

# **AGREEMENT BETWEEN THE EASTERN SIERRA COUNCIL OF GOVERNMENTS AND CELESTE BERG CONSULTING, LLC FOR THE PROVISION OF ADMINISTRATIVE SERVICES**

## **INTRODUCTION**

WHEREAS, the Eastern Sierra Council of Governments (hereinafter referred to as "ESCOG") may have the need for the Administrative Services (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

## **TERMS AND CONDITIONS**

### **1. SCOPE OF WORK.**

The Contractor shall furnish to ESCOG, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by ESCOG to the Contractor to perform under this Agreement will be made by Elaine Kabala, whose title is: Executive Director. Requests to the Contractor for work or services to be performed under this Agreement will be based upon ESCOG's need for such services. ESCOG makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by ESCOG under this Agreement. By this Agreement, ESCOG incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if ESCOG should have some need for such services or work during the term of this Agreement.

Services and work provided by the Contractor at ESCOG's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and county laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

### **2. TERM.**

The term of this Agreement shall be from April 25, 2024 to October 1, 2024 unless sooner terminated as provided below.

### **3. CONSIDERATION.**

A. Compensation. ESCOG shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment B) for the services and work described in Attachment A which are performed by Contractor at ESCOG's request.

B. Travel and per diem. Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by ESCOG under this Agreement.

C. No additional consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from ESCOG, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit upon amount payable under Agreement. The total sum of all payments made by ESCOG to Contractor for services and work performed under this Agreement shall not exceed Forty Thousand Dollars (\$40,000) (hereinafter referred to as "contract limit"). ESCOG expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to ESCOG, once a month, an itemized statement of all services and work described in Attachment A, which were done at ESCOG's request. This statement will be submitted to ESCOG not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Upon timely receipt of the statement by the fifth (5th) day of the month, ESCOG shall make payment to Contractor on the last day of the month.

F. Federal and State taxes.

(1) Except as provided in subparagraph (2) below, ESCOG will not withhold any federal or state income taxes or social security from any payments made by ESCOG to Contractor under the terms and conditions of this Agreement.

(2) ESCOG will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety nine dollars (\$1,499.00).

(3) Except as set forth above, ESCOG has no obligation to withhold any taxes or payments from sums paid by ESCOG to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. ESCOG has no responsibility or liability for payment of Contractor's taxes or assessments.

(4) The total amounts paid by ESCOG to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Contractor shall complete and submit to ESCOG an Internal Revenue Service (IRS) Form W-9 upon executing this Agreement.

#### **4. WORK SCHEDULE.**

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by ESCOG. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with ESCOG to ensure that all services and work requested by ESCOG under this Agreement will be performed within the time frame set forth by ESCOG.

#### **5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.**

A. Any licenses, certificates, or permits required by the federal, state, county, municipal governments, for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement or as otherwise may be required. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to ESCOG. Contractor will provide ESCOG, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and ESCOG as to what licenses, certificates, and permits are required to perform the services identified in

Attachment A, ESCOG reserves the right to make such determinations for purposes of this Agreement.

B. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration available at: <http://www.sam.gov>.

## **6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ET CETERA.**

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. ESCOG is not obligated to reimburse or pay Contractor, for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

## **7. ESCOG PROPERTY.**

A. Personal Property of ESCOG. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Contractor by ESCOG pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of ESCOG. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of ESCOG. At the termination of the Agreement, Contractor will convey possession and title to all such properties to ESCOG.

## **8. INSURANCE.**

For the duration of this Agreement, Contractor shall procure and maintain insurance of the scope and amount specified in Attachment C and with the provisions specified in that attachment.

## **9. STATUS OF CONTRACTOR.**

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of ESCOG. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of ESCOG. Except as expressly provided in Attachment A, Contractor has no authority or responsibility to exercise any rights or power vested in ESCOG. No agent, officer, or employee of the Contractor is to be considered an employee of ESCOG. It is understood by both Contractor and ESCOG that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to ESCOG only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to ESCOG 's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of ESCOG.

#### **10. DEFENSE AND INDEMNIFICATION.**

Contractor shall hold harmless, defend and indemnify ESCOG and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damages which was caused by the sole negligence or willful misconduct of ESCOG.

#### **11. RECORDS AND AUDIT.**

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of ESCOG shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which ESCOG determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, ESCOG has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

#### **12. NONDISCRIMINATION.**

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

#### **13. CANCELLATION.**

This Agreement may be canceled by ESCOG without cause, and at will, for any reason by giving to Contractor thirty (30) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to ESCOG.

#### **14. ASSIGNMENT.**

This is an agreement for the services of Contractor. ESCOG has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of ESCOG. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of ESCOG.

