

**AGREEMENT #21118 FOR PROFESSIONAL SERVICES
For LAKE COUNTY**

This AGREEMENT is entered into by and between Lake County ("County") and EcoInteractive, LLC ("Consultant"), 548 Market St. #19734, San Francisco, CA 94104-5401

RECITALS

WHEREAS, Lake County is seeking a Consultant to provide an Integrated Capital Program Management System for Lake County, IL as noted in the Consultant's proposal dated August 23, 2021, ("Services"); and

WHEREAS, Consultant has the professional expertise and credentials to provide these Services and has agreed to assume responsibility for this Agreement.

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

SECTION 1. AGREEMENT DOCUMENTS

The Agreement Documents that constitute the entire Agreement between Lake County and Consultant are in order of precedence:

- A. This Agreement and all exhibits thereto; and,
- B. Terms and Conditions identified in RFP #21118 – Integrated Capital Program Management System as Exhibit A
- C. Contractor's RFP response to RFP #21118 proposal dated August 23, 2021 and all exhibits thereto identified within as Exhibit B.
- D. Contractor's BAFO response, dated October 20, 2021 as Exhibit C.

SECTION 2. SCOPE OF WORK

The integrated transportation planning, programming, and tracking system, and visualizations solution project is made up of several distinct but connected components:

- 1. a "back end" database for storing, processing, and organizing data;
- 2. a front end "user interface" for entering, querying, and retrieving data from the database;
- 3. a GIS-based mapping application for entering, displaying, querying, and retrieving location-based data;
- 4. a reporting tool with predefined report formats and the ability to create ad-hoc or customized reports
- 5. an analysis and visualization component for displaying and querying data interactively via tables, charts, and/or graphs.

Integration of the database with other internal and external data sources through API's is also required. Data must be collected from the web interface, mapping application, and via imports from other databases/spreadsheets internal and external to LCDOT. Project data, including illustrative data will generally be collected at three different levels: Project Information, Financial Line Items, and Categories (by project and/or by line item). Background Information and Administrative Information will also be collected and may or may not be associated with individual projects or line items. Once collected, the data must be validated for accuracy, completeness, and compliance with fiscal constraint criteria. Standard reports and visualizations (map and dashboards) must be generated for the 5 Year Transportation Improvement Program, including with illustrative projects/line items.

Due to its complex nature, LCDOT envisions that this project will be completed in phases, beginning with a

Planning Phase that will define the structure and function of all components of the project. Once all planning phase deliverables have been completed and accepted by LCDOT, the actual Development and Programming or Build Phase should commence. The Third Phase will include cross walking existing data to the new application, testing, final documentation, and staff training. The Fourth Phase of this project will include Maintenance and Future Development. Maintenance and Future Development will encompass planned for, but yet uncompleted desired elements, application development enhancements, and possibly hardware and software maintenance, depending upon the final configuration and hosting decisions. Application development enhancements will be on a task order basis while maintenance will be on an annual budget basis.

SECTION 3. DURATION

The County intends to execute a two-part agreement for this initiative – implementation services and ongoing software services. The term for implementation will be set by the approved project implementation plan and the software services contract should commence upon go-live/product launch into production. The software services contract shall be renewed from year to year under the existing approved conditions unless termination notice is provided. At the end of any contract term, Lake County reserves the right to extend this contract for a period of sixty (60) days for the purpose of getting a new contract in place. For any year beyond the initial year, this contract is contingent on the appropriation of sufficient funds; no charges shall be assessed for failure of the County to appropriate funds in future contract years.

SECTION 4. AGREEMENT PRICE

Lake County will pay the Consultant upfront development cost of \$50,850 for the implementation configuration fee. This work will include configurations/customizations, data imports, and all initial start-up services (from configuration of the latest ProjectTracker database application to implementation to go-live as well as two live general trainings.) Licensing fees are included in the software as a service (SaaS) fee. Annual on-going service fees in the amount \$101,700 with a 2% annual increase for years two through five. Annual fee is expected to be a complete package covering secure site, public portal, maintenance, help desk support, hosting, security, business rule, and software changes.

SECTION 5. INVOICES & PAYMENT

- A. A purchase order will be issued for the work and Consultant shall submit invoice(s) detailing the products and services provided and identify the purchase order number on all invoices.
- B. Consultant shall maintain records showing actual time devoted and cost incurred. Consultant shall permit a representative from Lake County to inspect and audit all data and records of Consultant for work and/or services provided under this Agreement. Consultant shall make these records available at reasonable times during the Agreement period and for one year after the termination of this Agreement.
- C. All payments shall be made in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).

SECTION 6. CHANGE ORDERS

In the event changes to the Scope of the project and/or additional work become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references this Agreement (a "Change Order"). The Change Order shall set forth in detail: (i) the Change requested, (ii) the reason for the proposed Change; (iii) the cost of the Change; and (iv) the impact of the Change on time for completion of the project.

