



SOUTH FEATHER WATER & POWER AGENCY

TO: Board of Directors

FROM: Kathy Zancanella, Power Division Manager

DATE: January 13, 2010

RE: Contract for Seismic and Geologic Investigation Services
Agenda Item for 1/26/10 Board of Directors Meeting

Under the FERC dam safety program, an Independent Consultant reviews the safety of the South Feather Power Project dams every five years and makes recommendations to improve the understanding of factors that might affect performance of the dams. In 2007 and 2008 the Independent Consultants made the following recommendations:

Little Grass Valley Dam

- a. Review fault sources and ground motions and update, if necessary, the analysis of the dam's seismic stability.
- b. Assess the potential for fault rupture hazard at the dam through additional field investigation (e.g., geologic mapping). This suggestion was reasonable given the recent assessment of the Little Grass Valley fault as a conditionally active fault.

Miners Ranch Dam

- a. Identify any recent investigations by the California Department of Water Resources or others (e.g., academic studies or consulting work for other local agencies) into potential for fault offsets on the Cleveland Hill/Swain Ravine fault zone.
- b. Evaluate the peak ground acceleration (PGA) established from new (2007-2008) attenuation relationships considering a very close distance to the causative fault.
- c. If a new, higher PGA is established, evaluate the need for updated displacement analyses.
- d. Investigate the stability and deformation of the dam where the crest alignment changes abruptly (between Stations 11+90 and 16+15).

A Request for Proposals to perform the work recommended by the Independent Consultants was sent to fourteen firms on November 12, 2009 and five consulting teams responded:

- AMEC Geomatrix,
- Blackburn/AECOM,
- Christensen Associates,
- Fugro WLA/HDR/DTA, and
- URS.

Scott Alcantara, Alex Brown and I reviewed the proposals that were received January 7, 2010, and we came to the conclusion that the Christensen Associates team had the best combination of experience, work plan and cost for the project. The project will be phased so that no new dam stability analyses will be conducted unless the data collected regarding seismic hazards indicate that rupture hazards or ground motions at either dam have increased significantly since the analysis done by Harlan Miller Tait in 1988, or unless FERC or DSOD require further analysis after reviewing the report submitted at the end of the first phase of investigation.

A copy of the Consulting Services Agreement and a Non-Disclosure Agreement with Christensen Associates are attached for your review. The agreement is for a not-to-exceed price of \$118,888.

The recommended form of action is:

“I move approval of, and authorization for the General Manager to execute the Consulting Services Agreement and Non-disclosure Agreement with Christensen Associates, Inc., to provide seismic and geologic investigation services related to Little Grass Valley and Miners Ranch dams.”

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is entered into effective as of January 26, 2010 by Christensen Associates Inc. ("Consultant") and South Feather Water and Power Agency ("Agency").

ARTICLE 1 SCOPE

Consultant shall perform the services (the "Services") described generally in the Consultant's Proposal dated January 5, 2010, attached hereto as Appendix A. This Agreement shall become effective as of the date shown above and shall remain in effect unless amended in writing or terminated pursuant to Article 8 herein. Agency may engage other consultants as Agency deems necessary to timely and efficiently carry out tasks required, and this Agreement shall not be considered an exclusive engagement by Agency of Consultant for Agency's requirements.

ARTICLE 2 COMPENSATION

For performance of the Services, Agency shall pay Consultant a not to exceed price of \$118,888. Forty (40) percent of this compensation will be paid upon completion of Task 3.2.2, "Field Investigations;" thirty-five (35) percent will be paid upon completion of Task 3.2.5, "Prepare Draft Report of Findings;" and fifteen (15) percent shall be paid to Consultant upon completion of Task 3.2.7, "Prepare Documentation," as described in said Proposal. The remaining ten (10) percent shall be paid upon completion of Work Task 3.2.8, "Respond to Comments by FERC and DSOD." However, if FERC and DSOD do not provide their comments within a reasonable time after the submittal of the report documents (Task 3.2.7), payment of the remaining ten (10) percent will be made ninety (90) days after completion of Task 3.2.7. No additional payment will be made for Task 3.2.8 if DSOD and FERC are untimely in their comments and a response must be developed later than 90 days after completion of Task 3.2.7.

