

PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING AND DESIGN SERVICES  
TO EVALUATE THE LAKE COUNTY COURTHOUSE HVAC SYSTEM

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the COUNTY of Lake, hereinafter referred to as 'COUNTY', and STRATA Architecture Planning Management, hereinafter referred to as "CONSULTANT".

WHEREAS, it is the desire of the COUNTY to engage the services of the CONSULTANT to provide engineering and design services related to the evaluation and possible replacement of the HVAC system that serves the Lake County Courthouse facility; and

WHEREAS, CONSULTANT represents that it is specially trained, experienced, and competent to perform such services;

NOW, THEREFORE, it is mutually agreed by the parties as follows:

**I.**

**CONSULTANT'S RESPONSIBILITIES**

- A. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to County the Pre-Design services (the "Project") described in CONSULTANT'S Proposal dated May 25, 2023, and as further delineated in CONSULTANT'S FEE PROPOSAL incorporated within said Proposal, which is attached hereto and incorporated herein as Exhibit A (CONSULTANT's Proposal) at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall control.
- B. Time of Beginning and Completion of Services: Work on the PROJECT shall begin no later than five (5) calendar days after CONSULTANT's receipt of a COUNTY issued Notice to Proceed. CONSULTANT shall perform services within the term of this contract, except that, if applicable, the term may be adjusted to reflect any delay in issuance of the Notice to Proceed, or other delay factors not subject to CONSULTANT control.
- C. CONSULTANT's lead personnel and those of its subcontractors that will be associated with the services provided pursuant to this agreement shall be those designated in Exhibit "A" (CONSULTANT's Proposal), attached hereto and incorporated herein. At no time shall CONSULTANT replace project personnel or subcontractor(s) unless previously approved in writing by COUNTY.
- D. If during the term of this agreement the consultant discovers any errors, inconsistencies, or omissions in the CONSULTANT's documents, CONSULTANT shall promptly notify the County Project Manager, in writing, of the possible error, inconsistency or omission.
- E. Reports and/or Meetings: The CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the COUNTY's Project Manager to determine if the CONSULTANT is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so remedies can be developed. Additionally, the CONSULTANT's Project Manager shall communicate with the COUNTY's Project Manager as needed to discuss progress on the PROJECT.

- F. Excluded Services: CONSULTANT's services shall not be construed as providing legal, accounting, or insurance services. Additionally, unless the Agreement expressly requires, in no event does CONSULTANT have any obligation or responsibility for:
1. The correctness or completeness of any document which was prepared by another entity.
  2. The correctness or completeness of any drawing prepared by CONSULTANT, unless it was properly signed and sealed by a registered professional on CONSULTANT's behalf.
  3. Favorable or timely comment or action by any governmental entity on the submission of any construction documents, land use or feasibility studies, appeals, petitions for exceptions or waivers, or other requests or documents of any nature whatsoever.
  4. Taking into account off-site circumstances other than those clearly visible and actually known to CONSULTANT from on-site work.
  5. The actual location (or characteristics) of any portion of a utility which is not entirely visible from the surface.
  6. Site safety or construction quality, means, methods, or sequences.
  7. The correctness of any geotechnical services performed by others, whether or not performed as CONSULTANT's subcontractor.
  8. The accuracy of earth work estimates and quantity take-offs, or the balance of earthwork cut and fill.
  9. The accuracy of any opinions of construction cost, financial analyses, economic feasibility projections or schedules for the Project.
  10. Should shop drawing review be incorporated into the Services, CONSULTANT shall pass on the shop drawings with reasonable promptness. CONSULTANT's review of shop drawings will be general, for conformance with the design concept of the Project to which this Agreement relates and compliance with the information given in the construction documents, and will not include quantities, detailed dimensions, nor adjustments of dimensions to actual field conditions. CONSULTANT's review shall not be construed as permitting any departure from contract requirements nor as relieving County's contractor of the sole and final responsibility for any error in details, dimensions or otherwise that may exist.