In the event either party desires a Change, the Project Manager for such party shall submit to the other party's Project Manager a proposed Change Order. If the receiving party does not accept the Change Order in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Order. If the parties cannot reach agreement on a proposed Change, Contractor shall nevertheless continue to render performance under this Agreement in accordance with its (unchanged) terms and conditions.

Changes that involve or increase in the amounts payable by the County may require execution by the County Purchasing Agent. Some increases may also require approval by the County Board. In those cases where the County Purchasing Agent's signature is required, or County Board approval is needed, the Change Order shall not be deemed rejected by County after ten (10) days provided the Project Manager has indicated in writing within the ten (10) day period of his intent to present the Change Order for appropriate signature or approval.

SECTION 7. INDEMNIFICATION

Consultant agrees to indemnify, save harmless, and defend Lake County, its agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses, and expenses, including court costs and attorney's fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by this Agreement caused directly by the negligence or willful or wanton conduct of Consultant. The foregoing indemnity shall apply except if such injury, death, or damage is caused directly by the gross negligence or willful or wanton conduct of Lake County, its agents, servants, or employees or any other person indemnified hereunder.

SECTION 8. INSURANCE

The Consultant must obtain, for the Contract term and any extension of it, insurance issued by a company or companies qualified to do business in the State of Illinois with an A.M. Best Rating of at least A-and provide the County with a Certificate of Insurance 15 days before the start of the project, and thereafter annually for contracts/ projects that will last more than one year. Insurance in the following types and amounts is necessary and/or where applicable:

Commercial General Liability Insurance

In a broad form on an occurrence basis shall be maintained, to include, but not be limited to, coverage for property damage, bodily injury (including death), personal injury and advertising injury in the following coverage forms where exposure exists:

- Premises and Operations
- Independent Contractors
- Products/Completed Operations
- Liability assumed under an Insured Contract/ Contractual Liability
- Personal Injury and Advertising Injury

With limits of liability not less than:

\$ 1,000,000 Each Occurrence

\$ 1,000,000 Products-Completed Operations

\$ 1,000,000 Personal and Advertising injury limit

\$ 2,000,000 General aggregate; the CGL policy shall be endorsed to provide that the General Aggregate limit applies separately to each of the contractor's projects away from premises owned or rented to contractor.

Automobile Liability Insurance

Automobile liability insurance shall be maintained to respond to claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle. This policy shall be written to cover any auto whether owned, leased, hired, or borrowed. The Contractor's auto liability insurance, as required above, shall be written with limits of insurance not less than the following:

\$ 1,000,000 Combined single Limit (Each Accident)

Excess/ Umbrella Liability

The Contractor's Excess/ Umbrella liability insurance shall be written with the umbrella follow form and outline the underlying coverage, limits of insurance will be based on size of project:

\$ 2,000,000 per occurrence limit

Workers Compensation (Coverage A) and Employers Liability (Coverage B)

Workers Compensation Insurance covering all liability of the Contractor arising under the Worker's Compensation Act and Worker's Occupational Disease Act at limits in accordance with the laws of the State of Illinois. Employers' Liability Insurance shall be maintained to respond to claims for damages because of bodily injury, occupational sickness, or disease or death of the Contractor's employees, with limits listed below:

Employers Liability

- a) Each Accident \$1,000,000
- b) Disease-Policy Limit \$1,000,000
- c) Disease-Each Employee \$1,000,000

Such Insurance shall contain a waiver of subrogation in favor of Lake County.

Professional Liability – Errors and Omissions

The Engineers/Architects/Consultants for the plans of the project shall be written with limits of insurance not less than the following:

\$ 1,000,000 per claim per policy year

Coverage shall be provided for up to three (3) years after project completion. Policy is to be on a primary basis if other professional liability is carried.

Professional Liability – Cyber Liability

Cyber Liability Insurance for property damage to electronic information and/or data; first and third party risks associated with e-business, internet, etc., with limits of insurance not less than the following:

\$ 1,000,000 per occurrence limit

Technology Errors and Omissions

The Contractor's Software Developer and/or IT Consultant for the plans, including developing and implementing technology for Lake County, or of the project, shall be written with limits of insurance not less than the following:

\$ 1,000,000 per occurrence limit

Liability Insurance Conditions

Contractor agrees that with respect to the above required insurance:

- a) The CGL policy shall be endorsed for the general aggregate to apply on a "per Project" basis;
- b) The Contractor's insurance shall be primary & non-contributory over Lake County's insurance in the event of a claim.