ARTICLE 3 REPRESENTATIVES

Consultant will function in cooperation with and subject always to the direction and control of Agency's authorized officers or designated representatives. Consultant shall also designate a representative for the execution of the Services. Consultant's and Agency's representatives are:

Consultant:

John Christensen, PE
Christensen Associates, Inc.
810 Fifth Avenue, Suite 210
San Rafael, CA 94901
415-485-1440
jchristensen@caiworld.com

Agency:

Agency: South Feather Water and Power Agency
Kathy Zancanella, Power Division Manager
2310 Oro-Quincy Hwy.
Oroville, CA 95965
Telephone: (530) 534-1221, ext. 202
kzancanella@southfeather.com

Additional contact information can be found under Article 15.

ARTICLE 4 PERSONNEL

All Consultant's staff, and its subcontractors' staff, assigned to these Services shall be approved by the Agency prior to their assignment to task activities. Consultant shall confirm that the technical qualifications of all personnel assigned to these tasks meet the applicable industry standards. In the event that the individuals who are initially assigned by Consultant to perform Services under this Agreement are removed, replaced or reassigned by Consultant, such removal, replacement or reassignment may result in harm and costs to Agency. Consultant agrees not to remove, replace or reassign any such individuals without the approval of Agency. Such approval shall not be unreasonably withheld or delayed. Consultant shall make reasonable efforts to maintain continuity in its staffing and will provide Agency ample notification if any such changes are made. Notwithstanding the foregoing, it is agreed by Consultant that Agency is relying on the expertise and experience of Consultant as well as Consultant's subcontractors, and therefore Consultant shall not terminate the services of a subcontractor employed for the benefit of Agency without the prior approval of Agency, which approval shall not be unreasonably withheld. Agency may, in its discretion, direct Consultant to replace subcontractors that Agency reasonably believes are not performing in a satisfactory manner. Consultant shall ensure that subcontracts contain express acknowledgement by subcontractors of Agency's right to replace them and shall require the subcontractors to waive any claims or damages in connection therewith, save and except for costs and fees incurred to the date of said termination, plus reasonable costs incurred as a result of said termination.

ARTICLE 5 RECORDS

To the extent Agency does not otherwise specifically request delivery of records or results, Consultant agrees to retain all records and results of Services performed under this Agreement for a period of not less than two years after completion of the Services. At Agency's request Consultant will deliver a copy of any or all original field notes, investigative notes, tests, photographs, records, calculations, details, drawings, specifications, summaries and reports produced and collected in the course of Services performed under this Agreement.

A "Confidentiality and Non-Disclosure Agreement" shall be executed between Agency and Consultant and will govern receipt, use and publication of Critical Energy Infrastructure Information as defined by 18 CFR § 388.113.

ARTICLE 6 OWNERSHIP OF DOCUMENTS

Agency shall own all data, reports, information, manuals, drawings, or other written, recorded, photographic or visual materials, or other deliverables produced in the performance of this Agreement for use by Agency. Consultant shall retain no ownership interest in any of the foregoing described deliverables except as may be described herein, and such deliverables, including those retained by Consultant in the normal course of Consultant's business, may not be reused, sold, transferred or conveyed without Agency's permission. Any reuse of Consultant prepared documents, except for the specific purpose intended hereunder, will be at Agency's sole risk and without liability or legal exposure to Consultant or its subconsultants.

ARTICLE 7 CONFLICT OF INTEREST/BUSINESS ETHICS

Consultant shall exercise reasonable care and diligence to prevent any actions or conditions that would result in a conflict with Agency's interest. During the term of this Agreement, neither Consultant nor its subcontractors shall accept employment or engage in any work that creates a conflict of interest between Consultant and Agency, or in any way compromises the interest of Agency for which Contractor's services are being retained. Consultant shall immediately notify Agency of any and all such violations of this clause, by Consultant, its agents or subcontractors, immediately upon becoming aware of such violations. Failure of such notification or lack of knowledge of a violation by Consultant or its subcontractors shall not excuse the performance hereunder.

ARTICLE 8 TERMINATION

Agency may suspend or terminate this Agreement by giving thirty days prior written notice to Consultant, but such termination shall not relieve Agency of its obligation to pay Consultant for expenses incurred and Services performed up to the date of termination and all reasonable expenses that Consultant incurs by reason of such termination. Any reports, drawings or other documents prepared for Agency prior to the effective date of such termination shall be delivered to Agency by Consultant prior to Agency's release of its final payment to Consultant.

