



Lodi Energy Center Project Participant Committee

Staff Report

AGENDA ITEM NO.: 10

Date: May 2, 2017

Meeting Date: May 8, 2017

To: Lodi Energy Center Project Participant Committee

Subject: Sage Engineers, Inc. – First Amendment to the Five Year Multi-Task Professional Services Agreement for Engineering Services; Applicable to the following projects: All NCPA Facility Locations, Members, SCPPA and SCPPA Members

Proposal

Approve the First Amendment to the Multi-Task Professional Services Agreement with Sage Engineers, Inc. for engineering consulting services related to project support and plant operations, with any non-substantial changes recommended and approved by the NCPA General Counsel. The First Amendment will increase the not-to-exceed amount from \$225,000 to \$1,000,000 over five years for use at all facilities owned and/or operated by NCPA, its Members, Southern California Public Power Authority (“SCPPA”), or by SCPPA Members.

Background

On September 9, 2016 NCPA entered into a five year Multi-Task Professional Services Agreement for engineering services with Sage Engineers Inc. Sage Engineers, Inc. subsequently absorbed California Electrical Services, Inc., another engineering firm with which NCPA had a five year Multi-Task General Services Agreement for not to exceed \$750,000. California Electrical Services has requested that we access their services through Sage Engineers, Inc. As a result, the NCPA Generation Services facilities (Hydro, Geothermal, and Combustion Turbines) have a need to utilize significantly more of Sage’s engineering services than originally anticipated by the original contract of \$225,000 over five years. It has been determined that additional funds will be required in order for all facilities to utilize the contract.

Selection Process

This five year contract does not commit NCPA to any expenditure of funds. When these services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place other agreements with GHD, Inc., Andritz Hydro, Kestrel Power Engineering, Inc., and Baskin Engineering, Inc. for similar services. NCPA will seek bids from as many qualified providers as possible and enter into additional enabling agreements as needed. The bid is awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$1,000,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

Environmental Analysis

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

Submitted by:

KEN SPEER
Assistant General Manager
Generation Services

Attachments: (2)

- First Amendment to Sage Engineers, Inc. MTPSA
- Multi-Task Professional Services Agreement with Sage Engineers, Inc.



**FIRST AMENDMENT TO MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND SAGE ENGINEERS, INC.**

This First Amendment ("Amendment") to Multi-task Professional Services Agreement is entered into by and between the Northern California Power Agency ("Agency") and Sage Engineers, Inc. ("Consultant") (collectively referred to as "the Parties") as of _____, 201_.

WHEREAS, the Parties entered into a Multi-task Professional Services Agreement dated effective September 9, 2016, (the "Agreement") for Sage Engineers, Inc. to provide dam safety engineering and other engineering consulting services for the Agency, Agency Members, the Southern California Public Power Authority (SCPPA), or SCPPA members; and

WHEREAS, the Agency now desires to amend the Agreement to increase the total compensation authorized by the Agreement from a "NOT TO EXCEED" amount of \$225,000 to a 'NOT TO EXCEED amount of \$1,000,000; and

WHEREAS, the Parties have agreed to modify the Agreement as set forth above; and

WHEREAS, in accordance with Section 8.2 all changes to the Agreement must be in writing and signed by all the Parties; and

NOW, THEREFORE, the Parties agree as follows:

1. **Section 2—Compensation** of the Agreement is amended and restated to read as follows:

Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** one million dollars (\$1,000,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

The remainder of Section 2 of the Agreement is unchanged.

2. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

Date: _____

NORTHERN CALIFORNIA POWER AGENCY

RANDY S. HOWARD, General Manager

Date: _____

SAGE ENGINEERS, INC.

STEVE H. SANDERS, President

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Assistant General Counsel

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$1,000,000 subject to Section 2 of the Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:



SCHEDULE OF CHARGES

NCPA

16-103.00 – 2017 NCPA FERC Part 12D Safety Reports

June 24, 2016

The Schedule of Charges applies to all services provided by and/or through SAGE Engineers, Inc. (SAGE). Charges for our services are divided into three categories: Personnel, Travel/Reimbursables and Outside Services.

