

Funding Agreement

Between

County of El Dorado and (Applicant's Name)

Funding Agreement #XXXX

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 XXX, whose principal place of business is XXX, (hereinafter referred to as "Grantee");

RECITALS

WHEREAS, the Transient Occupancy Tax (TOT), or Hotel/Motel Occupancy Tax, is a tax imposed on the daily rental price of a room in a lodging facility, including vacation home rentals, when used by visitors staying in the unincorporated portions of El Dorado County for a period of 30 days or less; and

WHEREAS, neither the tax code nor the El Dorado County Ordinances require any specific use of TOT funds; however, historically TOT funds have been directed toward Economic Development to offset operational expenses as well as other various tourism related expenses, including funding agreements to promote tourism and economic development; and

WHEREAS, County has determined that 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 Grantee's activities have contributed significant local economic impacts due to its tourist attractions; 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, the parties do hereby agree as follows:

ARTICLE I

Activities: The County shall provide funds to Grantee for the purposes set forth in Exhibit A. Grantee shall use all funding received under this Agreement solely for those purposes

defined in Exhibit A, and shall be responsible for administering all eligible activities in a manner satisfactory to County.

ARTICLE II

Payment Procedures: Payment Procedure shall be pursuant to Exhibit A, and fall within one of the following categories:

1. Payment Procedure for Advance Payments

Advance payments shall be provided pursuant to Exhibit A "TOT Project."

If advance payments are authorized by Exhibit A, County shall advance funds to Grantee within forty-five (45) days following execution of this Agreement for allowable costs as defined in Exhibit A.

If Grantee has received an advance payment, Grantee shall include an accounting of advanced funds in each report submitted.

Any TOT funds advanced to Grantee but not expended shall be returned to County upon project completion and no later than sixty (60) days following County's request for repayment.

2. Payment Procedure for Reimbursement Payments

Grantee shall provide a request for reimbursement with each report for any expenditures in excess of advanced funds received. County shall review that report to determine if the costs are allowable. County shall make payment within forty-five (45) days of the County approving the request. Reimbursement of expenditure shall be made on the basis of expenditures incurred and paid by Grantee.

3. Provisions for Additional Advance Payment

Notwithstanding the procedures in this section, or the provisions of Exhibit A "TOT Project," County may, at its sole discretion, approve an additional advance payment to Grantee, upon request from Grantee. Such approval shall not increase the project total amount, or authorize a change to the project activities or allowable costs.

Article III

Duplication of Benefits: Grantee certifies that it has disclosed all other funding received, dedicated, or obligated for activities funded by this Agreement. Funding to be disclosed includes any grant or similar funding from Federal, State, or local public agencies; any funds designated or obligated by Grantee prior to execution of this Agreement; or any other funds received from a public or private entity designated or intended for activities funded by this Agreement.

Should Grantee receive or seek funding that would be eligible for disclosure, Grantee shall notify County within fourteen (14) calendar days. If Grantee receives funding for activities funded by this Agreement after execution of this Agreement, in an amount exceeding Grantee's total unreimbursed costs, County may, at its discretion, require return of TOT funds in excess of total costs unreimbursed by other sources.

Article IV

Term: This Agreement shall become effective when fully executed by the parties hereto and shall expire one (1) year following the Period of Performance, as defined in Exhibit A.

Article V

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 XII, 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 VI

Reporting Required: Reports shall be made on an annual basis, or upon completion of the TOT Project.

Reports shall include:

- Project status
- Detail of expenditures for the report period. Reports shall include sufficient

information to demonstrate that the expenditures incurred support the approved use of funds as defined in Exhibit A. Such reporting may include documentation of invoices, confirmation of receipt of products, submission of payroll logs, proof of contracts, etc., to substantiate that the expense is an allowable cost. Failure to submit proper documentation verifying that the expense is an allowable cost may result in termination of this Agreement and recoupment of awarded funds from the Grantee that are subsequently determined to be unallowable.

- Summary of expenditures from project inception through the reporting period. Reports shall be submitted to County via email to jeremy.apodaca@edcgov.us, with a copy to kerri.williams-horn@edcgov.us.

If Grantee is eligible for Reimbursement Payments, as defined in Article II, Grantee may submit reports for reimbursement on a monthly basis.

If Grantee has received Advance Payments, as defined in Article II, Grantee's reports shall include an accounting of the disposition of all advanced funds received.

ARTICLE VII

Audits Required: Grantee shall submit to County a year-end audited financial statement covering all fiscal years during which Grantee expended funds provided pursuant to this Agreement. Grantee shall maintain for a period of at least three (3) years, or for any longer period required by law, after final payment is made under the Agreement 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. This provision of this Article III, Audits Required, shall survive termination of this Agreement.

ARTICLE VIII

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 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
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Emma Owens
Management Analyst

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:

Grantee Name
Street Address
City, State Zip Code

Attn.:

or to such other location as Grantee directs.

ARTICLE X

Audit by California State Auditor: Grantee 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, Grantee shall maintain, for a period of at least three (3) years, or for any longer period required final payment under the contract, all books, records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XI

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 XII

Compliance with Applicable Law: Grantee will comply with all Federal, State, and local laws and ordinances which are applicable to its program and projects, including but not limited to non-discrimination provisions.

ARTICLE XIII

Change of Address: In the event of a change in address for Grantee's principal place of business, Grantee shall notify County in writing pursuant to the provisions contained in

this Agreement under the ARTICLE VIII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgement in writing by the County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XIV

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 XV

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant 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 Consultant in performance of the Agreement.
- D. In the event Consultant 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. Consultant 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. Consultant 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, Consultant 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 Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant 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. Consultant'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 Consultant'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 Consultant 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. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

- N. In the event Consultant cannot provide an occurrence policy, Consultant 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 XVI

Administrator: The County Officer or employee with responsibility for administering this Agreement is **Emma Owens, Management Analyst, Chief Administrative Office**, or successor or designee.

ARTICLE XVII

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 XVIII

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 XIX

No Third Party Beneficiary: Nothing in this Agreement shall be construed to create any rights of any kind or nature in any other party not a named party to this Agreement.

ARTICLE XX

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 XXI

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

Article XXII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

Article XXIII

Suspension or Termination: 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, or any issued under this 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.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to use any remaining TOT funds for similar purposes, or for any other allowable purpose for TOT funds.
2. County shall pay to Grantee any costs that were determined to be allowable before the date of the Notice of Termination.
3. Grantee shall refund to County any amounts previously paid that were subsequently determined to be unallowable.

The following shall be a material breach of this Agreement:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, policies or directives as may become applicable at any time;
2. Failure, for any reason, of Grantee to fulfill in a timely and proper manner its obligations under this Agreement, including the obligation to submit proper documentation in (V),;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Grantee to County reports that are incorrect or incomplete in any material respect.

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 costs determined to be

allowable before the effective date of termination, as set forth in the Notice of Termination provided to Grantee.

Article XXIV

Conflict of Interest: The Grantee shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

Article XXV

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement on the dates hereafter set forth below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Don Ashton
Chief Administrative Officer
"County"

-- GRANTEE --

By: _____

Dated: _____

xxx
Executive Director
"Grantee"

EXHIBIT A – TOT PROJECT

GRANTEE NAME:

PERIOD OF PERFORMANCE:

DESCRIPTION OF PROJECT:

ELIGIBLE USE OF FUNDS:

PROJECT TOTAL AMOUNT: \$XX,XXX

Advance Funding Amount: \$XX,XXX

The total funds provided pursuant to this Agreement shall not exceed the Project Total Amount.

ADDITIONAL PROJECT TERMS AND CONDITIONS: