

CONSULTANT AGREEMENT FOR
ELECTRICAL ENGINEERING SERVICES FOR THE
HILL ROAD CORRECTIONAL FACILITY GENERATOR PROJECT

This Agreement is made and entered into this _____ day of _____, 2020, by and between the County of Lake, hereinafter referred to as "COUNTY", and J. Mark Cappadonna, Inc., hereinafter referred to as "CONSULTANT".

WHEREAS, COUNTY has identified the need for electrical engineering services in support of upgrades to the emergency standby generator system at the Hill Road Correctional Facility; and

WHEREAS, CONSULTANT warrants 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. CONSULTANT shall perform the services described in Exhibit "A", attached hereto and incorporated herein by this reference hereinafter called Scope of Work. In the event of a conflict between this Agreement and Exhibit "A", the provisions of this 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 times or by the dates provided in Exhibit "A", which by reference is made a part hereof, except that, if applicable, the schedule 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", attached hereto and incorporated herein (if applicable). 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.

II.
COUNTY'S RESPONSIBILITIES

The COUNTY's responsibilities will include the payment for the CONSULTANT's services and the time period within which payment must be made. Additionally, the COUNTY may agree to provide certain information, documents, work space, and/or materials.

- A. COUNTY Furnished Data: COUNTY will provide to CONSULTANT all data in COUNTY's possession relating to CONSULTANT's services on the PROJECT.

- 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. Asbestos or Hazardous Substances and Indemnification: To the maximum extent permitted by law, COUNTY will indemnify CONSULTANT and CONSULTANT's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation or dispute resolution expenses arising out of or relating to the presence, discharge, release, or escape of hazardous substances, contaminants, or asbestos on, under, or from the PROJECT.

III.

CONSULTANT'S REPORT AND/OR MEETINGS

- A. 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.
- B. The CONSULTANT's Project Manager shall communicate with the COUNTY's Project Manager as needed to discuss progress on the project(s).

IV.

COMPENSATION AND TERMS OF PAYMENT

Payment to CONSULTANT will be made as follows:

- A. **Invoices and Time of Payment:** Monthly invoices will be issued by CONSULTANT for all services performed under this AGREEMENT. Invoices shall reference the project title and shall provide a breakdown of percentage of work completed by project phase. Invoices are due and payable upon receipt.

Invoices shall be mailed to the Public Services Department at the following address:

County of Lake
Public Services Department
333 Second St.
Lakeport, California 95453

Upon satisfactory completion of services enumerated in ARTICLE I herein, the final payment of any balance will be due upon receipt of the final invoice. The final invoice should be submitted within 60-calendar days after completion of the CONSULTANT's work.

- B. **Interest:** Interest at the rate of 1-1/2% per month, or that permitted by law if lesser, will be charged on all past-due amounts starting thirty (30) days after receipt of invoice and required documentation. Payments will first be credited to interest and then to principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. COUNTY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

If COUNTY fails to make payment in full to CONSULTANT for services within sixty (60) days of the date due for any uncontested billing, CONSULTANT may, after giving seven (7) days written notice to COUNTY, suspend services under this AGREEMENT until paid in full, including interest. In the event of suspension of services, CONSULTANT will have no liability to COUNTY for delays or damages caused COUNTY because of such suspension of services.

- C. **Compensation:** The COUNTY agrees to pay CONSULTANT a stipulated sum not-to-exceed fifty one thousand dollars (\$51,000.00), including cost of labor and expenses, to perform the professional services provided by this agreement and as presented by the tasks listed in Exhibit "A", attached hereto and incorporated herein. Total payments to CONSULTANT shall not exceed the stipulated sum, in total or as budgeted by task in Exhibit "A", without prior written authorization by COUNTY and formal Amendment to this Agreement.
- D. The CONSULTANT shall not be entitled to compensation from the COUNTY for additional services to the extent that the services are the result of failures by the CONSULTANT or CONSULTANT's subconsultants to follow generally accepted professional standards and practices.

V. **TERM**

This Agreement shall commence on the date hereinabove entered into and shall terminate on December 31, 2021, 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 written consent of the parties; or
- B. By COUNTY or Director of Public Services upon thirty (30) days written notice to CONSULTANT.

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 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 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. **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.** 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.
- 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.

IX.

INDEMNIFICATION - HOLD HARMLESS

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, to the extent of the indemnifying party's 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 obligations under this Section shall survive the termination of the Agreement.

X. CONSULTANT'S WARRANTIES

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.