## **II.**

### **COUNTY'S RESPONSIBILITIES**

The COUNTY's responsibilities will include the payment for the CONSULTANT's services in the amount and in accordance with the terms and conditions set forth this Agreement, including but not limited to the following:

- A. Information From County And Public Sources. County shall furnish CONSULTANT with all plans, drawings, surveys, deeds and other documents in its possession, or that come into its possession, which may be related to the Services, and shall inform CONSULTANT in writing about all special criteria or requirements related to the Services (together, "Information"). CONSULTANT may obtain deeds, plats, maps and any other information filed with or published by any governmental or quasi-governmental entity (together, "Public Information"). Unless CONSULTANT is engaged in writing as an additional service to independently verify such, CONSULTANT may rely upon Information and Public Information in rendering Services. CONSULTANT shall not be responsible for errors or omissions or additional costs arising out of its reliance on Information or Public Information. County agrees to give prompt notice to CONSULTANT of any development or occurrence that affects the scope or timing of Services, or any defect in the final work submitted by CONSULTANT, or errors or omissions of others as they are discovered. CONSULTANT shall not be responsible for any adverse consequence arising in whole or in part from County's failure to provide accurate or timely information, approvals and decisions, as required for the orderly progress of the Services.

- B. Access to Facilities and Property: COUNTY will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its services. COUNTY will be responsible for all acts of COUNTY's personnel.
- C. Advertisements, Permits, and Access: Unless otherwise agreed to in the Scope of Services, COUNTY will obtain, arrange and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for CONSULTANT's services.
- D. Timely Review: COUNTY will examine CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as COUNTY deems appropriate; and render in writing decisions required by COUNTY in a timely manner.
- E. Prompt Notice: COUNTY will give prompt written notice to CONSULTANT whenever COUNTY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or of any defect in the work of CONSULTANT.
- F. If during the term of this agreement the COUNTY discovers any errors, inconsistencies or omissions in the contract documents, the County Project Manager shall promptly notify the CONSULTANT, in writing, of the possible error, inconsistency or omission.
- G. Environmental Clearances: COUNTY will be responsible for all environmental clearances.
- H County shall designate in writing those officers, employees and agents having authority to orally make decisions relating to Scope of Services that do not affect compensation. Any such oral decision shall be in writing and subject to CONSULTANT's acceptance thereof. County may, at any time, limit the authority of any or all persons to act orally under this Paragraph by giving CONSULTANT seven 7 days advance written notice.

### III.

#### SUBCONTRACTORS

##### A. Subcontractors

1. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the COUNTY and any subcontractors, and no subcontract shall relieve the CONSULTANT of his/her responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the COUNTY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its subcontractors is an independent obligation from the COUNTY's obligation to make payments to the CONSULTANT.
2. CONSULTANT shall pay its subcontractors within forty five (45) calendar days from receipt of each payment made to the CONSULTANT by the COUNTY.
3. Any substitution of subcontractors must be approved in writing by the COUNTY's Contract Manager in advance of assigning work to a substitute subcontractor.

**IV.**  
**COMPENSATION AND TERMS OF PAYMENT**

Payment to CONSULTANT will be made as follows:

- A. Basic Compensation Fee: Provided that the CONSULTANT is not in default under any provision of this Agreement, COUNTY will compensate CONSULTANT in accordance with the procedures set forth hereinafter, in an amount not to exceed the stipulated sum of FIFTY EIGHT THOUSAND THREE HUNDRED DOLLARS (\$58,300.00). Except as otherwise provided elsewhere in this Agreement, said compensation shall constitute all compensation to CONSULTANT for all costs of services, including, but not limited to, direct costs of labor of employees engaged by CONSULTANT, subcontractors, travel expenses, telephone charges, copying and reproduction, computer time, and any and all other costs, expenses, fees and charges of CONSULTANT, its agents and employees.

