



**COUNTY OF EL DORADO
Procurement & Contracts**

ATTN: Purchasing Agent
330 Fair Lane
Placerville, CA 95667

**REQUEST FOR PROPOSALS #18-918-065
DUE: JULY 24, 2018**

Sealed Proposals must be clearly marked on
the outside of the package with:

“RFP #18-918-065 – DO NOT OPEN”

CODE ENFORCEMENT HEARING OFFICER

The County of El Dorado Office of Procurement and Contracts, on behalf of its Community Development Services, Planning and Building Department (also referred to as “County”), is requesting Proposals for a Code Enforcement Hearing Officer.

This Request for Proposal (RFP) defines the scope of services and outlines the requirements that must be met by Proposers interested in providing such services. Proposers shall carefully examine the entire RFP and any addenda thereto, and all related materials and data referenced in the RFP or otherwise available, and shall become fully aware of the nature and the conditions to be encountered in performing the service. **Proposers are advised to read all sections of this RFP prior to submitting a proposal.**

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- Attachment A** **El Dorado Ordinance Code #5067 and #5071**
- Attachment B** **Sample Agreement for Professional Services**

I. INTRODUCTION

The County of El Dorado Office of Procurement and Contracts, on behalf of Community Development Services, Planning and Building Department (also referred to as "County"), is requesting Proposals for a Code Enforcement Hearing Officer. The Code Enforcement Officer will provide services regarding code enforcement issues that arise within the County when property owners appeal penalties that are assessed by the Code Enforcement Section. The goal of these legal procedures is to obtain the facts and provide an unbiased opinion in order to make judgments in accordance with applicable law for the good of the public. Following hearing services, awarded Proposer shall determine if the assessment of penalties by the Code Enforcement Section was lawful and shall provide County and any parties to the aforesaid hearings a written opinion of the Hearing Officer's findings and final decision. These cases will be from all areas of El Dorado County; however, all hearings will take place in Placerville.

Hearing Officer shall follow Chapter 9.02 Code Enforcement of the El Dorado Ordinance Code; and Chapter 130.14.250 Medical Cannabis Distribution; Chapter 130.140.260 Outdoor Medical Cannabis Cultivation for Personal Use; and Chapter 130.14.270 Commercial Cannabis Activities of the El Dorado County Ordinance Codes #5067 and #5071 (hereinafter referred to as "Code") as referenced in Exhibit A, marked "El Dorado Ordinance Code #5067 and #5071", incorporated herein and made by reference a part hereof.

II. ATTORNEY QUALIFICATIONS

Proposer and all of the attorneys working for Proposer shall be currently licensed and in good standing with the California State Bar. Proposer, and all attorneys working for Proposer, whether as employees or contract attorneys, must meet all constitutional, statutory, court rule, and case law requirements for legal counsel.

III. SCOPE OF SERVICES

Services will include code enforcement issues that arise in the County when property owners appeal penalties that are addressed by the Code Enforcement. The goal of these legal procedures is to obtain the facts and provide an unbiased opinion in order to make judgments in accordance with applicable law for the good of the public. Following the hearing services, Proposer shall provide County and any parties to the aforesaid hearings a written opinion of the Proposer's findings and final decision.

Proposer would be contacted regarding the administrative hearing and will be notified of the provisions of the El Dorado County Code or State Law involved. Proposer will be required to have an understanding of the applicable laws, conduct the hearing in an appropriate manner, and issue a timely written decision.

Proposer's services may include, but shall not be limited to:

1. When scheduling a hearing on an alleged nuisance matter, or upon receiving a request for hearing, County will immediately contact Proposer to determine Proposer's availability. A hearing shall be held within five (5) days of the request for the hearing.
2. Based on availability of Proposer, hearing will be scheduled and County will mail required notice(s) to both the person requesting the hearing, and the Proposer.
3. Upon conclusion of a hearing, the decision of the Proposer shall be issued within five (5) days of completion of the hearing.
4. County will provide for the recording of hearings, either by tape recording or digital recording, as determined appropriate to the specific hearing by the County. The recording will be maintained by the County for a period of three (3) years, and may be provided to Proposer upon request.
5. County will retain all records related to administrative hearings, including the record of hearing, and all photographs and demonstrative and documentary evidence introduced at the hearing, for a period of three years from completion of hearing. Records will be available for Proposer review upon request.
6. Proposer is responsible for conducting the hearing and making a determination regarding violations of the particular County Code across various County departments. Proposer shall provide professional services, including all work necessary for the effective handling of the County's administrative hearings, except as provided in the El Dorado County Ordinance Code. The hearings are varied and may cover zoning, nuisances, building permits, health and safety building codes, cannabis ordinance enforcement and/or other related issues. Proposer shall also impose fines, award enforcement costs, or issue corrective/abatement orders.

The successful Proposer will be required to enter into an agreement for services with the County substantially similar in form to that attached hereto as Exhibit "A," marked "Sample Agreement for Professional Services".

Any reference in this RFP to specific terms of the agreement are for illustrative purposes only and shall not limit the scope of the obligations to be assumed by the successful proposer under the agreement. In the event of any conflict between a provision of this RFP and the provisions of the agreement attached as Exhibit "A", the terms of the agreement shall govern.

IV. PROPOSAL MINIMUM REQUIREMENTS

Proposers must submit one (1) original and four (4) copies of their Proposals for review by a County appointed Selection Committee. In addition, you must provide one (1) copy of the proposal on an electronic format (flash drive). Responsive proposals shall be bound and formatted on 8 ½" x 11" pages (portrait orientation). All proposals must include the following:

1. **Cover letter (not to exceed one page):** Identifying name, address and telephone number of the principal person representing the firm and an original signature by an individual authorized to execute an agreement with the County.
2. A statement acknowledging that the prospective Proposer has reviewed the language contained within the Sample Agreement for Professional Services (Exhibit A) and that the prospective Proposer concurs with the provisions contained within said agreement, **and can/will meet the indemnity and insurance requirements** without alterations to the County's standard agreement.
3. Describe the Proposer's history and provide a statement of qualifications and experience providing the services identified in this RFP.
4. Staff/Subcontractor: Include the name of each individual who will be providing services, as well as a written description of the individual's experience. The County reserves the right to investigate and review the background of any or all personnel, and based on such investigations, to reject the use of any persons within the County's discretion. Any changes to personnel require formal written approval of the County.
5. Provide a fixed cost for three years for all legal representation services identified in this RFP, inclusive of all ancillary costs.

V. PROPOSERS' QUESTIONS

Questions regarding this RFP must be submitted in writing to the Procurement and Contracts Office and must be received no later than **5:00 p.m. on JULY 3, 2018**. All envelopes or containers must be clearly labeled "**RFP #18-918-065: QUESTION**" for convenience purposes. Envelopes or containers not clearly labeled may be overlooked and not responded to. Questions will **not** be accepted by telephone, facsimile (fax), electronically, or orally. The County reserves the right to decline a response to any question if, in County's assessment, the information cannot be obtained and shared with all potential organizations in a timely manner. A summary of the questions submitted, including responses deemed relevant and appropriate by County, will be emailed on or about **JULY 12, 2018**.

