

GENERAL SERVICES AGREEMENT
ENERGY CONSULTING SERVICES

THIS GENERAL SERVICES AGREEMENT, made and entered into this _____ day of _____, 2024, by and between the COUNTY OF LAKE, hereinafter referred to as COUNTY, and Optony, Inc., hereinafter referred to as CONSULTANT:

W I T N E S S E T H

WHEREAS, COUNTY has determined that it is desirable to retain CONSULTANT to provide professional energy consulting services; and,

WHEREAS, the parties are unable to define at this time the precise scope of all services which will be required of CONSULTANT, this GENERAL SERVICES AGREEMENT shall include the general provisions for contractual agreements between COUNTY and CONSULTANT. Supplemental Services Agreements between COUNTY and CONSULTANT shall be executed in writing for each phase of work which will be accomplished prior to the commencement of services under said Supplemental Services Agreements. The general conditions of this General Services Agreement shall apply to each Supplemental Services Agreement hereinafter executed.

NOW, THEREFORE, in consideration of the covenants and agreements herein set forth, it is hereby agreed:

1. COUNTY hereby retains CONSULTANT as an independent contractor, and CONSULTANT hereby agrees to serve COUNTY in providing services in connection with services in support of energy related projects. Only those projects being designated in Supplemental Services Agreements shall be subject to the terms of this General Services Agreement.

2. CONSULTANT shall undertake the work covered by this GENERAL SERVICES AGREEMENT and supplements thereto at such time as he is authorized in writing to do so by

COUNTY and shall diligently complete each project pursuant to the predetermined progress schedule established by the parties for each project. No work shall be undertaken by CONSULTANT under this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements until CONSULTANT is specifically authorized in writing by COUNTY's authorized representative, who is the Director of the Department of Public Services acting in accordance with all County purchasing policies.

3. CONSULTANT's services that are anticipated to be required to complete the type of projects listed in Section 1 above shall include but not necessarily be limited to:

- a) Strategic Energy Planning
- b) Feasibility Studies
- c) Technical Analysis
- d) Financial Modeling
- e) Energy Development Procurement
- f) Project Commissioning
- g) Performance Tracking planning

4. CONSULTANT shall perform all work in conformance with Federal, State and County requirements. All studies shall be coordinated with appropriate local, State and Federal agencies. CONSULTANT shall prepare for and make all required presentations at specified public hearings as required.

5. All original work shall remain the property of the CONSULTANT; however, reproducible copies shall be provided by CONSULTANT to COUNTY at no cost to COUNTY.

6. All of the reports, information, data, etc., prepared or assembled by the CONSULTANT under this GENERAL SERVICES AGREEMENT and any future Supplemental

Services Agreements are confidential, and the CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of the COUNTY. CONSULTANT will maintain security and confidentiality of all reports, information, data, drawings, etc.

7. CONSULTANT shall furnish deliverable products for all work covered by this GENERAL SERVICES AGREEMENT and future supplements thereto in an electronic form that is acceptable to COUNTY.

8. CONSULTANT shall coordinate all of his activities on behalf of COUNTY hereunder with COUNTY's duly authorized representative and shall be available when required for consultation and review during the construction of each project.

9. CONSULTANT shall prepare a scope of services and cost estimate for all supplemental agreements as required for each project.

10. All work and services provided by CONSULTANT under this GENERAL SERVICES AGREEMENT and supplements thereto shall be done to the complete satisfaction of COUNTY and of representatives of Federal or State agencies involved.

11. CONSULTANT shall be compensated for services rendered hereunder as provided in each applicable Supplemental Services Agreement hereinafter executed.

12. If CONSULTANT should fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this GENERAL SERVICES AGREEMENT or any supplements thereto, COUNTY may terminate this GENERAL SERVICES AGREEMENT and any or all Supplemental Services Agreements by giving CONSULTANT written notice of such termination, stating the reason for such termination. In such event, CONSULTANT shall be entitled to receive as full payment for all services satisfactorily

rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Supplemental Services Agreements as the services satisfactorily rendered hereunder by CONSULTANT bear to the total services otherwise required to be performed for such total fee; provided, however, that there shall be deducted from such amount the amount of damage, if any, sustained by COUNTY by virtue of the breach of the Agreements by CONSULTANT.

13. COUNTY shall be the owner of and shall be entitled to immediate possession of any copies of design computations, plans, copies of correspondence or other pertinent data and information gathered or computed by CONSULTANT prior to termination of any Agreements by COUNTY or upon completion of the work pursuant to this GENERAL SERVICES AGREEMENT.

14. As full payment for all work and services to be provided by CONSULTANT hereunder, COUNTY shall make payments to CONSULTANT at the times and in accordance with the rates and procedures set forth in each supplemental agreement. Payments shall be made to CONSULTANT on a monthly basis based on work which COUNTY has approved as having been actually accomplished during that period. Each payment by COUNTY to CONSULTANT shall be made in the regular course of COUNTY's business after presentation by CONSULTANT to COUNTY of claim in the form approved by COUNTY. Billing to COUNTY shall identify specific services rather than a particular function.

15. This GENERAL SERVICES AGREEMENT shall remain in full force for a period of three (3) years from the date of approval or until terminated by either party. COUNTY shall have the right to terminate this GENERAL SERVICES AGREEMENT without reason by giving CONSULTANT thirty (30) days written notice. CONSULTANT shall have the right to terminate this GENERAL SERVICES AGREEMENT only after an assigned project has been completed to

the satisfaction of the COUNTY and then only after thirty (30) days written notice to COUNTY.

16. COUNTY shall have the right to assign projects to other consultants without affecting the terms of this GENERAL SERVICES AGREEMENT.

