

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF LAKE AND REGIONAL HOUSING AUTHORITY
FOR HOUSING CONSULTANT SERVICES**

THIS AGREEMENT, is entered into as of July 1, 2017, between the COUNTY OF LAKE, through its Department of Social Services, referred to as COUNTY, and REGIONAL HOUSING AUTHORITY, referred to as AGENCY, with reference to the following:

A. WHEREAS, COUNTY has received funding from the HOME Investment Partnerships Program, referred to as HOME, from the State of California, Department of Housing and Community Development, referred to as HCD, to finance the County of Lake Housing Rehabilitation and Homeownership Assistance Programs, referred to as PROGRAMS; and

B. WHEREAS, AGENCY meets the requirements as outlined by the HOME Program and COUNTY's procurement requirements and has expertise in carrying out housing rehabilitation program; and

C. WHEREAS, COUNTY wishes to enter into a professional services agreement with AGENCY for purposes of implementing the PROGRAMS mentioned above utilizing HOME funds; and

ACCORDINGLY, IT IS AGREED:

1. TERM: This Agreement shall become effective upon the aforementioned date and shall expire on June 30, 2019.

2. SERVICES:

a. HOME-Eligible: AGENCY agrees to provide professional services for the PROGRAMS as described in Scope of Work Attachments A-1 and A-2, and to be compensated by COUNTY as outlined below in Paragraph 3, PAYMENT FOR SERVICES.

b. County of Lake: AGENCY agrees to provide program administration services for the PROGRAMS as described in Scope of Work Attachments A-1 and A-2, and to be compensated by COUNTY as outlined below in Paragraph 3, PAYMENT FOR SERVICES.

3. PAYMENT FOR SERVICES: COUNTY shall pay AGENCY a sum not to exceed \$117,518. This amount is an administrative fee based on 22% of each housing rehabilitation project and 7% of each homeownership assistance loan plus general administration expenses. Payment for services provided pursuant to this Agreement subject to the following conditions:

a. County of Lake Housing Rehabilitation Program

i. Up to \$10,000 of HOME funds will be spent only for HOME-eligible

General Administration Program costs, as defined by HCD and outlined in SCOPE OF WORK (Attachment A-1) and PROGRAM GUIDELINES.

ii. Up to \$88,360 of HOME funds will be spent only for HOME-eligible Activity Delivery costs, as defined by HCD and outlined in SCOPE OF WORK (Attachment A-1) and PROGRAM GUIDELINES.

iii. The cost breakdown of services provided to the PROGRAM is defined in AGENCY BUDGET, attached as Exhibit B.

iv. The COUNTY will reimburse AGENCY an administrative fee up to 22% of the COUNTY's HOME Program Income funds required to be expended prior to drawdown of open grant funds.

b. County of Lake Homeownership Assistance Program

i. Up to \$10,000 of HOME funds will be spent only for HOME-eligible General Administration Program costs, as defined by HCD and outlined in SCOPE OF WORK (Attachment A-2) and PROGRAM GUIDELINES.

ii. Up to \$9,158 of HOME funds will be spent only for HOME-eligible Activity Delivery costs, as defined by HCD and outlined in SCOPE OF WORK (Attachment A-2) and PROGRAM GUIDELINES.

iii. The cost breakdown of services provided to the PROGRAM is defined in AGENCY BUDGET, attached as Exhibit B.

iv. The COUNTY will reimburse AGENCY an administrative fee up to 7% of the COUNTY's HOME Program Income funds required to be expended prior to drawdown of open grant funds.

c. General Conditions

i. The compensation to be provided to AGENCY under this Agreement will be reduced due to any inability to provide services, whether such an inability is due to AGENCY activities or other activities or circumstances beyond the control of AGENCY.

ii. COUNTY must approve budget changes in writing prior to any budget adjustment or amendment. The budget adjustment and amendment process is outlined in AGENCY BUDGET.

iii. Following the close of each quarter (March, June, September, December), AGENCY shall submit invoice statements stating the services provided and the actual costs of the previous quarter.

iv. Invoices shall be in the form and contain the information requested by COUNTY and shall be subject to approval by COUNTY, which approval shall not be unreasonably withheld. COUNTY will make payments within sixty (60) days of receipt of approved invoice. COUNTY will notify AGENCY of any objections, questions, or complaints regarding any particular invoice within thirty (30) days of receipt of such invoice. If COUNTY determines that any amounts were improperly billed and/or paid to AGENCY, or AGENCY was improperly underpaid, adjustments by such amounts may be made in the payment on the current or a later invoice with explanation provided. No interest or penalties shall accrue for late payments.

