terry LeMoncheck, Executive Director

or to such other location as Recipient directs.

## **ARTICLE 16**

**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 titled "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 17**

**Indemnity:** The Recipient shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages 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 Recipient's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Recipient, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence 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 18**

**Insurance:** Recipient shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Recipient maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's 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 \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Recipient in the performance of the Agreement.
- D. Recipient shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- E. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- F. Recipient agrees that the insurance required above 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 the 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.

- G. 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.
- H. The Recipient's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Recipient's insurance and shall not contribute with it.
- I. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Recipient shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- K. 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.
- L. Recipient's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- M. 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.
- N. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

## **ARTICLE 19**

**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 20**

**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 21**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Recipient attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Recipient relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

## **ARTICLE 22**

**Nondiscrimination:** In completing the Scope of Work, employing personnel, or in any other respect of this Agreement, Recipient shall not employ discriminatory practices on the basis of race, color, sex, age, religion, sexual orientation, national origin or ancestry, or physical or mental disability.

## **ARTICLE 23**

**County Business License:** 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 Code Section 5.08.070.

## **ARTICLE 24**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Don Ashton, Chief Administrative Officer, or designee.



## **ARTICLE 25**

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

## **ARTICLE 26**

**Venue:** 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 27**

**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 28**

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

## **ARTICLE 29**

**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 30**

**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 31**

**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.

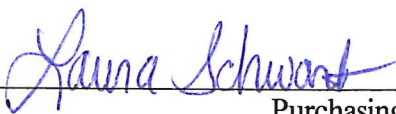

## **ARTICLE 32**

**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 --

Dated: 7/7/17

By:   
Purchasing Agent  
"County"  


-- RECIPIENT --

Dated: 7/3/17

EL DORADO ARTS COUNCIL  
A NON-PROFIT ORGANIZATION

By:   
Terry LeMoncheck  
Executive Director  
"Recipient"

**Exhibit "A"**  
**Scope of Work – FY 2017-18**

**El Dorado Arts Council**  
**Economic Development Funding Agreement**

Upon a duly executed contract and issuance of a notice to proceed from the County contract administrator, the Recipient shall perform the following activities/deliverables:

<b>Activity:</b>	<b>Deliverable(s):</b>	<b>Activity Completion Date:</b>
<p>Develop no fewer than four (4) curated exhibitions within the El Dorado Arts Council gallery space, and at spaces around El Dorado County, that demonstrate new art forms, highlight area heritage, focus attention on local artists, and forge local arts partnerships.</p>	<ol style="list-style-type: none"> <li>1. Completion of Events:               <ol style="list-style-type: none"> <li>a. Hiring of El Dorado County artists to exhibit and perform at events, as dictated by event content.</li> </ol> </li> <li>2. Attraction of a minimum 1,000 annual attendees combined at events.               <ol style="list-style-type: none"> <li>b. At least 20% of Event attendees from outside El Dorado County as demonstrated by ticket sales data. Generation of at least 100 bed nights for El Dorado County hoteliers as demonstrated by polling of area hoteliers in conjunction with arts events. Produce a plan to work with local visitor and economic development partners to market and package events for visitors.</li> </ol> </li> </ol>	<p>June 30, 2018</p>
<p>Offer a minimum of 8 standing programs and services that support local El Dorado County artists: Poetry Out Loud, Veterans Voices, Arts Incubator, Art Partners, Networking, Poet Laureate, Events Calendar, Studio Tour Preview.</p>	<ol style="list-style-type: none"> <li>1. Completion of Events:               <ol style="list-style-type: none"> <li>c. Hiring of El Dorado County artists to exhibit and perform at Events.</li> </ol> </li> <li>2. Attraction of a minimum 1,000 annual attendees combined at events.               <ol style="list-style-type: none"> <li>d. At least 20% of Event attendees from outside El Dorado County as demonstrated by ticket sales data. Generation of at least 500 bed nights for El Dorado County hoteliers as demonstrated by polling of area hoteliers in conjunction with arts events.</li> </ol> </li> </ol>	<p>June 30, 2018</p>