Total payments to CONSULTANT shall not exceed the stipulated sum without prior written authorization by COUNTY and formal Amendment to this Agreement.

B. Special Compensation:

1. *Services involving other Public Agencies*: CONSULTANT may submit plans and related, or other, documents to public agencies for approval. However, it may be necessary, in order to serve County's interests and needs, for CONSULTANT to perform special processing, such as attending meetings and conferences with different agencies, hand carrying plans or other documents from agency to agency, and other special services. These special services are not included in the basic compensation fee and shall be performed as additional services, subject to County's preapproval, on an hourly fee basis in accordance with applicable hourly rates set forth in CONSULTANT's FEE PROPOSAL as incorporated in Exhibit A.
2. *Additional On-site Meetings*: In addition to maximum of five on-site meetings provided by compensation set forth herein, CONSULTANT will attend additional on-site meetings that COUNTY or its representatives reasonably require, and additional on on-site meetings requested by public agencies that might be involved in the PROJECT. These additional on-site meetings are not included in the basic compensation fee and shall be performed as additional services, subject to County's preapproval, on an hourly fee basis in accordance with the applicable hourly and mileage rates set forth in Exhibit A.
3. If CONSULTANT or anyone in its employ, is called upon to be deposed or to testify in a matter in which CONSULTANT is not a named party, that relates to the PROJECT, County agrees to compensate CONSULTANT for such services, subject to County's preapproval, in accordance with the hourly rates as set forth on CONSULTANT's Fee Proposal set forth in Exhibit A to this Agreement unless different rates are otherwise agreed in writing, except that CONSULTANT may unilaterally increase its hourly billing rates on each anniversary of the effective date of this Agreement by as much as five percent or the percentage increase in the CPI-W (U.S. Department of Labor Consumer Price Index- Washington), whichever is greater.

C. Invoices and Time of Payment:

1. CONSULTANT's invoices shall be submitted in arrears on a monthly basis, or such other time that is mutually agreed upon in writing, and shall be itemized and formatted to the satisfaction of the County.



2. County shall make payment within 30 business days of an undisputed invoice for the compensation stipulated herein for supplies delivered and accepted or services rendered and accepted, less potential deductions, if any, as herein provided. Payment on partial deliverables may be made whenever amounts due so warrant or when requested by the CONSULTANT and approved by the Assistant Purchasing Agent.
3. If any invoice is not paid within 30 days of the invoice date, CONSULTANT shall have the right either to suspend the performance of its Services until all invoices more than 30 days past due are fully paid or to terminate the Agreement and to initiate proceedings to recover amounts owed by County. Additionally, CONSULTANT shall have the right to withhold from County the possession or use of any drawings or documents prepared by CONSULTANT for County under this or any other agreement with County until all delinquent invoices are paid in full. County shall not offset payments of CONSULTANT's invoices by any amounts due or claimed to be due for any reason.
4. If County does not provide CONSULTANT written notice disputing an invoice within 30 days of the invoice date, the invoice shall conclusively be deemed correct.
5. Invoices shall be mailed to the Project Manager, at the following address:  
County of Lake  
Public Services Department  
333 Second Street,  
Lakeport, California 95453

#### **V.** **TERM**

This Agreement shall commence on the date hereinabove entered into and shall terminate on December 31, 2023 the "Agreement Date"), unless earlier terminated as hereinafter provided. This term may be extended an appropriate period of time in case of unavoidable delays and for consideration of corresponding warranted adjustments in payment by modification of this agreement as hereafter provided.

#### **VI.** **DUE PERFORMANCE - DEFAULT**

Each party to this Agreement undertakes the obligation that the other's expectation of receiving the performance due under the terms of this Agreement will not be impaired. 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. If the party in default does not cure the default within ten (10) days of the date of that notice (i.e. the 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 shall be in writing executed by both parties and must specify the reason(s) for the extension and the date the extension of time to cure expires.

Notice given under this provision 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 time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

## **VII.**

### **TERMINATION**

This Agreement may be terminated as follows:

- A. By mutual consent of the parties; or
- B. By either party upon 30 days written notice.
- C. By either party if the other party materially breaches the Agreement and does not cure the breach within 7 days after receiving notice of the breach from the non-breaching party

Upon termination prior to the full and satisfactory completion of CONSULTANT's performance under this Agreement, COUNTY shall not be liable to pay CONSULTANT the total compensation set forth in Article V of this Agreement, but CONSULTANT shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the CONSULTANT covered by this Agreement. Upon termination of this contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in the COUNTY, and no further agreement will be necessary to transfer ownership to the COUNTY.

If this agreement is terminated by COUNTY as a result of alleged willful negligence, errors or omissions by CONSULTANT in the performance of its services under this agreement, COUNTY shall have the right to withhold payment due in an amount that is in proportion to the amount found to arise from CONSULTANT'S willful negligence, errors or omissions. The proportioned amount shall be withheld until settlement or adjudication.

## **VIII.**

### **INSURANCE**

CONSULTANT shall not commence work under this Agreement 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 the entire Agreement. COUNTY shall not be responsible for any premiums or assessments on the policy.

Certificates evidencing the issuance of the following insurance shall be filed with COUNTY within ten (10) days after the date of execution of this Agreement by CONSULTANT and prior to commencement of work hereunder.

- A. **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.

- B. **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 Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001, or its equivalent) 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.
- C. **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 Agreement 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 Agreement.
- D. **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.
- E. **Subcontractors.** 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.
- F. **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, or its equivalent. CONSULTANT shall not commence work under this Agreement 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.

- G. **Other Insurance Provisions.** For any claims related to the work performed under this Agreement by CONSULTANT, the CONSULTANT's Commercial General Liability 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 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 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 Agreement is provided on a "Claims Made", rather than "occurrence" form, CONSULTANT agrees to maintain required coverage for a period of three (3) years after the expiration of this 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 Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

CONSULTANT agrees to waive all rights of subrogation against County, its officers, officials, employees, agents, and volunteers for losses arising from work performed by CONSULTANT under this Agreement.

#### **IX. INDEMNIFICATION - HOLD HARMLESS**

To the fullest extent permitted by law (including, without limitation, California Civil Code sections 2782, 2782.6 and 2782.8), Each Party shall indemnify and hold the other harmless against all actions, claims, demands, and liabilities and against all losses, 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. This provision shall not extend to any claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party. 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 X herein

This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement. The County's acceptance of the insurance certificates required under this Agreement does not relieve the CONSULTANT from its obligation under this paragraph.

Such obligations to defend, hold harmless and indemnify the County shall not apply to the extent such Liabilities are caused by the County's sole willful negligence, active willful negligence or willful misconduct. The obligation to defend shall be proportionate as to CONSULTANT's percentage of fault as provided in California Civil Code section 2782.8.

**X.**  
**CONSULTANT'S REPRESENTATIONS**

CONSULTANT hereby makes the following representations and warranties:

- A. **Standard of Care.** CONSULTANT represents that it is specially trained, licensed, experienced, and competent to perform all the services, responsibilities, and duties specified herein and that such services, responsibilities, and duties shall be performed, whether by CONSULTANT or designated subconsultants, in a manner according to generally accepted practices of the CONSULTANT's or subconsultant's profession.

If COUNTY determines that any of CONSULTANT's work is not in accordance with such level of competency and standard of care, COUNTY, in its sole discretion, shall have the right to do any or all of the following: (a) require CONSULTANT to meet with COUNTY to review the quality of the work and resolve matters of concern; (b) require CONSULTANT to correct the work at no additional charge to generally accepted standards and practices of the engineering profession; (c) terminate this Agreement pursuant to the provisions of Article VII; or (d) pursue any and all other remedies at law or in equity.

1. Assigned Personnel:

- a. CONSULTANT shall assign only competent personnel to perform work hereunder. In the event that at any time COUNTY, in its sole discretion, desires the removal of any person or persons assigned by CONSULTANT to perform work hereunder, CONSULTANT shall remove such person or persons immediately upon receiving written notice from COUNTY.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by COUNTY to be key personnel whose services were a material inducement to COUNTY to enter into this Agreement. CONSULTANT shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of COUNTY.
- c. In the event that any of CONSULTANT's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of CONSULTANT's control, CONSULTANT shall be responsible for timely provision of adequately qualified replacements.

- B. **Non-Discrimination in Employment.** During the performance of this Agreement, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, nation origin, physical disability (including HIV and AIDS), mental disability, mental condition, age (over 40), marital status, and denial of family care leave. CONSULTANTS and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. CONSULTANTS and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900.0 et seq.) and the



applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 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 are incorporated into this contract by reference and made a party hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, creed religion, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

The CONSULTANT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

CONSULTANT shall comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR 21 through Appendix C and 23 CFR 710.405(b) are applicable to this contract by reference.

- C. **Adherence to Applicable Disability Law.** CONSULTANT shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.
- D. **HIPAA Compliance.** CONSULTANT will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.
- E. **Safety Responsibilities.** CONSULTANT will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. CONSULTANT agrees that in the performance of work under this Agreement, CONSULTANT will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.
- F. **Interest of CONSULTANT.** CONSULTANT hereby covenants that he has, at the time of the execution of this Agreement, no interest, direct or indirect, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this work, no person having such interest shall be employed.
- G. **Covenant Against Contingent Fees.** The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

- H. **Laws to be observed.** CONSULTANT will comply with all laws, regulations, orders, and decrees applicable to the PROJECT. Indemnify and defend the COUNTY against any claim or liability arising from the violation of a law, regulation, order, or decree by CONSULTANT or your employees. Immediately report to the Contract Manager a discrepancy or inconsistency between the Contract and a law, regulation, order, or decree.

If the COUNTY incurs any fines or penalties because of CONSULTANT's failure to comply with a law, regulation, order, or decree, the COUNTY will deduct the amount of the fine or penalty.

Immediately notify the Contract Manager, if a regulatory agency requests access to the job site or to records. Submit a list of documents provided to the agency and issued enforcement actions.

#### **XI. ASSIGNMENT**

CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of COUNTY, except that claims for money due or to become due the CONSULTANT from COUNTY under this Agreement may be assigned by the CONSULTANT to a bank, a trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to the COUNTY. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

#### **XII. INDEPENDENT CONSULTANT**

It is specifically understood and agreed that, in the making and performance of this Agreement, CONSULTANT is an independent CONSULTANT and is not an employee, agent or servant of COUNTY. CONSULTANT is not entitled to any employee benefits. COUNTY agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

CONSULTANT is solely responsible for the payment of all federal, state, and local taxes, charges, fees, or contributions required with respect to CONSULTANT and CONSULTANT's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security, and payroll tax withholding).

#### **XIII. MODIFICATION**

- A. This Agreement may only be modified by a written amendment thereto, executed by both parties. However, matters concerning scope of services which do not affect the agreed price may be modified by mutual written consent of CONSULTANT and COUNTY executed by the Public Services Director.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COUNTY's Project Manager.

- C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the Cost Proposal which is a part of this contract, without prior written approval by the COUNTY's Project Manager.

**XIV.**  
**ATTORNEYS FEES AND COSTS**

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

**XV.**  
**OWNERSHIP OF DOCUMENTS**

Upon payment in full of the compensation required by this Agreement, all non-proprietary reports, drawings, renderings, or other documents or materials prepared by CONSULTANT hereunder are the property of County.

**XVI**  
**PROPRIETARY RIGHTS**

The drawings, specifications and other documents prepared by CONSULTANT under this Agreement are instruments of CONSULTANT's service for use solely for the Project and, unless otherwise provided, CONSULTANT shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright and rights to any CONSULTANT trademarks. Upon payment in full for CONSULTANT's Services, County shall be permitted to retain copies, including reproducible copies of our instruments of service for information and reference for the Project. CONSULTANT's instruments of service shall not be used by County or others on other projects for any reason or for completion or modification of this Project by other professionals, unless County enters into a written agreement (which shall not be unreasonably withheld) with CONSULTANT allowing for such use. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication inconsistent with CONSULTANT's reserved rights. County shall defend, indemnify and hold CONSULTANT harmless, and release CONSULTANT, from any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, arising out of any use (including, without limitation, the means or media of transfer, possession, use, or alteration) of CONSULTANT's instruments of service by (i) County, if such use is inconsistent with this Paragraph 16, or (ii) any third party, regardless of the manner of use, if such third party received CONSULTANT's instruments of service directly or indirectly from County (including if CONSULTANT or others have transmitted such instruments of service to the third party at County's request or direction, for County benefit, or, and without limiting the foregoing, pursuant to a contractual obligation that is directly or indirectly derived (or flowed down) from a contract to which County have privity). Notwithstanding this paragraph 16, the parties agree that copies retained by COUNTY may be subject to the disclosure and confidentiality provisions of Government Code Section 7920.000 et. Seq.

**XVII.**  
**RETENTION OF RECORDS / AUDIT**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et. Seq., when applicable, and

other matters connected with the performance of the contract pursuant to Government Code 8546.7, the CONSULTANT, subcontractors and the COUNTY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract. The state, the State Auditor, the COUNTY, FHWA or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. If at the end of the retention period, there is ongoing litigation or an outstanding audit involving the records, CONSULTANT shall retain the records until resolution of litigation or audit. After the retention period has expired, CONSULTANT assures that confidential records shall be shredded and disposed of appropriately.

Subcontracts in excess of \$25,000 shall contain this provision.

**XVIII.**  
**JURISDICTION AND VENUE**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. CONSULTANT waives any right of removal it might have under California Code of Civil Procedure Section 394.

**XIX.**  
**NO THIRD-PARTY BENEFICIARIES**

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

**XX.**  
**SEVERABILITY**

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

**XXI.**  
**NON-APPROPRIATION**

In the event COUNTY is unable to obtain funding at the end of each fiscal year for professional engineering services required during the next fiscal year, COUNTY shall have the right to terminate this Agreement, without incurring any damages or penalties, and shall not be obligated to continue performance under this Agreement. To the extent any remedy in this Agreement may conflict with Article XVI of the California Constitution or any other debt limitation provision of California law applicable to COUNTY, CONSULTANT hereby expressly and irrevocably waives its right to such remedy.

**XXII.**  
**DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

- A. The CONSULTANT certifies to the best of its knowledge and belief, that it and its subcontractors:

1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  2. Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the preceding paragraph; and
  4. Have not, within a three-year period preceding this Agreement, had one or more public transactions terminated for cause or default.
- B. CONSULTANT shall report immediately to County, in writing, any incidents of alleged fraud and/or abuse by either CONSULTANT or CONSULTANT's subcontractor. CONSULTANT shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by County.

**XXIII.**  
**CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which is designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing held by the COUNTY relating to the contract, shall not authorize the CONSULTANT to further disclose such information or disseminate the same on any other occasion.
- C. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the COUNTY's actions on the same, except to the COUNTY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings, or in response to questions from a Legislative committee.
- D. The CONSULTANT shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this contract without prior review of the contents thereof by the COUNTY and receipt of the COUNTY's written permission.
- E. Any subcontract, entered into as a result of this contract, shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential and shall not be disclosed by the CONSULTANT to any entity, other than the COUNTY.



- G. CONSULTANT shall immediately notify County of any known or suspected breach of personal, sensitive and confidential information related to CONSULTANT's work under this Agreement.