All inquiries shall be submitted by U.S. mail to:

Procurement and Contracts
330 Fair Lane
Placerville, California 95667
RFP #18-918-065: Question

Proposers are cautioned that they are not to rely upon any oral statements that they may have obtained. Proposers shall direct all inquiries to the County Purchasing Agent and shall not contact the requesting department directly regarding any matter related to this Request for Proposal.

VI. PROPOSAL SUBMITTAL

Proposers must submit one (1) original and four (4) copies of their proposal (along with a copy of the proposal on an electronic format (flash drive), along with any addenda, in a sealed envelope or container, clearly marked “RFP #18-918-065 – DO NOT OPEN”, no later than 3:00 p.m. on **JULY 24, 2018**, to:

County of El Dorado
Procurement and Contracts
330 Fair Lane
Placerville, CA 95667

A Proposer may withdraw its final proposal at any time **prior** to the opening deadline date and time by submitting a written request for its withdrawal to the County Purchasing Agent, signed by an authorized agent of the firm. Proposers may thereafter submit a new or modified proposal **prior** to the opening deadline date and time. Modifications offered in any manner, oral or written, will not be considered.

Proposers submitting less than the required number of copies of their proposal will be rejected and considered “non-responsive”. Proposals received beyond the deadline will not be considered, and will be returned unopened.

It is the responsibility of the Proposer to assure that the proposal is received in the Procurement & Contracts Division prior to the proposal opening deadline date and time. Proposals received beyond the proposal opening deadline will not be accepted and will be returned unopened. The time stamp clock located in the office of the Procurement and Contracts Division will serve as the official time clock.

For questions regarding the Request for Proposal process, contact Linda Silacci-Smith, Sr. Department Analyst, at (530) 621-5417.

VII. SELECTION CRITERIA

Proposals will be evaluated based on the thoroughness, clarity, and quality of the material presented, and criteria contained in the FAA Advisory Circular 150/5100-14, as amended, will be applied as follows with emphasis on:

Criteria	Maximum Points
Responsiveness to RFP requirements (pass/fail). Proposals must be complete and must include all required information in a concise, clear format.	Pass/Fail
Qualifications and Experience	60
Pricing	40
Total Possible Points	100

VIII. SELECTION PROCESS

County staff will open Proposals following the submittal deadline. The only information that will be made available to the public at that time will be the names of the Proposers submitting Proposals. The contents of all Proposals, or any other medium which discloses any aspect of the Proposal, shall be held in strictest confidence until the County releases a Notice of Intent to Award.

A Proposer Selection Committee will be appointed by the County to evaluate the Proposals. It is anticipated that representatives from the County and other local government entities will conduct the evaluations. The Proposer Selection Committee may interview respondent firms during the selection process if it is determined to be necessary.

When evaluation of the Proposals and presentations has been completed, a Proposer will be selected and negotiations will be initiated. If for any reason a contract cannot be negotiated, the County reserves the right to select the next ranked prospective Proposer. The County will then make recommendations for selection to the County Board of Supervisors, based on the selection criteria outlined in the preceding section.

Failure to comply with any of the requirements contained herein may result in disqualification. It is the responsibility of all Proposers to read ALL sections of this RFP prior to submitting a response.

IX. REJECTION OF PROPOSALS

Prospective Proposers interested in being considered must submit a Proposal in compliance with this notice. Failure to meet the minimum requirements of the RFP shall be cause for rejection of the Proposal. The County reserves the right to reject any or all Proposals.

The County may reject a Proposal if it is conditional, incomplete, contains irregularities, or reflects inordinately high cost rates. County may waive immaterial deviation in a Proposal. Waiver of an immaterial deviation shall in no way modify the RFP documents or excuse the proposing firm/team from full compliance with the contract requirements if the prospective Proposer is awarded the contract.

X. VALID OFFER

Proposals shall remain valid for 120 days from the due date. The County reserves the right to negotiate with the successful Proposer any additional terms or conditions not contained in their proposal which are in the best interest of the County or to otherwise revise the scope of this RFP.

This RFP does not constitute a contract or an offer of employment. The cost of preparation of proposals shall be the obligation of the Proposer. All proposals, whether accepted or rejected, shall become the property of the County and will not be returned. Unnecessarily elaborate responses, enclosures and specialized binding are not desired, and may be construed as an indication of Proposer's lack of cost consciousness.

XI. COUNTY'S RIGHTS

The County reserves the right to:

1. Request clarification of any submitted information.
2. Waive any irregularity or immaterial deviation in any proposal.
3. Not enter into any agreement.
4. Not select any Proposer.
5. Cancel this process at any time.
6. Amend this process at any time.
7. To award more than one contract if it is in the best interest of the County.
8. Interview Proposers prior to award.
9. To request additional information during an interview.

Waiver of an immaterial deviation shall in no way modify the RFP documents or excuse the proposing firm/team from full compliance with the contract requirements if the prospective Proposer is awarded the contract.

XII. CONTRACT AWARD

Award shall be recommended to the Proposer whose proposal best meets the needs of the County. The County reserves the right to reject any or all proposals, and to solicit additional proposals if deemed in the best interest of the County to do so. The decision of the County Board of Supervisors shall be final in making such determination.

The successful Proposer will receive written notification of the award, along with instructions for finalizing the agreement documents.

Response and selection of a Proposal will not necessarily result in a contract with the County of El Dorado. Proposal opening does not constitute awarding of a contract. Contract award is by action of the El Dorado County Board of Supervisors and is not in force until fully executed by that Board.

XIII. CONFLICT OF INTEREST

Prospective Proposers warrant and covenant that no official or employee of the County, or any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of the resulting agreement, nor that any such person will be employed in the performance of such agreement without immediate divulgence of such fact to the County. Prospective Proposer's Proposal shall contain a statement to the effect that the Proposer is not currently committed to another project that would constitute a conflicting interest with the Project defined in this Request for Proposal (RFP).

XIV. PUBLIC RECORDS ACT

All proposals and materials submitted shall become property of the County and will not be returned. All responses, including the accepted proposal and any subsequent contract, become public records per the requirements of the California Government Code, Sections 6250 - 6270, "California Public Records Act". Proprietary material must be clearly marked as such. Pricing and service elements of the successful proposal are not considered proprietary information. Proposers which indiscriminately identify all or most of their proposal as confidential or proprietary without justification may be deemed unresponsive.

The County will treat all information submitted in a proposal as available for public inspection once the County has selected a consultant. If you believe that you have a legally justifiable basis under the California Public Records Act (Government Section 6250 et. seq.) for protecting the confidentiality of any information contained within your proposal, you must identify any such information, together with the legal basis of your claim in your proposal, and present such information **separately** as part of your response package.

The final determination as to whether the County will assert your claim of confidentiality on your behalf shall be at the sole discretion of the County. If the County makes a determination that your information does not meet the criteria for confidentiality, you will be notified as such. Any information deemed to be non-confidential shall be considered public record.

Upon receipt of a request for disclosure pursuant to the California Public Records Act for information that is set apart and marked as proprietary, County will notify you of the request for disclosure. You shall have sole responsibility for the defense of the proprietary designation of such information. Failure to respond to the notice and enter into an agreement with County providing for the defense of and complete indemnification and reimbursement for all costs incurred by the County in any legal action to compel the disclosure of such information, shall constitute a complete waiver of any rights regarding the information designated proprietary and such information will be disclosed by County pursuant to applicable procedures under the California Public Records Act.

XV. BUSINESS LICENSE REQUIREMENT

It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070. Contact the Tax Collector's Office at 360 Fair Lane, Placerville, CA 95667, or phone (530) 621-5800, for further information. El Dorado County is an equal opportunity employer (EOE). Minorities, females, and handicapped are encouraged to participate (M/F/H).

It is not a requirement to possess a County business license at the time of proposal submittal. Successful Proposers may be required to possess a County business license to award contract.

The County of El Dorado is an equal opportunity employer (EOE). Minorities, Females and Handicapped are encouraged to participate.

XVI. PUBLIC AGENCY

It is intended that other public agencies (i.e., city, special district, public authority, public agency and other political subdivisions of the State of California) shall have the option to participate in any agreement created as a result of this Request for Proposal to Bid with the same terms and conditions specified there in, including pricing. The County shall incur no financial responsibility in connection with any agreement from another public agency. The public agency shall accept sole responsibility for contracting for services and making payment to the vendor.

Failure to comply with any of the requirements contained herein may result in disqualification. It is the responsibility of all Proposers to read ALL sections of this RFP prior to submitting a response.

Your participation in the RFP process is important to El Dorado County!

RFP #18-918-065

Exhibit A

El Dorado County Ordinance Code #5067 and #5071



ORDINANCE NO. 5067

AN ORDINANCE AMENDING the ban on medical cannabis dispensaries and the regulation of outdoor cultivation of medical cannabis for personal use in El Dorado County.

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 4999, adopted September 24, 2013, which added Section 130.14.250 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Distribution" is hereby entitled "Medical Cannabis Distribution" and amended to read as follows;

Section 2. Ordinance No. 5000, adopted September 24, 2013, which added Section 130.14.260 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Outdoor Medical Cannabis" is hereby entitled "Outdoor Medical Cannabis Cultivation for Personal Use" and amended to read as follows:

**ARTICLE 9 - MISCELLANEOUS
CHAPTER 130.14 – MEDICAL CANNABIS**

Sec. 130.14.250 – Medical Cannabis Distribution.

1. *Findings.*

- A. In 1970, Congress enacted the Controlled Substances Act ("CSA") which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.
- B. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq., and entitled "The Compassionate Use Act of 1996" ("CUA").

- C. The intent of the CUA was to enable seriously ill persons who need medical cannabis for medical purposes to obtain and use cannabis under limited, specified circumstances. The CUA provides a limited exception from criminal prosecution under state law for specific crimes involving the cultivation, possession, and use of cannabis for specified medical purposes. The CUA did not address land use, zoning, or building code impacts or issues that arise from the proliferation of medical cannabis dispensaries and large-scale cultivation within local jurisdictions.
- D. On January 1, 2004, SB 420, the Medical Marijuana Program Act (“MMPA”), went into effect. The MMPA was enacted by the California Legislature to clarify the scope of the Compassionate Use Act of 1996. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.
- E. The MMPA included a list of facilities that could qualify as “primary caregivers” and dispense cannabis to qualified patients. The only facilities the Legislature authorized to serve as “primary caregivers” are licensed clinics, health care facilities, residential care facilities, home health facilities, and hospices which provide medical care and medical support services to qualified patients (Health and Safety Code Section 11362.7(d)(1)).
- F. On June 5, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich* (2005) 125 S.Ct. 2195, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and power to prohibit local cultivation and use of cannabis even if the cultivation or use complied with state law.
- G. In 2015, the state implemented the Medical Cannabis Regulation and Safety Act (“MCRSA”), which implemented AB 243, AB 266, and SB 643 and was subsequently modified in 2016 by budget trailer legislation (SB 837).
- H. On June 27, 2017, as part of budget trailer legislation (SB 94), the state enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which generally synthesized the regulation and licensing of cannabis. Prior to SB 94, regulation was under MCRSA for medicinal cannabis and Proposition 64, which enacted the Control, Regulate and Tax Adult of Marijuana Act (“AUMA”), for nonmedicinal cannabis.
- I. Health and Safety Code Section 11362.83 and Business and Professions Code Section 26200 preserve the authority of local governments to enact local ordinances regulating cannabis. Pursuant to Business and Professions Code Section 26055, state licensing authorities cannot approve an application for a state commercial cannabis license if the applicant is not in compliance with all applicable local ordinances or regulations.
- J. Citizens and law enforcement officers have reported an increase in crimes, such as loitering, and an increase in traffic, odor, and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of cannabis from dispensaries, in the areas immediately surrounding such medical cannabis dispensaries.
- K. Law enforcement officials have indicated that they could more effectively prosecute the illegal operation of dispensaries if the prohibition on medical cannabis dispensaries was more clearly stated in the zoning ordinance contained in this title.

2. *Facilities.*

- A. *Purpose.* The purpose of this section is to clearly set forth the prohibition on medical cannabis distribution facilities.
- B. *Medical cannabis distribution facility defined.* Except where the context otherwise requires, a “medical cannabis distribution facility” means any medical cannabis dispensary, collective, or cooperative, in any facility or location, whether fixed or mobile, and whether or not the facility is operated for profit, where medical cannabis, in any form, is made available, sold, transferred, given, or otherwise provided to three or more qualified patients, primary caregivers, or patients with an identification card, as defined in California Health and Safety Code Section 11362.7.
- C. *Exception.* A “medical cannabis distribution facility” shall not include a primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than three specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the Health and Safety Code, provided that any cannabis cultivating, drying, curing, processing, and storing complies with section 130.14.260.
- D. *Medical cannabis distribution facilities prohibited.* The establishment, maintenance, or operation of any medical cannabis distribution facility shall be prohibited, and no use permit, variance, building permit, or any other applicable entitlement for use, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a medical cannabis distribution facility. The County, however, shall not enforce the provisions of this section with respect to medical cannabis distribution facilities that were existing for at least six months prior to October 30, 2011 and that, no later than January 31, 2018, apply for a state license and submit documentation to the County Planning and Building Department demonstrating all of the following:
 - 1. Location within a commercial zone district;
 - 2. Continuous operation for a period of at least six months prior to October 30, 2011 and continuous operation since October 30, 2011;
 - 3. Compliance with state law;
 - 4. A detailed description of the full operations of the facility, including the hours of operation and the number of employees; and
 - 5. Any other information requested by the County Planning and Building Department.Those operations submitting documentation that the County finds satisfactory will be allowed to continue to operate without any expansion and at the same level of intensity with the same square footage as existed on October 30, 2011, subject to reasonable conditions and regulations, including conditions on time of use, as may be established by the County.

Nothing in this section or the County's authorization under Business and Professions Code Section 26055(g) of these limited distribution facilities shall provide those distribution facilities with the ability to continue operating and the County may, at a future date, ban all commercial cannabis distribution facilities at which time any state license would be subject to revocation under Business and Professions Code Section 26200(c).

- E. *Zoning; shared facilities.* A medical cannabis distribution facility as defined in Subsection 2.B of this section shall not be established, operated, or maintained at any location in any zone district in the unincorporated areas of the County, even if the medical cannabis distribution facility is located within or operated with one or more additional otherwise permitted use, including, but not limited to: a health food store, bakery, tobacco shop, other retail store, health education facility, health spa, fitness facility, wellness center, or a health facility other than a licensed facility identified in Subsection 2.C of this section.
- F. *Penalties.*
 - 1. Any person, firm, partnership, association, corporation, or other entity, whether as principal agent, employee, or otherwise, who owns the property upon which a medical cannabis distribution facility is located or owns or operates a medical cannabis distribution facility or otherwise violates any of the provisions of this section shall be guilty of a misdemeanor or infraction at the discretion of the district attorney.
 - 2. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed \$1,000.00 or by imprisonment in the County jail for a term not exceeding six months or by both such fine and imprisonment. If charged as an infraction, the violation shall be punishable by a fine not exceeding \$100.00 for the first violation, \$250.00 for the second violation within one year, and \$500.00 for each additional violation within one year. Such person, firm, partnership, association, corporation, or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.
 - 3. In addition to the above, enforcement of this section shall be subject to the provisions of Chapters 130.12 and 9.02. Any violation of this section shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law, including but not limited to Chapter 9.02. Enforcement of this section under Chapter 9.02 shall be subject to the increased fines and expedited deadlines of section 130.14.260(2)(I) for each and every day, or portion of a day, that a violation exists.
 - 4. All County officers with authority to enforce this Code shall also have the authority to enforce this section.
 - 5. The remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

- G. *Section declarative of existing law.* Except as otherwise provided herein, nothing in this section shall be construed to legalize any existing dispensaries, collectives, cooperatives, or other facilities currently operating in the County, whether they are operating with or without a business license.

3. *Severability.*

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

Sec. 130.14.260 - Outdoor Medical Cannabis Cultivation for Personal Use.

1. *Findings.*

- A. In 1970, Congress enacted the Controlled Substances Act (“CSA”) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.
- B. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq., and entitled “The Compassionate Use Act of 1996” (“CUA”).
- C. The intent of the CUA was to enable seriously ill persons who need medical cannabis for specified medical purposes to obtain and use cannabis under limited, specified circumstances. The CUA provided a limited exception from criminal prosecution under state law for the cultivation, possession, and use of cannabis for specified medical purposes. The CUA did not address land use, zoning, or building code impacts or issues that arise from cannabis cultivation within local jurisdictions.
- D. On January 1, 2004, SB 420, the Medical Marijuana Program Act (“MMPA”), went into effect. The MMPA was enacted by the California Legislature to clarify the scope of the Compassionate Use Act. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.
- E. In 2015, the state implemented the Medical Cannabis Regulation and Safety Act (“MCRSA”), which implemented AB 243, AB 266, and SB 643 and was subsequently modified in 2016 by budget trailer legislation (SB 837).
- F. On June 27, 2017, as part of budget trailer legislation (SB 94), the state enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which generally synthesized the regulation and licensing of cannabis. Prior to SB 94, regulation was under MCRSA for medicinal cannabis and Proposition 64, which

enacted the Control, Regulate and Tax Adult of Marijuana Act (“AUMA”), for nonmedicinal cannabis.

- G. Health and Safety Code Section 11362.83 and Business and Professions Code Section 26200 preserve the authority of local governments to enact local ordinances regulating cannabis. Pursuant to Business and Professions Code Section 26055, state licensing authorities cannot approve an application for a state commercial cannabis license if the applicant is not in compliance with all applicable local ordinances or regulations.
- H. The County zoning ordinance contained in this title currently does not make any distinction between the cultivation of medical cannabis and the cultivation of any other agricultural crop or landscaping; the zoning ordinance contained in this title does not contain any explicit regulations governing the cultivation of medical cannabis.
- I. The cultivation of cannabis has the potential for increased crime, intimidation, and threats. As cannabis plants mature, certain varieties can develop a strong odor that creates an attractive nuisance by alerting people to the location of valuable cannabis plants; this creates an increased risk of crimes including burglary, trespassing, robbery, and armed robbery. Law enforcement officers have reported an increase in calls from reported respiratory problems and allergic reactions to cannabis plants.
- J. Unlimited area for cannabis cultivation exceed the amounts reasonably grown to serve as medical cannabis for residents of the land where the cultivation occurs, or patients under the care of the grower, and would likely be criminal operations.
- K. The unregulated use of pesticides, fungicides, and fertilizers has the potential to contaminate or otherwise damage adjacent property and waterways. Unauthorized use of public and private water supplies and a lack of adequate sanitation facilities further adversely impacts adjacent property and bodies of water. The use of pesticides in the cultivation of cannabis also poses a threat not only to the users of the cannabis, but to consumers of agricultural crops grown in proximity to the cannabis. Under Business and Professions Code Section 26060, the Department of Pesticide Regulation is required to develop guidelines for the use and application of pesticides in the cultivation of cannabis and residue in harvested cannabis.
- L. Standards are necessary to deter increased criminal activity resulting from the visibility of cannabis plants and to protect adjacent property owners and residents who find the odor of mature cannabis plants offensive; the standards will limit incompatible uses on smaller lots and protect the public safety and welfare.
- M. Given the increasing viability of growing cannabis to maturity in moveable containers or harvesting plants during the enforcement process, expedient enforcement of violations under this section is necessary to achieve compliance while ensuring a fair and adequate process.
- N. Since enactment, criminal enforcement of this Chapter has not proved successful and an effective civil code enforcement system that accounts for the unique circumstances and cash value of cannabis cultivation is necessary.

2. *Cultivation.*

- A. *Purpose.* The purpose of this section is to regulate with zoning standards the outdoor cultivation of medical cannabis for personal, non-commercial use by authorized individuals under existing state law while protecting the health, safety, and welfare of adjacent property owners, minimizing law enforcement effort, limiting availability of and exposure to cannabis by the youth of El Dorado County, and protecting the environment and public resources.
- B. *Definitions.* As used in this section, the following terms and phrases shall have the meaning ascribed to them as follows, unless the context in which they are used clearly suggests otherwise:

Child care center means any licensed child care center, daycare center, childcare home, or preschool.

Church means a structure or leased portion of a structure that is used primarily for religious worship and related religious activities.

Cultivation or *cultivating* means the planting, growing, or harvesting of one or more cannabis plants or any part thereof.

Legal parcel means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Government Code Section 66410) of Title 7 of the Government Code).

Medical or medicinal cannabis means cannabis grown for personal medicinal use by a person with a cannabis identification card under Health and Safety Code Section 11362.71, a qualified patient, or a primary caregiver as contemplated by Health and Safety Code Section 11362.7(d) and Business and Professions Code Section 26033(b).

Outdoor cultivation means cultivation activities that are not conducted within a fully enclosed, permitted building, constructed of solid materials, accessible only through one or more locking doors. For purposes of this section, cultivation within a greenhouse or hoop house shall be considered outdoor cultivation.

Premises means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single “premises” for purposes of this section.

Primary caregiver means an individual designated by a patient who has consistently assumed responsibility for the housing, health, or safety of that patient and includes a caretaking relationship directed at the core survival needs of a seriously ill patient, as that meaning is set forth in Health and Safety Code Section 11362.7(d).

Qualified patient shall have the meaning set forth in Health and Safety Code Section 11362.7(f).

School means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior

high school, senior high school, or any special institution of education, but does not include a home school or vocational or professional institution of higher education, including a community or junior college, college, or university.

School bus stop means any location designated in accordance with California Code of Regulations, Title 13, Section 1238, to receive school buses, as defined in Vehicle Code Section 233, or school pupil activity buses, as defined in Vehicle Code Section 546.

Youth-oriented facility means any facility that caters to or provides services primarily intended for minors.

C. *Nuisance declared.* Any violation of this section is hereby declared to be a public nuisance. The outdoor cultivation of cannabis plants is also declared to be a public nuisance and is prohibited in all zone districts, except as provided in Subsection 2.D of this section.

D. *Cultivation standards.*

1. *Size of outdoor cultivation area.* Notwithstanding the limits set forth below, no person may cultivate more than 200 square feet of medical cannabis for personal use. The maximum area on a premises that may be used for the outdoor cultivation of medical cannabis shall be as follows:

- a. Lots zoned R1, R20,000, R1A, R2A, and R3A: 200 square feet;
- b. Lots zoned RE and RL: 400 square feet;
- c. Lots zoned AG, FR, LA, and PA: 600 square feet.

The cultivation of more than 200 square feet shall only be allowed as collective cultivation as provided in Subsection 2.E of this section.

The area of cultivation shall be measured from the outside edge of the stems of the plants on the perimeter of the cultivation area and shall include the space between the plants. The minimum width of a cultivation area shall be five feet.

2. *Screening.* Medical cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Screening shall be accomplished by use of a greenhouse or hoop house or by fencing or vegetation. All greenhouses, hoop houses, and fences shall comply with all building and zoning codes and any other applicable law or regulation. Greenhouses and hoop houses are the preferred means of screening.

3. *Security.* Areas where medical cannabis is cultivated, the premises on which medical cannabis is cultivated, or a portion thereof that includes the cultivation area shall be secured by a minimum six-foot high solid wood or chain link fence with locked gates built in compliance with building and zoning codes. A chain link fence is not sufficient for screening.

4. *Distance from youth-oriented facilities.* The outdoor cultivation of medical cannabis shall be located a minimum of 1,000 feet from any school, school bus stop, church, park, child care center, or youth-oriented facility.
 - a. If the premises on which medical cannabis is cultivated is in a zone listed in Subsection 2.D.1.a or b of this section, the distance shall be measured in a straight line from the boundary of the premises on which the medical cannabis is cultivated to the boundary of the premises on which the school, school bus stop, church, park, or youth oriented facility is located.
 - b. If the premises on which medical cannabis is cultivated is in a zone listed in Subsection 2.D.1.c of this section, the distance shall be measured in a straight line from the fence required in Subsection 2.D.3 of this section to the boundary of the premises on which the school, school bus stop, church, park, or youth oriented facility is located.
5. *Setbacks.* The cultivation area set forth in Subsection 2.D.1 of this section shall be set back from all property lines no less than the following:
 - a. Lots zoned R1, R20,000, R1A, R2A, and R3A: 50 feet;
 - b. Lots zoned RE, RL, AG, FR, LA, and PA: 100 feet.
6. *Residency.* The primary place of residence for persons engaging in the outdoor cultivation of medical cannabis shall be the premises on which the medical cannabis is cultivated. For collective cultivation as provided in Subsection 2.E of this section, the premises on which the medical cannabis is cultivated shall be the principal primary residence of at least one of the persons for whom the medical cannabis is being cultivated. Only those premises with a permitted dwelling unit shall be used for the outdoor cultivation of medical cannabis.
7. *Property owner authorization.* If a person cultivating medical cannabis on any legal parcel is not the legal owner of the parcel, such person shall obtain the written permission (including notarized signatures) of the legal owner consenting to the cultivation of medical cannabis on the parcel. Cultivation by a non-owner in the absence of notarized written permission constitutes a violation of this section.
8. *Environmental requirements.*
 - a. All persons engaging in the cultivation of medical cannabis shall:
 1. Have a legal water source on the premises;
 2. Not engage in unlawful or unpermitted surface drawing of water for such cultivation;
 3. Not allow illicit discharges of irrigation or stormwater from the premises;
 4. Not allow the off-site drift or discharge of chemicals;
 5. Not use any pesticide, fungicide, or fertilizer that has been banned for use in the County or state or that violates the pesticide laws and regulations as

enforced by the Department of Pesticide Regulation and the County agricultural commissioner under the authority of the California Food and Agriculture Code section 11501.5; and

6. Not allow the discharge of sediment from the site or the degradation of water quality of any water body.
 - b. The premises where the cultivation of medical cannabis takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.
 - c. Persons engaging in the cultivation of medical cannabis shall use, dispose, and store chemicals used in such cultivation pursuant to applicable laws and labeling requirements.
9. *Disposal of waste material.* Cannabis waste material shall be disposed of in accordance with existing state and local laws and regulations at the time of disposal. Burning of medical cannabis waste material is prohibited.
10. *Contact information.* The names, contact information, doctor's recommendation for each person cultivating or participating in the cultivation of cannabis on the premises, and the doctor's name and contact information, along with the patient's medical cannabis identification number or card, if applicable, shall be posted at the site of cultivation and made available to enforcement personnel at the time of inspection.
11. *Odor.* The cultivating, drying, curing, processing, and storing of medical cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which medical cannabis is cultivated due to dust, noise, smoke, or odors that are disturbing to people of normal sensitivity. Any cannabis odor shall not be equal or greater than a 7 dilution threshold ("DT") when measured by the County with a field olfactometer at the property line on which the cannabis is cultivated for a minimum of two olfactometer observations not less than fifteen minutes apart within a one hour period ("7 DT one hour"). If the odor from cannabis cultivating, drying, curing, processing, or storing violates this subsection, the County will notify the responsible person and that person must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. The County may require or suggest the installation of one or more odor control options, which may include but are not limited to the use of a greenhouse or hoop house that includes activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, increasing the required setback, growing fewer plants, or growing only low odor cannabis strains. Installation of certain odor control options may require a permit. Any such notice requiring the use of one or more odor control options will provide a deadline for completion and the dilution threshold will be retested upon expiration of that deadline. The continued odor in excess of 7 DT one hour upon retesting will constitute a violation of this Chapter subject to enforcement and abatement.

12. Once harvested, cannabis shall only be dried, cured, processed, or stored in a greenhouse, hoop house, shed, garage, residence, or other fully enclosed structure. Equipment used for drying, curing, or processing cannabis may require a permit.
- E. *Collective cultivation.* Notwithstanding the restrictions on the establishment of a medical cannabis distribution facility provided in Section 130.14.250, not more than three persons may collectively cultivate medical cannabis for their personal use provided such cultivation is conducted consistent with the standards set forth in Subsection 2.D of this section, and as provided below:
 1. The area of cultivation permitted in Subsection 2.D.1 of this section shall not exceed 200 square feet per person participating in the collective cultivation activity. Each person's plants or area of planting shall be clearly marked to identify the individual who is responsible for those plants.
 2. All persons participating in the collective cultivation shall be residents of the County.
- F. *"Right to farm" not applicable.* This prohibition on the outdoor cultivation of medical cannabis shall supersede the provisions of the right to farm ordinance in Section 130.40.290 and any other provision in this Code that defines or allows cultivation of crops or agricultural products to the extent that those provisions can be read in a manner inconsistent with this prohibition.
- G. Reserved.
- H. *Criminal Enforcement.*
 1. Any person, firm, partnership, association, corporation, or other entity, whether as principal agent, employee, or otherwise, who owns or is a tenant upon the property upon which medical cannabis is cultivated outdoors, except as provided in Subsection 2.D of this section, or owns the medical cannabis that is cultivated or otherwise violates any of the provisions of this section can be charged with a misdemeanor.
 2. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed \$1,000.00 or by imprisonment in the County jail for a term not exceeding six months or by both such fine and imprisonment. Such person, firm, partnership, association, corporation or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.
- I. *Administrative Enforcement and Abatement.*
 1. In addition to criminal enforcement, a violation of this section shall be deemed a public nuisance and shall be subject to enforcement as provided herein and the provisions of Chapters 130.12 and 9.02. Pursuant to section 9.02.020(B), the higher fines of this section shall control in any administrative enforcement action.
 2. A notice to correct or notice to abate issued under Chapter 9.02 shall provide 72 hours for the responsible person to correct or abate the violation and shall identify

the administrative fines of this section if the violation is not corrected or abated within 72 hours.

3. For any violation not corrected within the 72-hour notice to correct, an administrative fine of \$500 per day, per violation will accrue for each and every day, or portion of a day, that a violation exists. Once a notice to abate is issued and the time to abate provided in the notice has expired or a decision of a Hearing Officer requires abatement and the time to abate provided in the decision has expired, the fine shall increase to \$1,000 per day, per violation for each and every day, or portion of a day, that a violation exists. Each plant cultivated in violation of this section or cultivated outside the square footage provided for in this section shall be deemed a separate violation. For a second violation within the 12-month period commencing from the date of a prior administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be \$2,500 per day, per violation for each and every day, or portion of a day, that a violation exists. For a third violation within the 12-month period commencing from the date of the first administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be \$5,000 per day, per violation for each and every day, or portion of a day, that a violation exists.
4. Notwithstanding section 9.02.390, a request for an administrative hearing under Chapter 9.02 must be made within three days of service of the notice to correct, administrative citation, or notice to abate and the hearing shall be held within five days of the request for a hearing.
5. The decision of the Hearing Officer under section 9.02.440 shall be issued within five days of completion of the hearing.
6. A notice to abate or decision of a Hearing Officer requiring abatement shall provide that, if any plants cultivated under this section are removed as part of the abatement action because they are in excess of the allowable square footage, the responsible person may decide which plants will remain so long as the remaining plants are in compliance with this section. The notice to abate shall require the responsible person to identify the plants to remain within the 72-hours provided in the notice to abate or the time provided for in the decision by the Hearing Officer. If the responsible person does not identify the plants to remain in writing within the time provided, the enforcement official shall determine, in his or her sole discretion, which plants will remain.
7. Unless a notice is personally served, any notice provided under this section shall be mailed under section 9.02.120 and posted conspicuously on or in front of the residence, cultivation site, or other place reasonably anticipated to provide notice to the responsible person.
8. The remedies provided herein are cumulative to all other administrative, civil, and criminal remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances or criminal activity.

- J. *Administrative relief.* Any person who cannot comply with the provisions of this section due to undue hardship and unique circumstances applying to the property on which outdoor medical cannabis is cultivated or is proposed to be cultivated, may apply for administrative relief. The relief process shall be as follows:
1. A written request for a finding of undue hardship shall be submitted to the Chief Administrative Officer or his or her designee. The request shall include the reasons that the standards provided herein cannot be met and how that creates a hardship.
 2. The Chief Administrative Officer or designee shall approve or disapprove the request for administrative relief and provide notice of the action to the property owners immediately adjacent to the subject property, Code Enforcement, and the County Sheriff, together with notice that the action may be appealed. The Chief Administrative Officer may expand the notice at his or her discretion based on the type of relief requested and the potential effects on nearby property.
 3. An appeal of the Chief Administrative Officer's action may be filed as provided in section 130.52.090 except that any appeal shall be heard by the Board of Supervisors and may be filed within one year of the Chief Administrative Officer's action.
 4. The Chief Administrative Officer may refer the matter to the Board of Supervisors at his or her discretion.
 5. The Chief Administrative Officer or designee shall provide notice of the final decision on a request for administrative relief to Code Enforcement and the Sheriff. Additionally, should a request for administrative relief be granted, the applicant shall post documentation of such relief at the site of the cultivation and make such documentation available to enforcement personnel at the time of inspection.
- K. *No authorization, defense, or immunity.* Nothing herein shall confer on any person the right to maintain a public or private nuisance or to authorize or facilitate any violation of state or federal law. Except for enforcement actions arising out of this section, no provision of this section shall be deemed a defense or immunity to any action brought against any person by the District Attorney, the State of California, the United States, or any other person. Nothing in this section shall be construed to authorize or facilitate the cultivation or use of cannabis for non-medical purposes or to allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under state or federal law.
- L. *No duty to enforce.* Nothing in this section shall be construed as imposing on the Sheriff, the District Attorney, or the County any duty to abate any unlawful cannabis cultivation, to prosecute a violation of this section, or to take any other action with regard to any unlawful cannabis cultivation. Furthermore, the Sheriff, District Attorney, County, and any of their officers or employees shall not be held liable for failure to abate any unlawful cannabis cultivation, to prosecute a violation of this section, or to take any other action with regard to any unlawful cannabis cultivation.

3. *Severability.*

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

Pursuant to California Government Code section 25123, this ordinance shall become effective 30 days from the date of final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 7th day of November, 2017 by the following vote of said Board:

ATTEST

JAMES S. MITRISIN

Clerk of the Board of Supervisors

Kyza Schaufenberg
Deputy Clerk

Ayes: Hidahl, Veerkamp, Frentzen, Novasel,
Ranalli

Noes: None

Absent: None

Shiva E. Frentzen
Shiva Frentzen, Chair, Board of Supervisors

**APPROVED AS TO FORM
MICHAEL J. CICOZZI
COUNTY COUNSEL**

By: Bre Moebius

Breann M. Moebius
Deputy County Counsel



ORDINANCE NO. 5071

AN INTERIM ORDINANCE MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF COMMERCIAL CANNABIS ACTIVITIES, TO BECOME EFFECTIVE IMMEDIATELY

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 1. Section 130.14.270 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Commercial Cannabis Activities" is hereby enacted to read as follows:

**ARTICLE 9 - MISCELLANEOUS
CHAPTER 130.14 - MEDICAL CANNABIS**

Sec. 130.14.270 - Commercial Cannabis Activities

1. *Findings.*

- A. In 1970, Congress enacted the Controlled Substances Act ("CSA") which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.
- B. In 1996, the voters of the State of California approved Proposition 215, which was then codified as Health and Safety Code section 11362.5 et seq., and entitled "The Compassionate Use Act of 1996."
- C. On June 5, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich* (2005) 125 S.Ct. 2195, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and power to prohibit local cultivation and use of cannabis even if the cultivation or use complies with state law.
- D. In 2016, the voters of the State of California passed Proposition 64, which decriminalized the growth and possession of a limited amount of cannabis for recreational use by adults over the age of twenty-one and provided for the commercial cultivation and sale of cannabis for recreational use.

- E. On June 27, 2017, as part of budget trailer legislation (SB 94), the state enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which generally synthesized the regulation and licensing of cannabis. Prior to SB 94, regulation of medicinal cannabis was most recently under the Medical Cannabis Regulation and Safety Act (“MCRSA”) and regulation of adult recreational cannabis was under the Control, Regulate and Tax Adult of Marijuana Act (“AUMA”). MAUCRSA does not address land use, zoning, or building code impacts resulting from commercial cannabis activities and allows local governments to adopt and enforce rules and regulations consistent with MAUCRSA.
- F. After the passage of MAUCRSA, the California Bureau of Cannabis Control withdrew its commercial cannabis regulations and released emergency regulations on November 16, 2017 for public review. The controlling regulations by the Bureau of Cannabis Control and other state regulatory agencies are still developing and state cannabis law is continually shifting.
- G. Under the CSA, all commercial cannabis activities remain illegal and the federal government has not given clear direction as to whether it will pursue criminal or civil enforcement against individuals engaged in commercial cannabis activities or local governments that allow or regulate commercial cannabis activities.
- H. Despite the uncertainty at the federal and state levels, the Bureau of Cannabis Control, Manufactured Cannabis Safety Branch, and CalCannabis Cultivation Licensing have indicated their intent to begin issuing licenses on January 1, 2018 for commercial cannabis activities.
- I. Against the backdrop of these uncertainties and the limited time until the state begins issuing licenses, El Dorado County has been unable to meaningfully examine or draft regulations addressing potential impacts to the public safety, health, and welfare and the environment from commercial cannabis activities. Nor does El Dorado County currently have an adequate program in place to effectively enforce regulations of new uses for commercial cannabis to protect the public and environment.
- J. Citizens and law enforcement officers have reported an increase in criminal behavior, traffic, odor, disturbances, and noise in the vicinity of existing illegal commercial cannabis grows and the sale of illegal drugs, including the illegal resale of cannabis from dispensaries, in the areas immediately surrounding cannabis grows and medical cannabis dispensaries.
- K. Health and Safety Code section 11362.83 and Business and Professions Code section 26200 preserve the authority of local governments to enact local ordinances allowing or banning commercial cannabis activities. Pursuant to Business and Professions Code section 26055, state licensing authorities cannot approve an application for a state

commercial cannabis license if the applicant is not in compliance with all applicable local ordinances and regulations.

2. *Imposition of Moratorium on Commercial Cannabis Activities.*

- A. Pursuant to Government Code section 65858 and with the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code, the establishment or operation of any commercial cannabis activity is prohibited in the unincorporated areas of the County and no use permit, variance, building permit, or any other applicable entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of a commercial cannabis activity for a period of 45 days.
- B. With the exception of any existing medical cannabis distribution facilities that satisfy all of the requirements of section 130.14.250(2)(D) of the El Dorado County Code, a facility engaged in a commercial cannabis activity shall not be established, operated, or maintained at any location in any zone district in the unincorporated areas of the County, even if the facility engaged in a commercial cannabis activity is located within or operated with one or more additional otherwise permitted use(s), including but not limited to a health food store, bakery, tobacco shop, retail store, health education facility, health spa, fitness facility, wellness center, or health facility.
- C. *Definitions.* As used in this section, the following terms and phrases shall have the meaning ascribed to them as follows, unless the context in which they are used clearly suggests otherwise:
- i. "Commercial cannabis activity" includes any activity involving the cultivating, harvesting, processing, drying, curing, storing, trimming, manufacturing, labeling, transporting, delivering, or laboratory testing of cannabis or cannabis products for the sale, distribution, gifting, or donating to any other person regardless of whether the activity involves medicinal or adult recreational cannabis or cannabis products, is operated for profit, or is in compliance with state laws and regulations. "Commercial cannabis activity" does not include any activity expressly allowed under Business and Professions Code section 26033, Health and Safety Code section 11362.1, and County Code section 130.14.260 or the transportation of cannabis or cannabis products on public roads by a transporter licensed under state law.
- ii. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced

from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination, or "industrial hemp" as defined by section 11018.5 of the Health and Safety Code. (Business & Professions Code, § 26001.)

iii. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. (Health & Safety Code, § 11018.1.)

iv. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether as principal, agent, employee, or otherwise, and the plural as well as the singular. (Business & Professions Code, § 26001.)

- D. This ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code section 65858 and is for the immediate preservation of the public safety, health, and welfare. Based on the findings in section 1 of this ordinance, the facts constituting the urgency are: California regulatory agencies intend to begin issuing licenses for commercial cannabis activities and the legal framework surrounding such activities is uncertain given the recent changes in state law and uncertainty as to whether the federal government will enforce the CSA. California jurisdictions that have permitted commercial cannabis activities have recognized negative secondary effects, such as an increase in crime, including burglary, robbery, and the sale of illegal drugs, in the areas immediately surrounding the commercial cannabis activities and harmful effects to the environment from commercial cultivation that pose a risk to public health and welfare. The County does not currently authorize any commercial cannabis activities with the narrow exception of existing dispensaries under section 130.14.250(2)(D). Nonetheless, legalization and regulation at the state level has led to confusion about what is authorized in the County and, in the absence of an express ban, this confusion could result in the inadvertent issuance of a state license or new or continued illegal commercial cannabis activities. At this early stage, the County lacks a sufficient program and funding at this time to regulate any new commercial cannabis activity in order to protect the public safety, health, and welfare and needs sufficient time to consider and address the risks to public safety, health, and welfare from any commercial cannabis activity. Absent the adoption of this urgency ordinance, the establishment and operation of additional commercial cannabis activities in the County would result in increases to the harmful secondary effects identified. As a result of the harmful secondary effects associated with commercial cannabis activities, the current and immediate threat such secondary effects pose to the public safety, health, and welfare, and the uncertainty of state and federal law addressing commercial cannabis activities, it is necessary to, in accordance with Government Code section 65858,

temporarily establish a 45-day moratorium on the establishment and operation of any new commercial cannabis activities in the County pending the completion of the amendments to the County's Zoning Ordinance.

E. The Board of Supervisors hereby directs the Planning and Building Department to consider and study possible means to regulate or prohibit commercial cannabis activities, including possible amendments to the County Zoning Ordinance and the means to fund the regulation and enforcement of any new commercial cannabis activities.

3. *Penalties.*

A. Any person who engages or attempts to engage in any commercial cannabis activity, owns the property upon which a commercial cannabis activity is conducted, or otherwise violates or attempts to violate any of the provisions of this ordinance can be charged with a misdemeanor or infraction at the discretion of the district attorney.

B. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed \$1,000.00 or by imprisonment in the County jail for a term not exceeding six months or by both such fine and imprisonment. If charged as an infraction, the violation shall be punishable by a fine not exceeding \$100.00 for the first violation, \$250.00 for the second violation within one year, and \$500.00 for each additional violation within one year. Such person, firm, partnership, association, corporation, or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.

C. In addition to the above, enforcement of this section shall be subject to the provisions of Chapter 9.02. Any violation of this section shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law, including but not limited to Chapter 9.02. Enforcement of this section under Chapter 9.02 shall be subject to the increased fines and expedited deadlines of section 130.14.260(2)(I) for each and every day, or portion of a day, that a violation exists.