- c) Contractor agrees that with respect to the above required insurance, Lake County shall be named as additional insured, including its agents, officers, and employees and volunteers and be provided with thirty (30) days' notice, in writing by endorsement, of cancellation or material change. A blanket additional insured ISO endorsement is preferred for Contractors who have multiple projects with the County.
- d) Lake County shall be provided with Certificates of Insurance and the appropriate corresponding ISO form endorsements evidencing the above required insurance, prior to commencement of this Contract and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least thirty (30) days prior to the expiration of cancellation of any such policies. No manuscript endorsements will be accepted. Any hard copies of said Notices and Certificates of Insurance and Endorsements shall be provided to:

**Lake County
Purchasing Division
18 N. County 9th Floor
Waukegan, Illinois 60085
Attn: RuthAnne Hall, Lake County Purchasing Agent**

- e) **Electronic copies of Notices, Certificates of Insurance and Endorsements can be emailed to Purchasing@lakecountyil.gov in place of hard copies.**

Failure to Comply: In the event the Contractor fails to obtain or maintain any insurance coverage required under this agreement, Lake County may purchase such insurance coverage and charge the expense to the Contractor.

SECTION 9. INDEPENDENT CONTRACTOR

Consultant is defined and identified as an independent contractor, not an employee or agent of Lake County and the County has no right to control or direct Consultant's manner, detail, or means by which Consultant accomplishes tasks under this Agreement.

SECTION 10. DISPUTE RESOLUTION

All issues, claims, or disputes arising out of this Agreement shall be resolved in accordance with the Appeals and Remedies Provisions in Article 9 of the Lake County Purchasing Ordinance.

SECTION 11. NO IMPLIED WAIVERS

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

SECTION 12. SEVERABILITY

If any part of this Agreement shall be held to be invalid for any reason, the remainder of this Agreement shall be valid to the fullest extent permitted by law.

SECTION 13. JURISDICTION, VENUE, CHOICE OF LAW AND PROFESSIONAL STANDARDS

This Agreement shall be governed by and construed according to the laws of the State of Illinois. Jurisdiction and venue shall be exclusively found in the 19th Judicial Circuit Court, State of Illinois.

SECTION 14. NOTICES AND COMMUNICATIONS

All notices and communications which may be given by Lake County to Consultant relative to this Agreement shall be addressed to the Consultant at the address shown herein below:

EcoInteractive, LLC
548 Market St. #19734
San Francisco, CA 94104-5401

Copies of any notices and communications which propose to alter, amend, terminate, interpret, or otherwise change this Agreement shall be provided to: Lake County Purchasing Division, 18 North County Street, Waukegan, Illinois 60085-4350; Attention: Purchasing Agent.

SECTION 15. ASSIGNMENT, ALTERATIONS AND MODIFICATIONS

Except as otherwise provided herein, this Agreement shall not be assigned, delegated, altered, or modified without the express written consent of both parties. This Agreement supersedes any and all other agreements, oral or written, between the parties hereto with respect to the subject matter hereof.

To the extent Lake County agrees to an assignment, delegation, or subcontract by Consultant, Consultant shall remain liable to Lake County with respect to each and every item, condition and other provision hereof to the same extent that Consultant would have been obligated if it had done the work itself and no assignment, delegation, or subcontract had been made.

SECTION 16. TERMINATION

Lake County reserves the right to terminate this Agreement, or any part of this Agreement, with or without cause, upon thirty (30) days written notice. In case of such termination, Consultant shall be entitled to receive payment from Lake County for work completed to date in accordance with the terms and conditions of this Agreement.

In the event that this Agreement is terminated due to Consultant's default, Lake County shall be entitled to purchase substitute items and/or services elsewhere and charge Consultant with any or all losses incurred, including attorney's fees and expenses.

SECTION 17. CONFIDENTIALITY

Both parties acknowledge that Consultant's documents and dealings related to this Agreement are subject to the Illinois Open Meetings Act (5 ILCS 120/1 et seq.) and the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

SECTION 18. WORK PRODUCT

Lake County owns all rights, title, and interest in and to Lake County's data, specifically including all data entered into EcoInteractive's software-as-a-service (SaaS) platform and all reports produced by Lake County or using Lake County's data, under this contract. EcoInteractive retains all ownership, including intellectual property rights, of its software-as-a-service (SaaS) platform. To the extent the Agreement utilizes property, intellectual or non-intellectual in nature, in which it has an ownership interest in the performance of this Agreement, such property shall remain the property of EcoInteractive and, except as expressly authorized in this Agreement, Lake County shall acquire no right or interest in such property.

SECTION 19. NEWS RELEASES

Consultant may not issue any news releases regarding this Agreement without prior approval from Lake County.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.

Lake County:

EcoInteractive, LLC: *Eric Cao*

Purchasing Agent
Lake County

Eric Cao, Chief Operating Officer
Title

Date _____

Date 11/4/2021