

MASTER SERVICES AGREEMENT

This master services agreement ("**Agreement**") is made this Ninth day of August, 2022 by and between Town of San Anselmo (hereinafter called "**Owner**" or "**Client**") and Sage Energy Consulting, an NV5 Company, a California corporation with business address at 101 Lucas Valley Rd, Ste. 302, San Rafael, CA 94903 (hereinafter called the "**Consultant**").

WITNESSETH

WHEREAS, Consultant is in the business of providing project management services and Owner desires to retain the project management services of Consultant for several projects.

WHEREAS, Owner desires to hire Consultant to perform services in connection with energy project evaluation and assistance (hereinafter referred to as the "**Project**") as defined in Consultant's proposal, which is incorporated into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term. The Term of the project is thirty six (36) months.
2. Appointment. Owner hereby appoints Consultant and Consultant hereby accepts the appointment, as an independent contractor and not as an agent, to perform services herein contemplated, in accordance with and subject to, the express terms, covenants, conditions and provisions of this Agreement.
3. Services of Consultant. This Agreement anticipates the execution of written Task Orders which set forth the services specified in Consultant's Proposal and in each Task Order (the "Services"). Each Task Order shall define the scope of Services to be performed, the location of Consultant's project for providing such Services, the time period for performance, the Consultant's fees, and additional provisions, if any, applicable to such Services. The Parties agree that this Agreement, the Services, and all Task Orders, shall be governed and controlled by the terms and conditions herein

With regard to this Agreement, the Services, and all Task Orders, Consultant makes no warranty, either express or implied, as to its findings, recommendations, plans,

specifications, or professional advice except that the services were performed in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and in the same locality as the project. Owner agrees that Consultant shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

4. Scope of Authority. Consultant shall act in an advisory capacity to Owner and will not have the authority to bind Owner to any contractual obligations or otherwise incur liabilities on behalf of Owner or the existing parties.

(a) Consultant shall have no liability or responsibility to Owner or any third party (i) by reason of the failure on the part of any existing party or contractor to furnish required labor, materials, supplies or services in accordance with their respective contracts, obligations or undertakings, or (ii) for any defect or omission in plans and specification for the project, or (iii) for any negligent act or omission, breach of contract, malfeasance or malpractice of any existing party or contractor on the project. No action, statements, or communications of Consultant, or Consultant's site representative, can be construed as modifying any agreement between Owner and others. Consultant's presence on the project in no way guarantees the completion or quality of the performance of the work of any party retained by Owner to provide services. The activities of Consultant, shall not be construed to impose upon Consultant any responsibility for methods of work performance, superintendence, sequencing of construction, or safety conditions at the Premises. Owner acknowledges that Owner its general contractor is solely responsible for job site safety. Owner also agrees to make Consultant an additional insured under any general contractor's general liability insurance policy.

(b) Consultant shall in no event be obligated or liable for the duties or responsibilities of the general contractor or design-build contractor, including but not limited to means, methods, sequencing, and safety.

(c) All contracts for labor, materials or services to be furnished in connection with the project shall be made in the name of the Owner (and, subject to compliance with the provisions hereof, shall be executed by Owner), and Owner shall be responsible for all payments required to be made hereunder.

5. Representatives. Consultant shall be entitled to rely upon any consents or approvals given by Owner or Owner's representative.

6. Billing and Payment. Client shall pay Consultant in accordance with the schedule of fees or charges as shown in the Proposal or fee schedule. Backup data on billing will not be available unless prior arrangements have been made. Prior to initiation of the Services, Client is required to remit any retainer specified in the Proposal. Thereafter, Consultant will submit to Client invoices for the balance due, which shall be due and payable immediately upon submission. If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Invoices are delinquent if payment has not been received when due. In such event, Client shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. Consultant shall be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount. Consultant reserves the right to withhold all reports or deliverables and suspend any and all services, including but not limited to expert witness services such as testifying at deposition or trial, unless and until payment is made by Client in accordance with this Agreement. Fee schedules are periodically revised. Unless otherwise agreed, new rates apply to ongoing work as such rates are issued.