17. It is mutually understood and agreed that CONSULTANT (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONSULTANT shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions hereof. CONSULTANT understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONSULTANT shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONSULTANT shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONSULTANT's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements, CONSULTANT may be providing services to others unrelated to the COUNTY or to said Agreements.

18. Each Party shall indemnify and hold the other harmless against all actions, claims, demands, and liabilities and against all losses, pure economic damage, cost, expenses, and attorney's fees, that arise out of, pertain to, or relate to its own negligent acts and/or omissions,

recklessness, or willful misconduct which caused said claim, demand, liability, loss, damage, cost expense, and/or attorney's fees. CONSULTANT's liability hereunder shall be limited by the COUNTY to the amount of the available coverage under CONSULTANT's insurance coverage as described in Section 19 herein.

19. CONSULTANT shall not commence work under this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements until he has obtained all the insurance required herein, certificates of insurance have been submitted to COUNTY, and said insurance has been approved by COUNTY. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to COUNTY, ten (10) days notice if cancellation is due to nonpayment of premium. CONSULTANT shall not allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been obtained. Any failure of CONSULTANT to maintain the insurance required by this provision, or to comply with any of the requirements of this provision, shall constitute a material breach of this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements. Certificates evidencing the issuance of the following insurance shall be filed with COUNTY within CONSULTANT (10) days after the date of execution of this GENERAL SERVICES AGREEMENT by CONSULTANT and prior to commencement of work hereunder.

Compensation Insurance. CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In any case of such work sublet, CONSULTANT shall require subcontractor

similarly to provide Employer's Liability Insurance and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by CONSULTANT's Workers' Compensation Insurance and Employer's Liability Insurance. Employer's Liability Insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

Commercial General Liability. CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, upon himself and his employees at all times during the course of this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements, Commercial General Liability Insurance (Occurrence Form CG 0001) for bodily injury, personal injury, and broad form property damage, in an amount of not less than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: Personal and advertising injury, Premises-operations, Products and completed operations, Blanket contractual, and Independent CONSULTANT's liability. If such policy includes an aggregate limit, such aggregate limit shall be at least double the per occurrence limit required herein.

Automobile Liability Insurance. CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased, and non-owned vehicles used in connection with CONSULTANT's business in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence.

Professional Liability Insurance. CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Professional Liability Insurance for protection against claims arising out of the performance of services under this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements caused by errors, omissions, or other acts for which CONSULTANT, its employees, subcontractors, and agents, are liable. Said insurance shall be written with limits of not less than One Million Dollars (\$1,000,000.00). If said insurance is written on a "claims made" form, insurance shall be maintained and evidence of insurance must be provided for at least one (1) year after completion of the work under this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements.

Subcontractors. CONSULTANT shall include all subcontractors as insured under the aforesaid policies or shall furnish separate certificates and endorsements to the COUNTY for each subcontractor which shall be subject to review and approval by COUNTY. All insurance coverages for subcontractors shall be subject to each of the requirements hereinabove and contain the additional insured endorsements required of CONSULTANT described with particularity hereinbelow.

Additional Insured Endorsement. The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The COUNTY, its officers, officials, employees, and designated agents are to be covered as additional insureds and shall be added in the form of an endorsement to CONSULTANT's

insurance on Form CG 20 10 11 85. CONSULTANT shall not commence work under this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements until he has had delivered to COUNTY the Additional Insured Endorsements required herein. This provision is not intended to extend to construction contractors contracted by the COUNTY to perform the work of improvement.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

Other Insurance Provisions. For any claims related to the work performed under this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements by CONSULTANT, the CONSULTANT's insurance coverage shall be primary insurance as to the COUNTY, its officers, officials, employees, designated agents and appointed volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, designated agents or appointed volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY, either CONSULTANT shall reduce or eliminate such deductibles or self-insurance retentions as they apply to COUNTY or CONSULTANT shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of CONSULTANT under this GENERAL SERVICES AGREEMENT shall be placed with insurers with a current A.M. Best rating of no less than A:VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the CONSULTANT for liability in excess of such coverage, nor shall it preclude COUNTY from taking other action as is available to it under any other provision of this GENERAL SERVICES AGREEMENT or applicable law. Failure of COUNTY to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

If any insurance coverage required by this GENERAL SERVICES AGREEMENT or any future Supplemental Services Agreements is provided on a "Claims Made", rather than "occurrence" form, CONSULTANT agrees to maintain required coverage for a period of three years after the expiration of this GENERAL SERVICES AGREEMENT (hereinafter, "Post Agreement Coverage") and any extensions thereof. CONSULTANT may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This subprovision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this GENERAL SERVICES AGREEMENT. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this GENERAL SERVICES AGREEMENT in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be

reasonable.

20. This GENERAL SERVICES AGREEMENT and all of the covenants hereof shall inure to the benefit of and be binding upon COUNTY and CONSULTANT, respectively, and their successors, assigns, and legal representatives. Neither COUNTY nor CONSULTANT shall have the right to assign, transfer or sublet its interest or obligation hereunder without written consent of the other party.

21. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or as of the fifth calendar day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

COUNTY -

Lars Ewing
Public Services Director
Department of Public Services
333 Second Street
Lakeport, CA 95453

CONSULTANT –

Optony, Inc.
Jonathan Whelan
Director of Operations
5201 Great America Pkwy, Suite 320
Santa Clara, CA 95054

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IN WITNESS WHEREOF, the parties hereto have executed this GENERAL SERVICES AGREEMENT the day and year first written above.

County of Lake, a political
subdivision of the State of California

CONSULTANT

By _____
Chair, Board of Supervisors

B Pakter (as CEO Optony Inc.)

Optony Inc.

ATTEST: SUSAN PARKER
Clerk to the Board of Supervisors

APPROVED AS TO FORM:
LLOYD GUINTIVANO
County Counsel

By _____