**XXIV.**  
**NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code, Section 10296, the CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against the CONSULTANT within the immediately preceding two-year period because of the CONSULTANT's failure to comply with an order of a Federal court that orders the CONSULTANT to comply with an order of the National Labor Relations Board.

**XXV.**  
**PUBLIC RECORDS ACT**

CONSULTANT is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the CONSULTANT to clearly identify information in those documents that s/he considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

**XXVI.**  
**DISPUTES**

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the COUNTY's Contract Manager and Department Head, who may consider written or verbal information submitted by the CONSULTANT.
- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, the CONSULTANT may request review by the COUNTY GOVERNING BOARD of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this contract.
- D. COUNTY shall not withhold amounts from the CONSULTANT's compensation to impose a penalty or liquidated damages on CONSULTANT, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless CONSULTANT agrees. In the event of a dispute arising from a Change Order for which the County contends CONSULTANT is responsible, the COUNTY may withhold fees from the CONSULTANT equal to the value of that portion of the Change Order directly caused by CONSULTANT'S alleged errors or omissions which fell below the standard of care or ten percent (10%) of CONSULTANT'S total fees, whichever is lesser. Thereafter, COUNTY and CONSULTANT agree to meet in good faith within 30 days of the disputed Change Order issue arising and to negotiate and resolve any fee dispute arising from alleged error or omission. If good faith negotiations do not resolve the dispute, COUNTY and CONSULTANT shall enter into voluntary mediation

(fees to be split equally) to work to resolve any fee dispute arising from alleged error or omission.

**XXVII.**  
**SUBCONTRACTING**

- A. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the COUNTY's Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
- B. Any substitution of subcontractors must be approved in writing by the COUNTY's Contract Manager.

**XXVIII.**  
**STATEMENT OF COMPLIANCE**

The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

**XXIX.**  
**CONFLICT OF INTEREST**

- A. The CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this contract, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.
- B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- C. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- D. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

**XXX.**  
**REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**XXXI.**

**PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. The CONSULTANT certifies to the best of his or her knowledge and belief that:
1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
  2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

**XXXII**

**INTEGRATION**

This Agreement, including attachments, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior Agreements, related proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties.

**XXXIII.**

**AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the COUNTY's CHIEF FINANCIAL OFFICER.
- B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the COUNTY's CHIEF FINANCIAL OFFICER of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the COUNTY will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.

**XXXIV.**  
**EVALUATION OF CONSULTANT**

The CONSULTANT's performance will be evaluated by the COUNTY. A copy of the evaluation will be sent to the CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

**XXXV.**  
**CONSULTANT'S ENDORSEMENT ON PS&E/OTHER DATA**

The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

**XXXVI.**  
**NOTICES**

All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited with the United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party.

County of Lake  
Public Services Department  
333 Second Street  
Lakeport, CA 95453  
Attn: Lars Ewing

STRATA Architecture.  
P.O. Box 1207  
Sonoma, CA 95476

With copy to:  
15000 Inc.  
6085 State Farm Drive #30  
Rohnert Park, CA

**XXXVII.**  
**ADDITIONAL PROVISIONS**

This Agreement shall be governed by the laws of the State of California. It constitutes the entire Agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

**XXXVIII.**  
**COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

SIGNATURES ON FOLLOWING PAGE

PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING AND DESIGN SERVICES TO EVALUATE THE LAKE COUNTY  
COURTHOUSE HVAC SYSTEM

COUNTY and CONSULTANT have executed this Agreement on the day and year first written above.

COUNTY OF LAKE:

CONSULTANT:



\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
STRATA Architecture Planning Management

Print Name: Bennett Martin

August 22, 2023

ATTEST:  
SUSAN PARKER  
Clerk of the Board of Supervisors

APPROVED AS TO FORM:  
LLOYD GUINTIVANO  
County Counsel

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

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



**EXHIBIT "A"**

**CONSULTANT'S PROPOSAL AND FEE PROPOSAL DATED MAY 25, 20215**