Assigned Personnel:

1. 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.
 2. 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.
 3. 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.** In the performance of the work authorized under this Agreement, CONSULTANT shall not unlawfully discriminate against any qualified worked because of race, religious creed, color, sex, sexual orientation, national origin, ancestry,

physical disability, mental disability, medical condition, marital status, or age.

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.

- 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. Modifications that do not affect the term or the price may be executed by the Lake County 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 DATA

- A. Upon completion of all work under 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. The CONSULTANT shall furnish the COUNTY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. The CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the COUNTY of the machine-readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with, any use by the COUNTY of the project documentation on other projects, for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by the CONSULTANT.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

XVI.
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 10532, 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.

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

XVII.
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.

XIII.
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.

XIX.
SEVERABILITY

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

XX.
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.

XXI.
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.

XXII.
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.

XXIII.
NON-DISCRIMINATION

- A. 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 (cancer), 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.
- B. The CONSULTANT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.
- C. 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.

XXIV.
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.

XXV. SAFETY

- A. The CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the COUNTY Safety Officer and other COUNTY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the COUNTY has determined that such areas are within the limits of the project and are open to public traffic. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

XXVI. 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 Administrative Code, Section 8103.

XXVII.
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. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. 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.
- E. 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.

XXIII.
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.

XXIX.
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.

XXX. CONTINGENT FEE

The CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the COUNTY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

XXXI. 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.

XXXII. 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.

**XXXIII.
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
333 Second Street
Lakeport, California 95453
Attn: Lars Ewing, Public Services Director

J. Mark Cappadonna Corp.
26 Shearwater
Irvine, CA 92604
Attn: J. Mark Cappadonna

**XXXIV.
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.

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

COUNTY OF LAKE:

Chair, Board of Supervisors

CONSULTANT:



J. Mark Cappadonna Corp.

ATTEST: CAROL J. HUCHINGSON
CLERK OF THE BOARD
OF SUPERVISORS

By: _____

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By:  _____

EXHIBIT A

J. MARK CAPPADONNA CORP.

Electrical Engineer ■ 26 Shearwater ■ Irvine, CA 92604

PH: (714) 357-3327

E-MAIL: MCAPPADONNA@TWSEF.COM

Revised August 24, 2020
March 19, 2020

Lake County Public Works
Lakeport, CA 95453

Attn: Lars Ewing

RE: Lake County Jail Generator
JMC Corp #2020602.00

SUB: Electrical Engineering Fee Proposal

Dear Lars:

Enclosed is our revised electrical engineering proposal for the above referenced project. Please let me know if you have any questions or need clarifications.

The project will need a civil engineer. This is not included in this proposal.

We appreciate this opportunity and look forward to working with you and finalizing our agreement.

Sincerely,

J. MARK CAPPADONNA CORP.



J. Mark Cappadonna, P.E.
Principal

JMC

ELECTRICAL ENGINEERING SERVICES PROPOSAL
FOR
LAKE COUNTY JAIL GENERATOR

Revised August 24, 2020
March 19, 2020
JMC Corp #2020602.00

A. SCOPE OF PROJECT

1. DESCRIPTION

We understand the project to consist of adding a standby generator sized to run the entire existing Jail Facility. We anticipate reusing this existing fueling system.

This proposal has been revised to include two standby generator, if needed.

We will coordinate the design with Larry Hicks of G.D. Nielson. This will include any temporary generator if required to minimize the time that the jail will be without power.

For this revised proposal, we will need the County to hire G.D. Nielson to provide construction input during the Design Development phase.

If the County can work out a contract after we prepare the Construction Documents with Larry Hicks then our fees listed under Bidding and Construction Administration will not be needed.

We will need the County to locate the existing underground fuel tank.

We will need the County's assistance with obtaining the peak electrical readings from PG&E.

We anticipate that we will have to generate backgrounds in AutoCAD format needed to prepare our site and floor plans.

We will conduct a site visit, along with available existing documentation, to help substantiate the existing installation.

We expect that the project will be designed, permitted and bid as one set of construction documents and constructed as one phase of work, in a continuous manner, to an established schedule.

Anticipated Schedule:

Design Development and
the County's review..... 12 weeks

Construction Documents, permitting and
the County's review..... 10 weeks
Bidding and Construction Contract..... 8 weeks
Construction..... 8 months

2. ENGINEERING SERVICES

- a. Observation and documentation of the relevant existing conditions.
- b. Design Development.
- c. Construction Documents.
- d. Bidding.
- e. Construction Administration.