PERSONNEL

Personnel charges are for technical work, including technical typing, editing, graphics and support services involved in the preparation of reports and correspondence, and for the time associated with production of such documents. Personnel category per-hour charge rates are as follows:

<u>Personnel Category</u>	<u>Hourly Rate</u>
Senior Principal Engineer/Geologist	\$ 275.00
Principal Electrical Engineer	265.00
Principal Engineer/Geologist	265.00
Senior Associate Engineer/Geologist	220.00
Senior Consultant	210.00
Associate Engineer/Geologist	200.00
Senior Electrical Engineer	200.00
Senior Engineer/Geologist	185.00
Senior Project Engineer/Geologist	165.00
Project Engineer/Geologist	150.00
Senior Staff Engineer/Geologist	135.00
Staff Engineer/Geologist	125.00
Senior CADD/GIS Technician	145.00
CADD/GIS Technician	105.00
Contract Administration/Support Services	105.00

The charge for expert witness services, depositions (4-hour minimum) and court (8-hour minimum) is \$375 per hour.

TRAVEL / REIMBURSABLES

Time spent in travel in the interest of the Client will be charged at the above hourly rates plus mileage at the current IRS rate, except that no more than eight (8) hours of travel time will be charged in any day. When

it is necessary for an employee to be away from the office overnight, all actual costs including out-of-pocket expenses will be charged. Meals will be charged on a per diem basis at \$61.00. Reimbursable items (e.g., airfare, hotel, automobile/equipment rental, supplies etc.) will be charged at cost plus fifteen percent (15%). Specialty design software will be charged at an hourly rate on a per use basis, as follows: I- Site (\$40/hr); Arc GIS, GeoStudios (SEEP/W, SLOPE/W, SIGMA/W), RISA-3D, and SAFE (\$35/hr), SAP 2000 and RockWorks (\$25/hr); Dips, Swedge, RocPlane, and RocFall (\$15/hr). Specialty field equipment will be charged at a daily rate on a per use basis: Trimble GPS Unit+Antenna (\$130/day); Rope Access (\$200/day).

OUTSIDE SERVICES

Outside services will be charged at cost plus fifteen percent (15%). Common outside items to which this 1.15 multiplier applies include, but are not limited to drilling services, laboratory testing, printing and photographic work, special insurance and outside consultants.

2251 Douglas Blvd., Ste. 200, Roseville, CA 95661, (916) 677-4800
1999 Harrison St., Ste. 1800, Oakland, CA 94612, (510) 701-2266
SAGEengineers.com

The rates set forth above are valid from June 24, 2016 and may be subject to an annual escalation of up to 5% per year, effective upon 30 days' prior written notice to NCPA.

NOTE: As a public agency, NCPA shall not reimburse Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.



MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND SAGE ENGINEERS, INC.

This agreement for professional services ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and SAGE Engineers, Inc., a corporation, with its office located at 2251 Douglas Blvd., Roseville, CA 95661 ("Consultant") (together sometimes referred to as the "Parties") as of 9/19, 2016 ("Effective Date") in Roseville, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Services"), at the time and place and in the manner specified therein.

- 1.1 **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) years from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 **Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 **Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 **Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services or does not respond within the seven (7) day period

specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

Section 2.

COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** two hundred twenty-five thousand dollars (\$225,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Services performed;
- The Purchase Order number authorizing the Services;
- At Agency's option, the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder; and
- At Agency's option, when the Consultant's Scope of Work identifies tasks, for each work item in each task, a copy of the applicable time entries showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction.

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable

2.2 Monthly Payment. Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.4 Authorization to Perform Services. The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the Contract Administrator.

2.5 Timing for Submittal of Final Invoice. Consultant shall have ninety (90) days after completion of its Services to submit its final invoice. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for the period covered by this Agreement.