7. Consultant's Costs. Owner shall reimburse Consultant for reasonable and necessary out-of-pocket incidental expenses (which may include but are not limited to supplies and equipment, telephone, telecopy, delivery and copying charges), at cost with a 10% administrative mark-up, upon Owner's receipt of reasonable evidence that Consultant shall have incurred the same in connection with the project. Specifically requested reimbursable cost, including travel will be billed at actual cost with a 10% mark-up.

8. Disputes. The Owner shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant, unless the Owner has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed where the project is located. This certification shall: (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional

negligence, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy and venue for the same shall be where the project is located. Upon written request by either party to this Agreement for mediation of any dispute, Owner and Consultant shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Owner and Consultant within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree. Any cause of action brought against Consultant shall be brought within one year of the work or services performed under this Agreement. Owner hereby agrees to indemnify, defend and hold Consultant harmless against any and all actual as well as any actions, causes of action, fines, costs and claims arising out of or in any way relating to this project not the result of misconduct, gross negligence, or breach of this Agreement by Consultant.

9. Documents. Processes used and documents prepared or provided by Consultant while working for the Owner are solely provided as instruments of service to the Owner for use on the project. They are and shall remain the property of Consultant, who reserves all rights thereto.

10. Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Consultant, and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the Owner and anyone claiming by, through or under the Owner, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of Consultant, and its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by the Consultant, for Services provided under this Agreement or \$50,000 whichever is less.

11. Default; Termination. This Agreement may be terminated without cause by either party upon thirty (30) days written notice, and at any time by either party if the other party defaults in the performance of any material provision of this Agreement and such default continues for a period of seven (7) days after written notice thereof. In the event of termination, Consultant will be paid for services performed through the date of termination, reimbursable expenses incurred plus reasonable termination expenses, including the cost of completing analyses, demobilization, records and reports necessary to document job status at the time of termination.

12. Notices. Except as otherwise herein expressly provided, every notice, demand, consent, request, approval or other documents or instruments required or permitted to be served upon any of the parties hereto shall be in writing and shall be deemed to have been given when delivered by messenger, by electronic facsimile transmission or by the U.S. mails (and if mailed, shall be deemed received two (2) business days after the postmarked date thereof), with the cost thereof borne by the delivering party, and addressed to the parties as follows:

To Owner: Sean Condry P.E.
Public Works and Building Director
Town of San Anselmo
525 San Anselmo Ave
San Anselmo, CA 94960

To Consultant: Sage Energy Consulting, an NV5 Company
101 Lucas Valley Rd, Suite 302
San Rafael, CA 94903

Either party may change its address for notices by delivering notice to that effect in the manner above provided.

13. Relationship between the Parties; No Restrictions. This Agreement is not intended to result in any agency, partnership, employment or joint venture between the parties hereto or limit or restrict Consultant from performing services for any other building or projects at any time and wherever located and whether the same as or similar to the services to be performed by Consultant.

14. Successors and Assigns. Neither party may assign this Agreement or any right or obligation hereunder without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an Affiliate of either party if such successor or Affiliate assumes all obligations under this Agreement.

15. No Third Party Beneficiaries. The rights and obligations of the parties hereto are intended for the sole benefit for the parties hereto, and except as otherwise expressly herein provided, are not intended for the benefit of, and may not be enforced by, any third party.

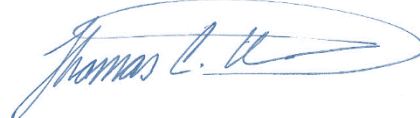
16. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties hereto regarding the subject matter hereof, and supersedes all prior agreements, whether written or oral, with regard thereto. No representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No change, modification or amendment shall be made to this Agreement unless set forth in writing and signed by the parties hereto.

17. Severability. The provisions of this Agreement are severable, and should any provision be found to be invalid or unenforceable, such finding shall not affect the validity or enforceability of any other provisions hereunder.

18. Governing Law. This Agreement shall be interpreted in accordance with the laws of the state where the project is located. In the event of a lawsuit, the proper venue shall be in the county where the project is located.

19. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provisions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CLIENT	CONSULTANT
	
Name:	Name: Tom Williard
Title:	Title: Vice President
Date:	Date: 8/9/2022