

## AGREEMENT FOR SERVICES

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**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 AMS Properties Inc., a Corporation duly qualified to conduct business in the State of California, whose principal place of business is 4301 Prospect Drive, Carmichael, CA 95608 hereinafter referred to as “Consultant”);

### W I T N E S S E T H

**WHEREAS**, County has determined that it is necessary to obtain a Consultant to provide professional real estate negotiating services; and

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provisions of these services provided by Consultant are in the public’s best interest and that these services, are more economically and feasibly performed by outside independent Consultants as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

## **ARTICLE I**

**Scope of Services:** County is retaining Consultant to negotiate on its behalf the purchase, by way of property exchange, of approximately five acres of undeveloped property being a portion of Assessor's Parcel Number 325-300-02 in the County of El Dorado (the "Property"). The precise size of the parcel to be acquired shall be determined through project development and negotiations. Services to be provided by Consultant include all normal brokerage services including, but not limited to: (1) providing advice to the County on price (including provision of comparable sales), terms of sale, and the form of the purchase; (2) preparation of appropriate purchase/sale documents; (3) conduct of due diligence on the property; and, (4) assisting with the close of the transaction. The purchase/sale documents will need to be in the form of an option to purchase or other conditional sale to ensure compliance with the California Environmental Quality Act. All negotiations will be conducted under the direction and control of the Board of Supervisors of the County.

Consultant and its salespersons do not have the expertise to evaluate tax, legal, environmental, engineering, construction, seller's financial condition or other matters, nor to determine whether any expert is properly qualified in such areas. County should consult the experts of County's choice.

## **ARTICLE II**

**Representation:** In performing all services under this Agreement, Consultant shall represent only the interests of the County, and not those of the seller of the property.

## **ARTICLE III**

**Exclusivity:** This right to negotiate is exclusive as to any other brokers. The County reserves the right to have its representatives participate in negotiations along with Consultant.

## **ARTICLE IV**

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall remain in effect until completion of the transaction, unless sooner terminated pursuant to Article X of the Agreement.

## **ARTICLE V**

**Compensation for Services:** Compensation shall be in the form of a commission upon transfer of title to the Property. It is anticipated that the seller will pay Consultant its commission. County agrees that any offer to purchase or other such documentation shall require the seller to pay to Consultant a commission as set forth herein, and in the event that the County does not obtain seller's written agreement for the benefit of Consultant to so pay such commission to Consultant, County agrees to pay such commission to Consultant. Consultant shall be paid a commission of eight percent (8%) of the gross sales price (excluding project enhancements and similar costs) with respect to the Property as the total compensation for all work under this Agreement. Such payment shall be contingent on escrow closing and title to the land transferring.

The commission shall be paid upon the transfer of title to the property. If an exchange of property or other thing of value is effected in lieu of a sale, a full sales commission shall

be paid based upon a fair market value for the property negotiated by County and Consultant.

Consultant acknowledges that the Property is being purchased for incorporation in a state project for construction of a new court house on adjoining property owned by the County. The state has not finally approved the project and it cannot do so until completion of an analysis under the California Environmental Quality Act. Until that analysis is completed, the state cannot make a final decision on approving the project and the County cannot make a final decision on acquisition of the Property, necessitating the use of an option or other type of conditional sale. Both the state and the County reserve their discretion to approve or disapprove the project and purchase of Property until that time. Completion of that process is estimated to take at least 18-24 months. Consultant acknowledges and understands that the commission will not be due and payable unless and until the County exercises the option or other form of conditional sale, at the sole discretion of County, and title to the Property transfers.

Consultant shall be entitled to the above-referenced commission, upon transfer of title to the Property as set forth above, if, during the term of this Agreement: (a) County purchases the Property by or through Consultant, County or any other person or entity; or, (b) any contracts for the purchase of the Property, including without limitation the granting of options or rights of first refusal, are made directly or indirectly by County. Consultant shall also be entitled to the above-referenced commission, upon transfer of title to the Property as set forth above, if within 180 days of after the termination of this Agreement, except termination for cause pursuant to Article 10 Sections A, B or C, County enters into a contract for the purchase of the Property, or any interest therein, including without limitation the granting of an option or a right of first refusal.

#### **ARTICLE VI**

**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. County acknowledges that salespersons affiliated with Broker are not authorized to make or approve any additions to, deletion from or alterations to this Agreement or to terminate this Agreement. Consultant acknowledges that County staff is not authorized to approve any changes to this Agreement without approval of the Board of Supervisors. Any purported amendment, modification or termination of this Agreement which is oral, or which is in writing but not signed by both County and an officer of Consultant, shall be void and of no effect whatsoever.

#### **ARTICLE VII**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

#### **ARTICLE VIII**

**Assignment and Delegation; Representation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. Sandy Sandoval shall be responsible for providing the services under this Agreement on behalf of Consultant.

#### **ARTICLE IX**

**Independent Consultant/Liability:** Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates and subConsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

#### **ARTICLE X**

##### **Default, Termination and Cancellation:**

A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. 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 on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.

C. Ceasing Performance: County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. Upon receipt of a Notice of Termination, Consultant shall

promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

#### **ARTICLE XI**

**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:

COUNTY OF EL DORADO

Louis B. Green  
County Counsel  
330 Fair Lane  
Placerville, CA 95667

or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

Sandy Sandoval

AMS Properties Inc.  
P.O. Box 6  
Fair Oaks, CA 95628

or to such other location as the Consultant directs.

#### **ARTICLE XII**

**Nondiscrimination:** It is understood that it is illegal for either the County or Consultant to discriminate against any person because of race, color, religion, national origin, sex, marital status, age or physical disability.

#### **ARTICLE XIII**

**Indemnification Against Claim for Broker's Commission:** Consultant acknowledges that it is replacing Grubb Ellis Commercial Real Estate as broker in this transaction due to termination of Grubb Ellis Commercial Real Estate's contract as a result of the bankruptcy of Grubb Ellis Commercial Real Estate. Consultant agrees to indemnify and hold harmless County, its officers, employees and agents against any claim by Grubb Ellis Commercial Real Estate, whether direct or by way of any claim arising out of any bankruptcy action, for all or any part of the broker's commission provided for in its prior contract with the County.

#### **ARTICLE XIV**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's 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 \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability (~)(is)(is not) required.
- E. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above 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 the 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, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.

- I. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the 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 the 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 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. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

#### **ARTICLE XV**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XVI**

**Interest of Consultant:** Consultant covenants that Consultant 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. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

**ARTICLE XVII**

**California Residency (Form 590):** All independent Consultants providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The Consultant will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

**ARTICLE XVIII**

**Taxpayer Identification Number (Form W-9):** All independent Consultants or Corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

**ARTICLE XIX**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Louis B. Green, County Counsel, or successor.

**ARTICLE XX**

**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 XXI**

**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 XXII**

**Venue:** Any dispute resolution action rising 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. Consultant waives any removal rights it might have under Code of Civil Procedure Section 394.

**ARTICLE XXIII**

**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.

**Requesting Department Concurrence:**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Louis B. Green, County Counsel



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first below written.

**-- COUNTY OF EL DORADO --**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

John R. Knight, Chair  
Board of Supervisors  
"County"

ATTEST:  
THERESA DALY  
Acting Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk

**-- CONSULTANT --**

Dated: \_\_\_\_\_

AMS Properties Inc.

By: \_\_\_\_\_

E. Sandoval  
Licensed Real Estate Broker, CA-License #00677894  
"Consultant"