4.1 Workers' Compensation. If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than one million dollars (\$1,000,000.00) per accident.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 Commercial General Insurance. Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

4.2.2 Automobile Liability. Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

4.2.3 General Liability/Umbrella Insurance. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

4.3 Professional Liability Insurance. Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000) aggregate covering the Consultant's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

4.4 All Policies Requirements.

4.4.1 Verification of coverage. Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

4.4.2 Notice of Reduction in or Cancellation of Coverage. Consultant shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

4.4.3 Higher Limits. If Consultant maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Consultant.

4.4.4 Additional Certificates and Endorsements. If Consultant provides services to Agency members, SCPPA and/or SCPPA members, Agency shall have the right to require the Consultant to provide certificates of insurance and/or policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPPA or Agency member for which the Services are to be performed.

4.5 Waiver of Subrogation. Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

4.6 Consultant's Obligation. Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensues they are and remain covered by the policies referenced in Section 4 during this Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 Effect of Insurance. Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.2 Scope. Consultant shall indemnify and hold harmless the Agency and its officials, commissioners, officers, employees, agents, and volunteers from and against any and all losses, liability, and damages arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, and for acts for which they are liable.

The foregoing obligations of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the negligence or willful misconduct of the Agency or its officers, employees, or agents, and (2) the actions of Consultant or its employees, subcontractors, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law.

It is understood that the duty to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of Insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration. Notwithstanding the

foregoing, in the event Consultant defends the Agency and it is ultimately determined or agreed to that the Consultant was either not negligent or was only partially negligent with respect to the loss, liability, claim, suit, action or damages, the Agency agrees that it shall promptly reimburse Consultant for such proportion of the Consultant's costs incurred in defending the Agency that is not attributable to the negligence of the Consultant.

Consultant's liability shall be limited to the policy limit amounts detailed in Section 4 above, as well as any coverage positions or determinations made or taken by Consultant's insurance carriers, as it relates to specific claims by the Agency, as long as Consultant maintains in effect and applicability the insurance, including but not limited to the amounts, deductibles, and scope, referenced herein.

As to any professional services subject to Civil Code section 2782.8, Consultant's liability shall be further limited as set forth in Section 2782.8 of the California Civil Code.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

Consultant shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such

claims, whether directly or indirectly, due to Consultant's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Consultant agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Consultant.

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Consultant shall, at the same time it executes this Agreement, execute Exhibit C.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and

approvals of whatever nature that are legally required to practice their respective professions.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Consultant.

In the event of termination, Consultant shall be entitled to compensation for Services satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.

- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.

- 8.4 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:

8.4.1 Immediately terminate the Agreement;

8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or

8.4.4 Charge Consultant the difference between the costs to complete the Services that is unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant delivers or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to

deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.

9.2 Consultant's Books and Records. Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

9.4 Confidential Information and Disclosure.

9.4.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide

prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

9.4.3.1 Disclosure to employees, agents, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

9.4.3.2 Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

9.4.3.3 Disclosure by Agency in response to a request pursuant to the California Public Records Act.

9.4.4 **Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 10.7 Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, Generation Services, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.
- 10.8 Notices.** Any written notice to Consultant shall be sent to:

Steven H. Sanders
President
SAGE Engineers, Inc.
2251 Douglas Blvd., Suite 200
Roseville, CA 95661

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Michael F. Dean
General Counsel
Northern California Power Agency
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

- 10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
 - 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
 - 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

10.11.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

10.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Consultant's Proposal, the Exhibits shall control.


10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.15 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. The Parties have executed this Agreement as of the date signed by the Agency.


NORTHERN CALIFORNIA POWER AGENCY

Date 9/9/16

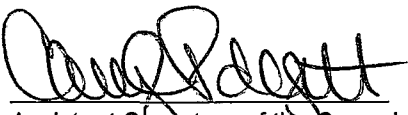

RANDY S. HOWARD, General Manager

SAGE ENGINEERS, INC.