Design Development will include:

- a. Develop electrical design criteria for replacing the existing generator while keeping the facilities in operation.

An alternate design for two generators will be prepared.

- b. Determine generator sizes and proposed locations.
- c. Prepare single line diagrams.
- d. Prepare specifications.
- e. Locate electrical equipment.

Construction Documents will include the preparation of drawings and specifications suitable for bidding. Services will include:

Before proceeding with this phase, the County shall direct us to use one or two generators.

- a. Final site and electrical floor plans. Two generator locations will be located, if needed.
- b. Coordinating any requirements with PG&E, if needed.
- c. Exterior lighting, if needed.
- d. Required circuiting and power connections for the generator requirements.

- e. Responses to building permit comments.

Bidding phase will include:

- a. Attend one bid walk.
- b. Responses to clarification requests from the bidders and assist in preparation of addenda.

Construction Administration

Construction Administration is limited to the items below and the observations of the work in progress. It is not intended to be a detailed review or inspection of the work.

- a. Review shop drawings and submittals.
- b. Responses to requests by the Contractor for clarifications of the Construction Documents.
- c. Two (2) site visits during construction, with a final written review of the observations of the electrical installation.

B. FEE

The fee shall be as follows:

Design Development.....	\$19,750
Construction Documents.....	\$18,000
Bidding.....	\$3,750
Construction Administration.....	\$9,500
Total.....	\$51,000
Reimbursable Budget.....	\$4,000

C. HOURLY RATES, IF NEEDED

Principals:	\$215.00
Project Managers and Engineers:	\$190.00
Senior Designers:	\$175.00
Designers:	\$145.00
Drafters:	\$95.00
Clerical:	\$75.00

D. PAYMENT

Invoices will be monthly and payment is due within 30 to 45 days of date of invoice.

E. SERVICES SUBJECT TO ADDITIONAL FEE

1. Re-design for compliance of deficient portions of the existing electrical installation, beyond the project limits and not included in this proposal, resulting from the enactment or revision of codes, laws, regulations or current building permit requirements.
2. Any changes to plans and specifications affecting the electrical systems after all plan check corrections have been incorporated and permits obtained or changes required by the enactment or revision of codes, laws, regulations or building inspector's requirements subsequent to the preparation of such plans and specifications.
3. Services resulting from an alternate design different from that accepted in the Design Development phase.
4. Site visits or meetings with the County in excess of the quantity listed in this proposal.
5. Preparation of detailed construction cost opinions.
6. Preparation of Record Drawings.
7. Fire Alarm and security design services.
8. Civil and/or Structural Engineering Services
9. Hiring a Mechanical Engineer for fueling modifications, if needed.
10. We assume the supplier of the generator will be responsible for obtaining the Air Quality permit.

F. REIMBURSABLE EXPENSES

Reimbursable expenses will be billed at direct cost and will include:

1. Cost for plotting and printing of drawings and specifications.
2. Postage and delivery expenses.
3. Travel expenses to and from the job site and meetings.

G. INSURANCE

Our Errors and Omissions Insurance is \$1,000,000.00

H. INDEMNIFICATION

To the maximum extent permitted by law, Owner shall indemnify, assume the defense of and hold harmless the Engineer, its agents, employees and consultants from and against any and all liability including but not limited to all attorney fees and other costs of defense, arising out of or alleged to arise out of or in any way connected with the project which is the subject of this contract or the activities carried out pursuant to this contract, or from conditions pre-existing at said project including the concurrent negligence of the Engineer, its agents, employees and consultants, excepting only such claims or losses determined by a court or other forum of competent jurisdiction to arise out of the sole negligence or willful misconduct of the party seeking indemnification hereunder. This provision shall survive termination of this agreement.

I. ABANDONMENT OR SUSPENSION OF SERVICES

If services are requested to be abandoned or suspended, in whole or in part, services rendered to date of abandonment or suspension shall be paid for in accordance with the percentage of completion of the project at that time. If the project is reinstated after a 3-month period or more, we reserve the right to re-evaluate our fees.


J. TERMINATION OF AGREEMENT

This Agreement may be terminated by either party upon written notice to the other party in the event of a substantial failure of performance of such other party or if the project should be abandoned or indefinitely postponed.

We are prepared to sign an AIA agreement based on a signed copy of this proposal authorizing us to proceed.

J. MARK CAPPADONNA CORP.

Lake County



J. Mark Cappadonna, P.E.
Principal

Signature: _____

Name: _____

Project No: _____

Date: _____