ARTICLE 9 STANDARD OF CARE

The standard of care for professional services performed or furnished by Consultant under this Agreement will be the care and skill used by members of Consultant's profession practicing under similar circumstances at the same time and same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise in connection with Consultant's services.

ARTICLE 10 LIMITATION OF LIABILITY

Consultant's total cumulative liability for any claims of any kind, whether based on contract, tort (including negligence and strict liability), under any warranty or otherwise, for any loss or damage relating to this Agreement or the performance of the Services, shall not exceed the insurance coverage specified in this Agreement, and Agency hereby releases Consultant from any liability in excess of such amount. This monetary limitation shall survive the failure of any exclusive remedy.

Neither Agency nor Consultant shall be liable, whether based on contract, tort (including negligence and strict liability), under any warranty or otherwise relating to the Services or this Agreement, for any consequential, indirect, special, punitive or incidental loss or damage, any damage or loss of any property or equipment, or any loss of use of property or equipment, and Agency and Consultant mutually release the other from any liability for all such losses and damages.

All of the provisions of this Agreement providing for limitation or protection against liability of Consultant and Agency shall also protect their directors, officers and employees, and affiliated entities of Consultant and their directors, officers, employees and affiliates, and shall apply regardless of the fault, negligence or strict liability of Consultant, its directors, officers, employees or affiliates.

ARTICLE 15 NOTICES

Any notice related to this Agreement shall be in writing and shall be considered duly made if delivered to the other party at the following addresses:

Consultant:
John Christensen, PE
Christensen Associates, Inc.
810 Fifth Avenue, Suite 210
San Rafael, CA 94901
415-485-1440
jchristensen@caiworld.com

Agency:
Agency: South Feather Water and Power Agency
Kathy Zancanella, Power Division Manager
2310 Oro-Quincy Hwy.
Oroville, CA 95965
Telephone: (530) 534-1221, ext. 202
kzancanella@southfeather.com

Either party may change its address or numbers for receiving notices by giving written notice of such change to the other party.

ARTICLE 16 SURVIVAL

The provisions of this Agreement which by their nature should survive expiration, cancellation or termination of this Agreement, including but not limited to provisions regarding warranty and liability, shall survive such expiration, cancellation or other termination.

ARTICLE 17 LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its conflicts of law principles.

ARTICLE 18 INTEGRATION

These terms and conditions are intended by Consultant and Agency to constitute the final and complete statement of their agreement, and all prior proposals, communications and understandings related to the subject matter of this Agreement are hereby superseded. No modification or amendment of this Agreement shall be effective unless the same is in writing and signed by both parties.

CHRISTIANSEN ASSOCIATES, INC.

SOUTH FEATHER WATER AND POWER AGENCY

By: _____

By: _____

Michael Glaze

Title: _____

Title: General Manager

Date: _____

Date: January 26, 2010

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

BETWEEN

Christensen Associates, Inc. (Consultant)

AND

SOUTH FEATHER WATER & POWER AGENCY

This Confidentiality and Non-Disclosure Agreement (Agreement) between Christensen Associates, Inc. (Consultant) and South Feather Water and Power Agency (SFWPA) (also referred to as a "Party" or the "Parties") is entered into as of January 26, 2010 ("Effective Date").

RECITALS

1. SFWPA is a public agency and the licensee of the South Feather Power Project, Federal Energy Regulatory Commission (FERC) Project No. 2088 (Project). Consultant has agreed to provide services to SFWPA as specified in the Consulting Services Agreement (CSA).
2. As a result of the CSA between Consultant and SFWPA, Consultant may receive or be given access to files and information of SFWPA that may contain confidential information related to Critical Energy Infrastructure (CEII) as defined by 18 CFR § 388.113..
3. Consultant wishes to use certain CEII for purposes of fulfilling its obligations under the CSA and Consultant wishes to confirm its obligation to insure that CEII made available to or accessed by Consultant is maintained in confidence and not released or disclosed to others.