4. **COMPLIANCE WITH LAW:** AGENCY shall provide services in accordance with all of the provisions of Federal, State, and local laws; current and future enacted Federal, State, and local governmental guidelines, policies and available funding covenants; and the rules and regulations governing the HCD HOME Program. With respect to AGENCY'S employees, AGENCY shall comply with all laws and regulations pertaining to wages and hours, State and Federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment. In addition, AGENCY agrees to fully comply with all Federal, State and local laws, regulations, and directives that apply to the work involved in the project.

5. **RECORDS:** AGENCY shall maintain complete and accurate records required by the Federal regulations that are pertinent to the activities to be funded under this Agreement. In addition, AGENCY shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All books, records, accounts, documentation, and all other materials relevant to the PROGRAMS shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, AGENCY shall make all such records available to the Auditor and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the expiration date of this Agreement or five (5) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, and any amendments, whichever is later.

6. **MONITORING:** COUNTY will monitor AGENCY during the term of this Agreement for compliance with any or all applicable requirements and for attainment of expenditure milestones and PROGRAMS' goals outlined in SCOPE OF WORK.

7. **INSURANCE:** Prior to approval of this Agreement by COUNTY, AGENCY shall file with the COUNTY Program Staff evidence of the required insurance as set forth in INSURANCE REQUIREMENTS attached as Exhibit "C".

8. **AGENCY STATUS:**

a. This Agreement is entered into by both parties with the express understanding that AGENCY will perform all services required under this Agreement as an independent

contractor. Nothing in this Agreement shall be construed to constitute AGENCY or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

b. AGENCY agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, AGENCY shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over AGENCY as to how the services will be performed. As AGENCY is not COUNTY'S employee, AGENCY is responsible for paying all required State and Federal taxes. In particular, COUNTY will not:

- i. Withhold FICA (Social Security) from AGENCY'S payments.
- ii. Make State or Federal unemployment insurance contributions on AGENCY'S behalf.
- iii. Withhold State or Federal income tax from payments to AGENCY.
- iv. Make disability insurance contributions on behalf of AGENCY.
- v. Obtain unemployment compensation insurance on behalf of AGENCY.

c. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of AGENCY to assure compliance with this Agreement.

9. INDEMNIFICATION:

a. To the fullest extent permitted by law, AGENCY shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by AGENCY or its agents, officers and employees under this Agreement. Such indemnification obligations shall not be limited in any way by any limitation or the amount or type of damages, compensation or benefit payable by or for either party under worker's or workmen's compensation, disability benefits or other employee entitlements. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by AGENCY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for AGENCY'S failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

b. To the fullest extent permitted by law, COUNTY shall hold harmless, defend and indemnify AGENCY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including AGENCY property, arising from, or in connection with, the performance by COUNTY or its agents, officers and employees under this Agreement. Such indemnification obligations shall not be limited in any way by any limitation or the amount or type of damages, compensation or benefit payable by or for either party under worker's or workmen's compensation, disability benefits or other employee entitlements. This indemnification specifically includes any claims that may be made against AGENCY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against AGENCY alleging civil rights violations by COUNTY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on AGENCY for COUNTY'S failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

10. CONFLICT OF INTEREST:

a. AGENCY agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including AGENCY for this purpose, from the making of any decision on behalf of COUNTY in which such officer, employee or AGENCY has a direct or indirect financial interest. A violation can occur if the public officer, employee or AGENCY participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on AGENCY or any business firm in which AGENCY has an interest, with certain narrow exceptions.

b. No covered persons who exercise or have exercised any functions or responsibilities with respect to HOME-assisted activities under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial contract, subcontract, or agreement with respect to a HOME-assisted activity, or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter.

c. AGENCY agrees that if any facts come to its attention, which raise any questions as to the applicability of conflicts of interest laws, it will immediately inform COUNTY designated representative and provide all information needed for resolution of this

question.

11. **TERMINATION:**

a. Without Cause: COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. COUNTY will pay to AGENCY the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from AGENCY of any and all plans, specifications and estimates, and other documents prepared by AGENCY in accordance with this Agreement. No sanctions will be imposed.

b. With Cause: This Agreement may be terminated by either party should the other party:

- i. be adjudged a bankrupt, or
- ii. become insolvent or have a receiver appointed, or
- iii. make a general assignment for the benefit of creditors, or
- iv. suffer any judgment which remains unsatisfied for thirty (30) days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- v. materially breach this Agreement. Material breach includes but is not limited to AGENCY failing to perform obligations under this Agreement, and AGENCY failing to perform obligations in accordance with the PROGRAMS' time schedules.

