

Growth Factory Program Agreement with City of Roseville

This Program Agreement (“**Agreement**”) is entered into by and between the Growth Factory (“**Growth Factory**”), a California nonprofit public benefit corporation and the City of Roseville (“**The City**”), a municipal corporation, as of _____, 2022 (“**Effective Date**”). Growth Factory and City may be referred to herein collectively as the “Parties,” or each individually as a “Party.”

Section 1 - Recitals

WHEREAS, Growth Factory is a nonprofit public benefit corporation organized for the specific purpose of providing educational, informational, community development, and other services and opportunities to entrepreneurs and others working with technology and other innovative industries through the development and hosting of various programs and events; and

WHEREAS, Growth Factory is committed to building and fostering a community of entrepreneurs, advisors, potential investors, and partners, in order to help foster and accelerate the development and growth of technology and other innovative startup companies throughout the Northern California region; and

WHEREAS, the City is also committed to building and fostering a community of successful entrepreneurs and small businesses in Roseville; and

WHEREAS, Growth Factory and City desire to collaborate with one another and under which each Party will participate in the development, marketing, and execution of various projects and initiatives designed to engage, educate, and accelerate local entrepreneurs and innovative startup companies (hereinafter referred to as the “**Program**”); and

WHEREAS, the Parties intend that this Agreement express their mutual desire and collective goal to support startup companies in the region and assist entrepreneurs and local small business in a collaborative and iterative manner as set forth in this Agreement; and

WHEREAS, the City desires to lease to Growth Factory, by separate Lease Agreement, approximately 2,416 square feet of ground floor office space at 316 Vernon Street for the Growth Factory to operate a portion of its entrepreneurship programs and activities; and

WHEREAS, the City and Growth Factory intend to share in the development, management, and expense of various entrepreneurship programs and activities at the 316 Vernon Street location pursuant to the terms stated herein.

NOW THEREFORE, the Parties agree as follows:

Section 2 - Program Scope and Initiatives

- 2.1 Program Scope and Initiatives. The Parties agree to work together and collaborate upon various initiatives in support of the Program to spur entrepreneurial activities and economic development in the region as further detailed in the Program Document prepared collectively by the City of Roseville and the Growth Factory and attached hereto as Exhibit A. Such initiatives are dynamic and subject to change and may include, but are not limited to:
- (a) Growth Factory Initiatives. A minimum of 25% of all Growth Factory-related events and activities will take place in the subject space at 316 Vernon Street to further the joint goal of promoting venture-backable companies.
 - (b) Innovation Challenges. The Parties agree to jointly execute and promote regularly scheduled Innovation Challenges to encourage local startups and entrepreneurs to engage with regional companies to help identify and solve challenges via pitch competitions, pilot projects, and proofs of concept. Innovation Challenges will be set at the rate of no less than one (1) and up to two (2) per year.
 - (c) Dreamers Program. The Parties agree to jointly develop and launch a "Dreamers Program" to catalyze the launch of new businesses based in the City of Roseville. Dreamers Programs will be set at the rate of two (2) per year.
 - (d) Inclusive Workforce Development. The Parties agree to jointly research, ideate and execute ongoing programs aimed at encouraging entrepreneurship amongst underrepresented individuals and groups in the Roseville community.
 - (e) Social Events. The Parties agree to jointly develop a calendar of regularly scheduled and ad hoc in-person events relevant to the Program to engage mutual stakeholders and the community-at-large. These events include, but are not limited to, meetups, socials, interview panels, and other events as defined by both Parties.
 - (f) Thought Leadership. The Parties agree to promote these initiatives and their results on an ongoing basis via co-marketing efforts including, but not limited to, webinars, speaking opportunities, white papers, and other activities.
 - (g) Partner Engagement. The Parties agree to jointly identify and engage local corporate and civic partners on an ongoing basis in the interest of increasing their competitiveness, long-term sustainability, and market visibility via these initiatives.
- 2.2 Program Duration. The Program will begin on the Effective Date and terminate at the end of five (5) years from the Effective Date ("Term"). Program funding has been identified by the Parties through the first three (3) years of this Agreement. Additional funding allocations will be assessed for the remaining two (2) years of the Agreement, based on information, feedback, market conditions and community needs identified through the first three (3) years of operation. Additionally, the potential inclusion of sponsorships and community partnerships may help offset Program costs.
- 2.3 Program Budget and Schedule. Growth Factory has provided the City with cost estimates for Years 1-3 and that information is attached hereto as Exhibit B. Growth Factory will submit to City a

quarter-by-quarter schedule and budget for Program Year 1 for the City to review and approve within two (2) weeks after start of the Term, consistent with the previously agreed upon annual budget amounts noted in Exhibit B.

