

**Funding Agreement Between the  
County of El Dorado and The Economic Development Corporation  
of El Dorado County for a Destination Operating System**

**Funding Agreement #6493**

**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 Economic Development Corporation of El Dorado County, a domestic non-profit corporation duly qualified to conduct business in the State of California, whose mailing address is 542 Main Street, Placerville, California 95667 (hereinafter referred to as "Grantee");

**RECITALS**

**WHEREAS**, County wishes to encourage tourism and economic development in the County through collaborative efforts with outside community agencies; and

**WHEREAS**, County has appropriated funding for the purpose of providing assistance to community agencies with the intent of enhancing operational and strategic decision making by removing the technical barriers to data-informed decision-making, allowing for greater expertise and insight to guide the tourism and visitor economy; and

**WHEREAS**, Grantee has accepted a proposal from Zartico to develop a Destination Operating System which will build a framework to bring together data systems and sources to use in marketing, community development and sustainability efforts; and

**WHEREAS**, the funding provided herein will provide a valuable public service that will guide decision making and key performance indicators which will 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 applicant's stated purpose;

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

**ARTICLE I**

**Payment and Use of Funds:** Within sixty (60) days of execution of this Agreement, County shall pay to Grantee the lump sum of \$9,000 to be used for the first year's implementation and service costs associated with the Grantee's agreement with Zartico for the Destination Operating System.

Contingent upon the successful renewal of Grantee's agreement with Zartico for a second year and within sixty (60) days of County receipt of the Grantee's fully executed

renewal agreement notice, County shall pay to Grantee the lump sum of \$9,000 to be used for the second year service costs associated with the Destination Operating System.

The total amount of this agreement shall not exceed \$18,000.

Funds shall only be used to support the development, implementation, and ongoing costs associated with the Destination Operating System. Funding shall not be used for political advocacy of any kind and shall not be used for individual person or business promotion or advertisement. Grantee shall provide a statement, in reasonable detail, regarding the disposition of the funds and shall return any unused funds. If any of the advanced 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 expire two (2) years from the date thereof, 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**

**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**

**Reports Required:** Grantee shall submit to the 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. The provision of this ARTICLE IV, Reports Required, shall survive termination of this Agreement.

#### **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, 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 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

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:

The Economic Development Corporation  
of El Dorado County  
542 Main Street  
Placerville, CA 95667

Attn.: Laurel Mary Brent-bumb  
Chief Executive Officer

or to such other location as Grantee directs.

#### **ARTICLE X**

**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 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 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 XV**

### **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 XVI**

**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 XVII**

**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.

#### **ARTICLE XVIII**

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

#### **ARTICLE XIX**

**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 XX**

**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 XXI**

**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 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.

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

--COUNTY OF EL DORADO--

By: Roni Parlin  
Board of Supervisors  
"County"

Dated: 6-14-22

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By: Michelle Ferguson  
Deputy Clerk

Dated: 6-14-22

--THE ECONOMIC DEVELOPMENT CORPORATION  
OF EL DORADO COUNTY--

By: Laurel Mary Brent-bumb  
Laurel Mary Brent-bumb  
Chief Executive Officer  
"Grantee"

Dated: 5/9/2022

By: Mindy F. Jackson  
Mindy F. Jackson  
Secretary

Dated: 5/9/2022