

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **Consulting Services**

THIS AGREEMENT ("Agreement") is made and entered into this 4th day of June, 2019, by and between the County of Lake, a political subdivision of the State of California, ("County") and Ellis Planning Associates Inc. ("Contractor"), pursuant to the following terms and conditions.

#### **WITNESSETH:**

#### **1. TERM**

The Agreement shall commence on June 4, 2019 and shall terminate on February 28, 2020, unless earlier terminated as hereinafter provided. In the event County desires to temporarily continue services after the expiration of this Agreement, such continuation shall be deemed on a month-to-month basis, subject to the same terms, covenants, and conditions contained herein.

#### **2. SERVICES**

Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to County the services described in the Scope of Services attached hereto and incorporated herein as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of the Agreement and Exhibit A – Scope of Services, the Agreement shall prevail.

#### **3. COMPENSATION**

Contractor has been selected by County to provide the services described hereunder in Exhibit A (Scope of Services), attached hereto, provided that Contractor is not in default under any provisions of this Agreement. Compensation to Contractor is contingent upon appropriation of federal, state and county funds. The maximum amount payable under this Agreement is not to exceed \$49,720.00.

#### **4. INSURANCE**

Contractor shall provide at his/her own expense and maintain at all times **Automobile Liability Insurance** with a minimum limit of liability per occurrence of \$300,000 for bodily injury and \$100,000 for property damage, and shall provide evidence of such insurance to the county as may be required by the Risk Manager of the County, if applicable. This insurance shall cover bodily injury and property damage, owned automobiles, and non-owned automobiles. Contractor shall provide notice to the Risk Manager of the County by registered mail, return receipt requested, thirty (30) days prior to cancellation or material change this insurance policy.

If at any time of said policy shall be unsatisfactory to the County, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the County, the Contractor shall promptly obtain a new policy, submit the same to the Risk Manager for approval, and submit a certificate

thereof as hereinabove provided. Failure of the Contractor to furnish, deliver or maintain such insurance and certificates as above provided shall be considered a material breach of this Agreement, and upon such event, this Agreement, at the election of the County, may be forthwith declared terminated. Failure of the Contractor to obtain and/or maintain any required insurance shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Contractor concerning indemnification. Best's rating of A or with approval of the Risk Manager.

## **5. HOLD HARMLESS/INDEMNIFICATION**

Each party shall indemnify and hold the other harmless against all actions, claims, demands and liabilities and against all losses, damage, cost, expenses, and attorney's fees, arising directly or indirectly out of an actual or alleged injury to a person or property in the same proportion that its own acts and/or omissions are attributed to said claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees. This provision shall not extend to any claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party.

Contractor's obligations under this Section shall survive the termination of the Agreement.

## **6. INDEPENDENT CONTRACTOR**

It is understood that Contractor, in the performance of the services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the County. Contractor shall obtain no rights to retirement benefits or other benefits which accrue to County's employees, and Contractor hereby expressly waives any claim s/he may have to any such rights. All employees, agents, contractors, subcontractors hired or retained by the Contractor are performing in that capacity for and on behalf of the Contractor and not the County. The County shall not be obligated in any way to pay any wage claims or other claims made against the Contractor by any such employee, agent, contractor or subcontractor, or any other person resulting from the performance of this Agreement.

## **7. ASSIGNMENT**

This Agreement is for the professional services of the Contractor and s/he shall not assign, subcontract or sublet any part of this Agreement without the express prior written consent of County. Any assignment without the express prior written consent of the County is VOID.

## **8. NOTICE**

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

COUNTY OF LAKE  
County of Lake Health Services  
Denise Pomeroy, Director  
922 Bevins Court  
Lakeport, CA 95453

CONTRACTOR  
Ellis Planning Associates Inc  
P.O. Box 901  
Nevada City, CA 95959

**9. COMPLIANCE**

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

All services performed by Contractor under this Agreement shall be in strict conformance with all applicable federal, state and/or local laws and regulations relating to confidentiality, including, but not limited to, California Civil Code section 56 et seq., Welfare and Institutions Code sections 827, 5328, 10850 and 14100.2, Health and Safety Code sections 11977 and 11812, 22 California Code of Regulations section 51009, and 42 Code of Federal Regulations section 2.1 et seq.

**10. NONDISCRIMINATION**

Contractor shall provide services without discrimination based on race, creed, color, ethnic or linguistic identification, gender or sexual preference, disability or handicap or any other basis prohibited by law.

**11. PUBLIC RECORDS ACT**

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that s/he considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

**12. ENTIRE AGREEMENT AND MODIFICATION**

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties, however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the County of Lake Health Services Department Director. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

**13. ENFORCEABILITY AND SEVERABILITY**

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision,

which shall remain in full force and effect.

**14. TERMINATION AND RIGHTS UPON TERMINATION**

- A. This agreement may be terminated upon mutual written consent of the Parties, or as a remedy available at law or in equity.

Upon termination prior to the full and satisfactory completion of Contractor's performance under this Agreement, County shall not be liable to pay Contractor the total compensation set forth in paragraph 3 of this Agreement, but Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Agreement.

- B. Either party may terminate this Agreement for convenience upon thirty (30) calendar days' written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

- C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

**15. NO WAIVER**

The failure to exercise any right to enforce any remedy contained in the Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

**16. DISPUTES**

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Lake, State of California.

**17. CAPTIONS**

The captions of the Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**18. NUMBER AND GENDER**

In the Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

**19. MANDATORY AND PERMISSIVE**

“Shall” is mandatory. “May” is permissive.

**20. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in the Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**21. COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same Instrument.

**22. OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of the Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

**23. CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

**24. AUTHORITY**

Each party and each party’s signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the Agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

**25. NEGOTIATED AGREEMENT**

This Agreement has been arrived at through negotiation between parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly forgoes any such consultation.

**26. NO RELIANCE ON REPRESENTATIONS**

Each party warrants and represents that it is not relying and has not relied upon any Representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or facts provided by the other party.

**27. WARRANTY**

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

**28. FUNDING AVAILABILITY**

It is mutually agreed that if the County budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this program, the County shall have the option to either cancel this Agreement with no liability occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced amount.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF LAKE

CONTRACTOR

\_\_\_\_\_  
Chair Board of Supervisors

\_\_\_\_\_  
Shannon Eli  
Ellis Planning Associates Inc

APPROVED AS TO FORM:

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Anita L. Grant  
County Counsel