- (a) For Program Year 2 and Program Year 3, Growth Factory will submit annual budgets and schedules for the City's review and approval within two (2) months prior to the start of each year, and quarterly budgets within four (4) weeks prior to the start of each quarter, consistent with the previously agreed upon budget amounts noted in Exhibit B.
- (b) Any differences in remitted payment and actual accrued costs will be reconciled annually by Growth Factory by applying the overages to the budget delivered to the City for the first quarter of the following Program year.

Section 3 - 316 Vernon Street Space Lease

- 3.1 Agreement to Lease. The City agrees to lease to Growth Factory, via separate Lease Agreement and subject to the approval of the Roseville City Council, a 2,416 square foot ground floor space located at 316 Vernon Street, Roseville CA (referred to as "**Vernon Street Space**"). The Vernon Street Space will serve as the Growth Factory's central location for the Program initiatives outlined in Section 2.
- 3.2 City Improvements to Vernon Street Space. The City agrees to provide up to three hundred and thirty thousand dollars (\$330,000.00 USD) in tenant improvement costs to the Vernon Street Space, which may include, but are not limited to permitting, planning, design, construction, and other costs necessary for readying the space for occupation and regular use by Growth Factory. In the event improvement costs are on track to exceed the allocated budget, the Growth Factory may decide to forgo mutually agreed upon improvements or cover any additional costs. The City also agrees to cover common area maintenance (CAM) and incidental costs associated with landlord repair and upkeep. The City will solicit and review feedback from Growth Factory on any improvements to be made prior to implementation, however the City maintains final approval on any improvements made to the Vernon Street Space.
- 3.3 Lease Buy-Out. The City agrees to provide Growth Factory with an option to terminate its lease before the end of the Lease Term, contingent upon Growth Factory providing a sixty (60) day notice to The City. In such event, Growth Factory agrees to forfeit its security deposit and a payment equivalent to six (6) months of rent if terminated during Years 1-3 or a payment equivalent to three (3) months of rent if terminated during Years 4-5.
 - (a) Lease Termination and Agreement Survivability/Breach. Although the Vernon Street Space lease provision noted in Section 3.1 above is independent of any other terms in this Agreement and will be effectuated via a separate Lease Agreement, the City maintains the right to consider Growth Factory's decision to terminate any resulting lease as an opportunity to revise the Agreement terms or terminate the Agreement in whole, in which case notice will be provided by Growth Factory pursuant to Section 7 below.

Section 4 - Marketing and Branding

- 4.1 Launch of Vernon Street Space. Upon satisfactory completion of the improvements made to the Vernon Street Space pursuant to Section 3.2, the Parties will plan an event to promote the launch of the Program (“Launch”), with associated costs to be determined by both Parties and paid for by The City and Growth Factory in equal amounts, but not to exceed three thousand dollars (\$3,000.00) per Party.
- 4.2 Joint Marketing Approvals. The Parties agree to undertake additional joint marketing activities as further approved by both Parties. During the Term, all promotional content, marketing activities, press releases and other publicity related to the Program and the Parties’ relationship, including promotion via the Program or Launch or any other subsequent events, will be subject to the prior written approval of each Party (not to be unreasonably withheld) for each such use. For clarity, after the Launch, publicity regarding the Parties’ relationship will be subject to prior written approval of each Party.
- 4.3 Marketing Guidelines. Each Party agrees not to represent itself as an agent or employee of the other Party. Neither Party shall make any representations (i) on the other Party’s behalf or (ii) regarding the other Party or its products or services except as consistent with the written descriptions provided by such other Party hereunder. Each Party agrees not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to the other Party or its products or services and agrees to comply with all applicable federal, state and local laws and regulations in connection with the exercise of its marketing rights under this Agreement. Each Party will abide by the terms and conditions of all social media sites or other third party platforms that it uses (if any) in connection with its marketing activities under this Agreement.