**15. DEFAULT.**

If the Contractor abandons the work, or fails to proceed with the work and services requested by ESCOG in a timely manner, or fails in any way as required to conduct the work and services as required by ESCOG, ESCOG may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, ESCOG will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

**16. WAIVER OF DEFAULT.**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-two (22) below.

**17. CONFIDENTIALITY.**

Contractor further agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Contractor only with the express written consent of ESCOG. Any disclosure of confidential information by Contractor without ESCOG's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

**18. CONFLICTS.**

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

**19. POST AGREEMENT COVENANT.**

Contractor agrees not to use any confidential, protected, or privileged information which is gained from ESCOG in the course of providing services and work under this Agreement, for any personal benefit,

gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with ESCOG, or who has been an adverse party in litigation with ESCOG, and concerning such, Contractor by virtue of this Agreement has gained access to ESCOG's confidential, privileged, protected, or proprietary information.

**20. SEVERABILITY.**

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

**21. FUNDING LIMITATION.**

The ability of ESCOG to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, ESCOG has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Contractor of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-two (22) (Amendment).

**22. AMENDMENT.**

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

**23. NOTICE.**

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Contractor or ESCOG shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

ESCOG  
c/o Town of Mammoth Lakes  
Elaine Kabala, Executive Director  
437 Old Mammoth Road, Suite 230 #1609  
Mammoth Lakes, CA 93514

Contractor:

**24. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

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IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

**ESCOG**

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

Elaine Kabala, Executive Director \_\_\_\_\_  
Print or Type Name

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

**CONTRACTOR**

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

\_\_\_\_\_   
Print or Type Name

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

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Counsel for ESCOG

APPROVED AS TO ACCOUNTING FORM:

\_\_\_\_\_  
ESCOG Fiscal Services



## **ATTACHMENT A**

### **AGREEMENT BETWEEN THE EASTERN SIERRA COUNCIL OF GOVERNMENTS AND CELESTE BERG CONSULTING, LLC FOR THE PROVISION OF ADMINISTRATIVE SERVICES**

#### **TERM:**

**FROM\_ April 25, 2024      TO: October 1, 2024**

#### **SCOPE OF WORK:**

##### **Scope of Work**

General: The ESCOG is seeking qualified contractors to provide Regional Interagency Liaison Services, consisting of coordinating interagency outreach and deliverables for the California Jobs First initiative.

Under direction of the ESCOG Board and the Executive Director, the contractor will provide administrative and analytical duties supporting the California Jobs First initiative duties conducted by the ESCOG JPA, including regional interagency coordination, public engagement and analytical services.

This position serves as an independent contractor to the ESCOG JPA. The position is a part-time position.

##### **Scope of Work**

- Support outreach, communications, public engagement and analysis for the Eastern Sierra California Jobs First initiative. Manage and strengthen communications and collaboration between the regional agencies and the ESCOG, and stakeholders, partners, and the public.
- Coordinate public outreach workshops and interagency collaboration meetings to support data gathering to inform Eastern Sierra California Jobs First project deliverables.
- Make presentations to regional Boards and Council (including Tribal Councils) regarding Eastern Sierra California Jobs First project updates.
- Analyze Eastern Sierra Jobs First deliverables for accuracy and prepare communications on behalf of the Eastern Sierra Council of Governments to provide to regional partners.
- Act as point of contact and liaison between the ESCOG and other regional partner agencies.
- Assist with the development and implementation of agency communications, including website posts and updates, email marketing, newsletters and brochures for relevant project
- Assist with developing and writing departmental reports for consideration by the ESCOG Board

for bimonthly Board meetings.

- Coordination of meetings and public workshops.
- Works closely with Executive Director to ensure continuity and completion of projects.
- Attendance at board meetings as needed.

**ATTACHMENT B**

**AGREEMENT BETWEEN THE EASTERN SIERRA COUNCIL OF GOVERNMENTS AND CELESTE  
BERG CONSULTING, LLC FOR THE PROVISION OF ADMINISTRATIVE SERVICES**

**TERM:**

**FROM April 25, 2024 TO: October 1, 2024**

**SCHEDULE OF FEES:**

\$75.00 per hour, not-to-exceed \$40,000

**ATTACHMENT C**

**AGREEMENT BETWEEN THE EASTERN SIERRA COUNCIL OF GOVERNMENTS AND CELESTE  
BERG CONSULTING, LLC FOR THE PROVISION OF ADMINISTRATIVE SERVICES**

**TERM:**

**FROM: April 25, 2024 TO: October 1, 2024**

**SEE ATTACHED INSURANCE PROVISIONS**