Date 9/7/16


STEVE H. SANDERS, President

Attest:


Assistant Secretary of the Commission

Approved as to Form:

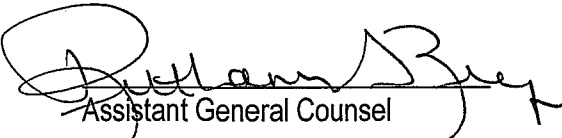

Assistant General Counsel

EXHIBIT A

SCOPE OF SERVICES

As requested by NCPA, Sage Engineers, Inc., ("Consultant") shall provide consulting services to the Northern California Power Agency ("Agency"), Agency Members, the Southern California Public Power Authority (SCPPA), or SCPPA members, including, without limitation:

- Dam Safety Engineering in accordance with 18CFR12D;
- Civil, environmental, geotechnical and structural engineering;
- Consulting related to geology, hydrology or hydraulics;
- Mapping/surveying/GIS;
- Protection relay upgrades and electrical engineering support;
- Engineering inspection and construction observation and testing; and
- Other miscellaneous engineering tasks.

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$225,000 subject to Section 2 of the Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:



SCHEDULE OF CHARGES

NCPA

16-103.00 – 2017 NCPA FERC Part 12D Safety Reports

June 24, 2016

The Schedule of Charges applies to all services provided by and/or through SAGE Engineers, Inc. (SAGE). Charges for our services are divided into three categories: Personnel, Travel/Reimbursables and Outside Services.

PERSONNEL

Personnel charges are for technical work, including technical typing, editing, graphics and support services involved in the preparation of reports and correspondence, and for the time associated with production of such documents. Personnel category per-hour charge rates are as follows:

<u>Personnel Category</u>	<u>Hourly Rate</u>
Senior Principal Engineer/Geologist	\$ 275.00
Principal Electrical Engineer	265.00
Principal Engineer/Geologist	265.00
Senior Associate Engineer/Geologist	220.00
Senior Consultant	210.00
Associate Engineer/Geologist	200.00
Senior Electrical Engineer	200.00
Senior Engineer/Geologist	185.00
Senior Project Engineer/Geologist	165.00
Project Engineer/Geologist	150.00
Senior Staff Engineer/Geologist	135.00
Staff Engineer/Geologist	125.00
Senior CADD/GIS Technician	145.00
CADD/GIS Technician	105.00
Contract Administration/Support Services	105.00

The charge for expert witness services, depositions (4-hour minimum) and court (8-hour minimum) is \$375 per hour.

TRAVEL / REIMBURSABLES

Time spent in travel in the interest of the Client will be charged at the above hourly rates plus mileage at the current IRS rate, except that no more than eight (8) hours of travel time will be charged in any day. When it is necessary for an employee to be away from the office overnight, all actual costs including out-of-pocket expenses will be charged. Meals will be charged on a per diem basis at \$61.00. Reimbursable items (e.g., airfare, hotel, automobile/equipment rental, supplies etc.) will be charged at cost plus fifteen percent (15%). Specialty design software will be charged at an hourly rate on a per use basis, as follows: I- Site (\$40/hr); Arc GIS, GeoStudios (SEEP/W, SLOPE/W, SIGMA/W), RISA-3D, and SAFE (\$35/hr), SAP 2000 and RockWorks (\$25/hr); Dips, Swedge, RocPlane, and RocFall (\$15/hr). Specialty field equipment will be charged at a daily rate on a per use basis: Trimble GPS Unit+Antenna (\$130/day); Rope Access (\$200/day).

OUTSIDE SERVICES

Outside services will be charged at cost plus fifteen percent (15%). Common outside items to which this 1.15 multiplier applies include, but are not limited to drilling services, laboratory testing, printing and photographic work, special insurance and outside consultants.

2251 Douglas Blvd., Ste. 200, Roseville, CA 95661, (916) 677-4800
1999 Harrison St., Ste. 1800, Oakland, CA 94612, (510) 701-2266
SAGEngineers.com

The rates set forth above are valid from June 24, 2016 and may be subject to an annual escalation of up to 5% per year, effective upon 30 days' prior written notice to NCPA.

NOTE: As a public agency, NCPA shall not reimburse Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Contractors

I, Steven Sanders

(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

SAGE Engineers, Inc

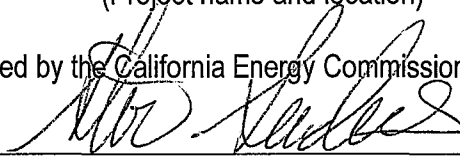
(Company name)

for contract work at

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the above-named project.



(Signature of officer or agent)

Dated this 7th day of September, 20 16.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

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