D. All County officers with authority to enforce this Code shall also have the authority to enforce this section.

E. The remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

4. *Ordinance Declarative of Existing Law.*

Chapter 130.20 of the El Dorado County Zoning Ordinance provides that only uses specifically enumerated are permitted and, unless an exemption applies, any unenumerated use is not allowed within the County. The County Zoning Ordinance does not authorize any commercial cannabis use and thus any such use is currently prohibited. Nothing in this ordinance shall be construed to

legalize any existing commercial cannabis activity currently operating in the County, whether it is operating with or without a business license.

5. *Compliance with California Environmental Quality Act.*

The Board of Supervisors finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to section 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; section 15060(c)(3) because the activity is not a "Project" as defined in section 15378 since the moratorium has no potential for resulting in physical change to the environment, directly or indirectly; and section 15308 because the proposed amendments are intended to protect the environment.

6. *Severability.*

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

7. *Effective Date.*

This ordinance shall become effective immediately upon adoption, if adopted by at least four-fifths vote of the County Board of Supervisors. It shall be in effect for forty-five (45) days from the date of adoption, unless extended by the County Board of Supervisors as provided for in Government Code section 65858.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 12th day of December, 2017, by the following vote of said Board:

Ayes: Ranalli, Novasel, Frentzen, Hidahl, Veerkamp
Noes: None
Absent: None

ATTEST
JAMES S. MITRISIN
Clerk of the Board of Supervisors
Kyra Schaefferberg
Deputy Clerk

Shiva E. Frentzen
Shiva Frentzen, Chair, Board of Supervisors

**APPROVED AS TO FORM
MICHAEL J. CICOZZI
COUNTY COUNSEL**

By: Bre Moebius

Breann M. Moebius
Deputy County Counsel

Exhibit B
Sample Agreement for Professional Services

Consultant's Name

Hearing Officer Services

AGREEMENT FOR SERVICES # _____

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and _____, a _____, duly qualified to conduct business in the State of California, whose business and mailing address is _____ (hereinafter referred to as "Consultant" or "Hearing Officer");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a consultant to act in the capacity of Code Enforcement Hearing Officer for the Community Development Services, Planning and Building Department, Code Enforcement Section, on an as-needed basis;

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;

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

WHEREAS, County has determined that the provision of such 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 Section 31000;

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

ARTICLE I

Scope of Services:

- A. Consultant services are to be provided specifically in support of the Community Development Services, Planning and Building Department, Code Enforcement Section on an as-needed basis.
- B. Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein, to provide an unbiased opinion in order to make judgments in accordance with applicable law for the good of the public. Services shall include, but not be limited to, those tasks as identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof.

- C. Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in Exhibit A or in the individual Notice to Proceeds that may be issued. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in ARTICLE XII, Default, Termination, and Cancellation, herein.
- D. Hearing Officer shall follow Chapter 9.02 Code Enforcement of the El Dorado Ordinance Code; and Chapter 130.14.250 Medical Cannabis Distribution; Chapter 130.140.260 Outdoor Medical Cannabis Cultivation for Personal Use; and Chapter 130.14.270 Commercial Cannabis Activities of the El Dorado County Ordinance Codes #5067 and #5071 (hereinafter referred to as "Code") as referenced in Exhibit B, marked "El Dorado Ordinance Code #5067 and #5071," incorporated herein and made by reference a part hereof.

All of the services included in this Article and Exhibit A, are the responsibility of Consultant, unless specifically described as a task or item of work to be provided by County. Consultant shall be responsible for the supervision, administration, and work performed by any subconsultant for services rendered under this Agreement.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall expire three (3) years from the date thereof unless terminated earlier pursuant to the provisions under ARTICLE XII, Default, Termination, and Cancellation, herein.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Consultant in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices identifying the services rendered.

For the purposes hereof, the billing rates shall be as follows:

Hearings

- \$_____ per day
- Second day begins at midnight
- \$_____ per day cancellation fee unless cancelled fourteen (14) days in advance
- No charge for travel time or mileage

Research, Review, Writing, and Preparation of Written Opinions

- \$_____ per hour

The total amount of this Agreement shall not exceed \$60,000, inclusive of all costs and expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall

reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado
Community Development Services
Planning and Building Department
2850 Fairlane Court
Placerville, California 95667
Attn.: Contract Administrator
Contract Administrator's Title

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XII, Default, Termination, and Cancellation, herein.

ARTICLE IV

Taxes: Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

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 VI

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 the term hereof.

ARTICLE VII

Confidentiality: Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Community Development Services for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this

Agreement.

ARTICLE VIII

Assignment and Delegation: 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.

ARTICLE IX

Independent Contractor/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 the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subcontractors, 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

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, 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 County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XI

Audit by California State Auditor: Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, 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, Consultant 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 XII

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 in 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. 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.

B. **Bankruptcy:** This Agreement, at the option of 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 upon seven (7) calendar days' written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. 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.

ARTICLE XIII

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
Community Development Services
Planning and Building Department
2850 Fairlane Court
Placerville, California 95667

With a copy to:

County of El Dorado
Community Development Services
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Contract Administrator's Name
Contract Administrator's Title

Attn.: Michele Weimer
Administrative Services Officer
Contracts & Procurement Unit

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Consultant's Name
Address
City, State and Zip Code

Attn.: Name, Title

or to such other location as Consultant directs.

ARTICLE XIV

Change of Address: In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XIII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XV

Indemnity: Consultant shall defend, indemnify, and hold County and its officers, agents, employees, and representatives harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' 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 Consultant's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Consultant, subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of County, its officers, agents, employees, and representatives, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVI

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Evidence of Automobile Liability Insurance complying with the State of California's statutory limits.
- C. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$100,000 per occurrence and \$300,000 aggregate.
- D. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- E. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- F. Consultant agrees that the insurance required herein 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 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.

- G. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without prior written notice to County; and
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- H. Consultant's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- I. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- K. 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.
- L. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- M. 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.
- N. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

ARTICLE XVII

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 XVIII

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 XIX

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in ARTICLE XII, Default, Termination, and Cancellation, herein.

ARTICLE XX

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 identify, 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 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 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 8355 and Title 2, California Code of Regulations, Section 8103.

ARTICLE XXI

California Residency (Form 590): If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXII

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXIII

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXIV

Licenses: Consultant hereby represents and warrants that Consultant and any of its subconsultants, if any, employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXV

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 XXVI

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Contract Administrator's Name, Contract Administrator Administrator's Title, Contract Administrator's Division, Community Development Services, Planning and Building Department, or successor.

ARTICLE XXVII

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 XXVIII

Partial Invalidity: If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXIX

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XXX

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXI

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 Contract Administrator Concurrence:

By: _____

Dated: _____

Contract Administrator
Contract Administrator's Title
Community Development Services
Planning and Building Department

Requesting Department Concurrence:

By: _____

Dated: _____

Director's Name
Director's Title
Community Development Services
Planning and Building Department

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

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Purchasing Agent
Chief Administrative Office
"County"

-- CONSULTANT'S NAME --

By: _____

Dated: _____

Contract Signer
Title
"Consultant"