For any of the occurrences except item v., termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated following the failure of the defaulting party to remedy the breach to the reasonable satisfaction of the non-defaulting party within thirty (30) days of the receipt of written notice specifying the breach. If the breach is not remedied within that thirty (30) day period, the non-defaulting party may terminate the agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a thirty (30) day period, the defaulting party may, submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice specifying the date of termination. COUNTY will pay to AGENCY the compensation earned for work

performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination.

c. **Effects of Termination:** Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

d. **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which AGENCY'S services are to be performed, may immediately suspend performance by AGENCY, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by AGENCY to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

12. **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between AGENCY and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

13. **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

14. **NOTICES:**

a. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Crystal Markytan
Director, Department of Social Services
P.O. Box 9000
Lower Lake, CA 95457
Phone No.: (707) 996-4260
Fax No.: (707) 995-4294

AGENCY:

Gustavo Becerra
Executive Director
1455 Butte House Road
Yuba City, CA 95993
Phone No.: (530) 671-0220 ext. 113
Fax No.: (530) 674-8505

b. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth (5th) day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

15. **CONSTRUCTION:** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.

16. **NO THIRD PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

17. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Lake County, California. AGENCY waives the removal provisions of California Code of Civil Procedure section 394.

18. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

19. **EXHIBITS AND RECITALS:** The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

20. **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

21. **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts which may be reasonably required to effect the purposes of this Agreement.

22. **ASSURANCES OF NON-DISCRIMINATION:** AGENCY shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by State or Federal law or regulation.

23. **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement,

COUNTY is relying on the personal skill, expertise, training and experience of AGENCY and AGENCY'S employees and no part of this Agreement may be assigned or subcontracted by AGENCY without the prior written consent of COUNTY.

24. **DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

25. **PROFESSIONAL MANNER:** AGENCY shall provide the services contemplated by the Agreement in a professional manner and quality satisfactory to the COUNTY.

26. **DOCUMENT OWNERSHIP:** All finished or unfinished documents, data, studies, computer programs, methodological explanations, surveys, models, photographs, and reports prepared by AGENCY under the Agreement shall be considered the property of the COUNTY. Upon completion of the services to be performed or upon termination of the Agreement, these materials shall be turned over to the COUNTY, provided that in any case AGENCY may, at no additional expense to the COUNTY, make and retain copies thereof as it desires. AGENCY further agrees to keep those materials, which may not be public records under the laws of the State of California confidential.

27. **FUNDING CLAUSE:** AGENCY acknowledges that COUNTY is dependent upon certain Federal and State funding to pay for the PROGRAMS provided for in this Agreement. If COUNTY is awarded the HOME funding from HCD to fund the PROGRAMS, this Agreement will become effective. If such funding is discontinued or reduced, COUNTY may exercise its sole discretion to reduce the amount of Housing Rehabilitation and/or Homeownership Assistance Program funds or terminate the Agreement by giving the AGENCY 30 calendar days notice of the reduction or termination.

28. **IMPROPER USE OF FUNDS:** To the fullest extent permitted by law, AGENCY shall hold harmless, defend and indemnify COUNTY from any liability, action or losses incurred by COUNTY as a result of AGENCY'S improper use of funds under this Agreement.

29. **CLOSE-OUTS:** AGENCY'S obligation to COUNTY shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to COUNTY), and determining the custodianship of records.

30. ATTORNEY FEES: If either party shall initiate legal proceedings to enforce or construe the terms of this agreement, or for damages, the prevailing party shall be entitled to its attorney's fees.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

Executed at _____, California on _____.

COUNTY OF LAKE

AGENCY

CHAIR, Board of Supervisors



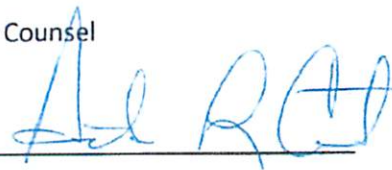
GUSTAVO BECERRA, Executive Director

ATTEST: CAROL J. HUCHINGSON
Clerk to the Board of Supervisors

APPROVED AS TO FORM:
ANITA L. GRANT

County Counsel

By: _____

By:  _____