Section 5 - Resources

- 5.1 Qualified Personnel. The Parties shall utilize only competent personnel, employed and under the supervision of the Growth Factory, with oversight from the to-be-formed “Venture Lab Advisory Committee,” to perform any services related to the Program Scope and Initiatives outlined in Section 2.1 and further detailed in Exhibit A. The Venture Lab Advisory Committee noted above will be a five person advisory committee and the City of Roseville shall hold no less than two seats on the five person committee and shall serve (or otherwise designate a representative) as Chair of the Committee. The Growth Factory shall also hold no less than two seats on the five person committee with the fifth seat to be held by a mutually agreed upon independent third party. Growth Factory will comply with City’s reasonable requests regarding assignment and/or removal of personnel.
- 5.2 Personnel for Vernon Street Space. Any dedicated resources employed to manage the Vernon Street Space during the Program and Term shall be employed and managed by Growth Factory with consideration from the Venture Lab Advisory Committee noted in Section 5.1 above.

- 5.3 Subcontracting. The Parties may subcontract portions of the Program only upon prior written approval and mutual agreement. Growth Factory is responsible for its subcontractors throughout the course of the work required to perform the services noted in the Program Scope and Initiatives.
- 5.4 Ownership of Data Collected during Program. In accordance with federal, state, and local laws and ordinances, the Parties will maintain joint ownership of all data produced and collected during the Program Term, including but not limited to Program participant information, Program partner information, and any related third-party information. Both Parties will make commercially-reasonable efforts to ensure the security of this information against misuse and as it relates to their specific needs, including the withholding of personally identifiable information (“PII”).
- 5.5 Subcontractor/Contractor Representation. Neither party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

Section 6 - Intellectual Property

- 6.1 Pre-existing and Independent Intellectual Property. Each Party retains all of its right, title, and interest in and to all intellectual property (“IP”) that: (1) was conceived or developed by that Party prior to the Effective Date; or (2) is independently conceived or developed by that Party outside the scope of this Agreement. “IP” means any idea, design, concept, technique, apparatus, method, discovery, improvement, invention, work, or other item protectable by patent rights, copyrights, trademark rights, rights in trade secrets (if any), design rights, database rights, domain name rights, moral rights, or any other intellectual property rights (registered or unregistered) throughout the world.
- 6.2 Innovation Challenge and Dreamers Program IP Ownership. The Parties will maintain perpetual and royalty-free licenses to promote both their respective involvements and associated IP developed within the Program.
- (a) Innovation Challenge IP ownership. All IP developed in relation to Innovation Challenges will be owned by Growth Factory.
- (b) Dreamers Program IP ownership. All IP developed in relation to Dreamers Program will be owned by The City.

Section 7 - Term and Termination

- 7.1 Term. This Agreement shall be in effect during the Term noted in Section 2.2 above, unless terminated in accordance with Section 7.2 below.
- (a) Termination. Either Party may terminate this Agreement for cause if the other Party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; or (b) ceases operation without a successor.

- 7.2 Effect of Termination. Upon expiration or termination of this Agreement for any reason (a) each Party shall promptly cease all use of the other Party's branding or marketing materials; and (b) Subject to the provisions of California Government Code section 6254 *et seq* regarding public records, within thirty (30) days after such expiration or termination, each Party shall return to the other Party or destroy all Confidential Information defined in Section 8.1 and all other material received from such other Party at such other Party's election, and upon request provide the other Party with confirmation (which confirmation may be provided via email) that it has complied with the foregoing obligations.
- 7.3 Survival of Termination. The provisions of Sections 4.2 (Joint Marketing Approvals), 5 (Resources), 6 (Intellectual Property), 8 (Confidentiality), 9 (Liability and Indemnification), and 10 (General) shall survive any termination or expiration of this Agreement.
- 7.4 Notice. Any consent, approval, or communication that either Party desires or is required to give the other Party shall be in writing and may be delivered personally or by deposit in the U.S. mail, first class postage prepaid, addressed as follows:

CITY OF ROSEVILLE

City of Roseville
 City Manager
 311 Vernon Street
 Roseville, CA 95678

GROWTH FACTORY

Growth Factory
 4465 Granite Dr. Suite 700
 Rocklin, CA 95677
 Attn: Rick Spencer

With a copy to:

City of Roseville
 City Attorney
 311 Vernon Street
 Roseville, CA 95678

Section 8 - Confidentiality

- 8.1 Confidential Information. The Parties agree that all inventions, know-how, business, technical and financial information it receives from each other constitutes the confidential property of the disclosing party, provided that it is identified as confidential at the time of disclosure or should be reasonably known by the receiving party to be confidential ("Confidential Information") due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any business decisions, investment outcomes, similar financial information, any information relating to a future or potential product or service (or feature thereof) of the Parties or any of its' other associated entities will be deemed confidential and proprietary information of the disclosing party without any marking or further designation. Except as expressly authorized herein, the receiving party will hold in confidence and not use or disclose any Confidential Information. The receiving party's nondisclosure obligation will not apply to information which they can document:

- was rightfully in its possession or known to it prior to receipt of the Confidential Information;
- is or has become public knowledge through no fault of the receiving party;
- is rightfully obtained by them from a third party without breach of any confidentiality obligation; or
- is independently developed by employees of the receiving party who had no access to such information.
- is required to be disclosed pursuant to the California Public Records Act and the provisions noted in California Government Code section 6254 *et seq.*

The receiving party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the disclosing party). The receiving party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the receiving party the disclosing party will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

Section 9 - Liability and Indemnification

9.1 Limitation of Liability. In no event shall either party be liable to the other party for any incidental, consequential, indirect, or punitive damages (including but not limited to lost profits) regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise and even if advised of the possibility of such damages.

9.2 Indemnification. To the fullest extent allowed by law, the Parties shall defend, indemnify, and save and hold harmless the other Party, its officers, agents, employees and volunteers from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to workers and the public), or damage to property, resulting from or arising out of the other Party's willful misconduct or negligent act or omission while engaged in the performance of obligations or exercise of rights created by this Agreement, except those matters arising from either Party's sole negligence or willful misconduct. The Parties intend that this provision shall be broadly construed.

Growth Factory agrees to defend and indemnify City if, despite the Parties intent and practice, any venue, agency, or court with competent jurisdiction determines that Growth Factory and/or any of its agents, officers, employees, volunteers, independent contractors, or subcontractors, are characterized as employee(s) of City. Growth Factory's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

Section 10 - General

- 10.1 Agreement. This Agreement constitutes the entire agreement between the Parties, and supersedes and replaces all agreements, arrangements and understandings relating to the subject matter hereof, whether reduced to writing or not, that may have preceded this Agreement.
- 10.2 Amendments. No amendment or modification of this Agreement or any provision of this Agreement shall be effective unless in writing and properly executed by both Parties.
- 10.3 Legal Compliance and Jurisdiction. The Parties shall comply with all applicable laws, regulations and ordinances in connection with its participation in any events or initiatives associated with this Agreement. This Agreement shall be governed by, construed and enforced in accordance with the internal laws of the state of California, without regard to conflict of law provisions. All claims or disputes arising from or in connection with this Agreement or as a result of the relationship created thereby shall be adjudicated only by the state or federal courts sitting in Placer County, California.
- 10.4 Waiver and Transferability. The Parties agree to use commercially-reasonable efforts to cooperate and collaborate in the performance of this Agreement so that its purposes may be successfully carried out. The waiver or failure of any Party to exercise any rights hereunder shall not be deemed a waiver of any other right or future rights. Any attempt to transfer or assign this Agreement without such written consent will be null and void.
- 10.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, taken together, constitute one and the same agreement.


[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation has authorized the execution of this Program Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ___ day of _____, 2022, and Growth Factory has caused this Agreement to be properly executed.

CITY OF ROSEVILLE, a
municipal corporation:

GROWTH FACTORY, a
California nonprofit public benefit corporation


BY: _____
DOMINICK CASEY
City Manager

BY:  _____
Print name: Mark Haney
Title: President

ATTEST:

and

BY: _____
CARMEN AVALOS
City Clerk

BY:  _____
Print name: Monique Brown
Title: Managing Director & Secretary

APPROVED AS TO FORM:

BY: _____
MICHELLE SHEIDENBERGER
City Attorney

APPROVED AS TO SUBSTANCE:

BY: _____
MELISSA ANGUIANO
Economic Development Director

EXHIBIT LIST:

Exhibit A – Program Document

Exhibit B - Program Budget (Years 1-3)

EXHIBIT A
PROGRAM DOCUMENT

EXHIBIT B
PROGRAM BUDGET (YEARS 1-3)









Growth Factory Program Agreement 4-28-22 - GF Signatures

Final Audit Report

2022-05-05

Created:	2022-05-05
By:	Richard Spencer (rick.spencer@koxlabs.com)
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"Growth Factory Program Agreement 4-28-22 - GF Signatures" History

-  Document created by Richard Spencer (rick.spencer@koxlabs.com)
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