TERMS OF AGREEMENT

THEREFORE, in consideration for SFWPA's retention of Consultant's services under the CSA, Consultant agrees as follows:

1. Consultant acknowledges that during the term of the CSA, Consultant will receive CEII from SFWPA, including but not limited to, engineering drawings, construction reports, 5-year Dam Safety Inspection Reports, Supporting Technical Information documents, and other materials that would be classified by the FERC as CEII. Consultant agrees to maintain custody and control of all CEII supplied by SFWPA to Consultant and to insure that it will not be disclosed except to FERC.
2. Consultant agrees to maintain and hold all CEII in strict confidence and not to disclose it, or otherwise make it available, to any person not employed by Consultant in the performance of the CSA or to any third party without the prior written notice to and consent of SFWPA. Any material that is subsequently filed with the FERC that would be properly designated as CEII shall be so designated on each and every page that contains CEII material.
3. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing, unless otherwise agreed by the Parties, and shall be delivered in person or sent by electronic mail, by overnight delivery with tracking information, or by U.S. mail, and addressed as follows:

To Consultant:

John Christensen, PE.
Christensen Associates, Inc.
810 Fifth Avenue, Suite 210
San Rafael, CA 94901

To SFWP:

Kathy Zancanella, Power Division Manager
South Feather Water and Power Agency
2310 Oro Quincy Highway
Oroville, CA 95966

4. Either Party may from time to time change its representative(s) or address for the purpose of notices to that Party by a similar notice specifying new representative(s) or address, but no such

change shall be deemed to have been given until such notice is actually received by the Party being so notified. In no event will a person be substituted who is not in the direct employ of Consultant or SFWPA.

5. All CEII disclosed pursuant to this Agreement, and all rights related thereto, shall be and remain the sole property of SFWPA.
6. Consultant agrees that CEII received from SFWPA:
 - (a) shall be used only for purposes related to the CSA;
 - (b) shall not be reproduced or copied, in whole or in part, except as specifically requested by Consultant, and authorized by SFWPA, when necessary for the purposes set forth in (a), above; and
 - (c) shall, together with any copies, reproductions, or other records thereof, in any form, and all information and materials containing copies of the CEII, be returned to SFWPA when no longer needed for the performance of the CSA; or otherwise upon written request of SFWPA.
7. This Agreement shall be part of and be coterminous with the CSA, and may not be terminated except by authority of SFWPA, or unless disclosure of CEII is ordered by a regulatory agency or court of competent jurisdiction. Termination shall not extinguish the obligations of Consultant to maintain the confidentiality of CEII obtained up to the date of termination, and termination shall not extinguish any claim, liability, or cause of action arising under this Agreement existing at the time of termination.
8. No Party shall be liable to any other Party for any special or consequential damages arising out of or in connection with this Agreement, whether based on contract, tort, including negligence and strict liability, or otherwise. Notwithstanding the foregoing, it is understood that the unauthorized release or disclosure of CEII may cause irreparable injury to SFWPA, and be a threat to public

health and safety. Therefore, if Consultant should cause, directly or indirectly, the unauthorized release of CEII, than Consultant shall defend, indemnify, and hold harmless SFWPA from all claims, demands, and penalties, including penalties imposed by any government entity, including FERC, for the improper release or unauthorized publication of CEII. Consultant agrees that in the event of such unauthorized disclosure, that SFWPA shall notify FERC of such unauthorized release by Consultant, and that Consultant will be de-barred from performing further consultant services for SFWPA, and SFWPA shall not be prevented hereby from publicizing such release or disclosure.

9. By entering into this Agreement and upon delivery of any CEII to Consultant, SFWPA shall not be considered to have granted, expressly or by implication, any rights to Consultant, by license or otherwise, to such information or to any copyright or copyrighted material now or hereafter owned or controlled by SFWPA.
10. This Agreement contains the complete and exclusive agreement of the Parties with respect to the subject matter of this Agreement and supersedes all discussions, negotiations, representations, warranties, commitments, offers, and writings prior to the date of this Agreement, with respect to its subject matter. No change to this Agreement shall be effective unless agreed to in writing by the Parties.
11. This Agreement is not intended to create any rights and/or obligation of any party or third party other than those expressly stated herein.
12. Any CEII disclosed to Consultant under this Agreement carries no warranty or representation of any kind, either express or implied. Consultant shall not make any claim in the future that it relied to its detriment or damage on any CEII supplied pursuant to this Agreement.
13. This Agreement is made in the State of California, County of Butte, and shall be governed by and interpreted in accordance with the laws of the State of California.

14. This Agreement shall be binding upon the Parties, their successors, and assigns. No Party shall assign this Agreement without the other Party's prior written consent. Consultant shall not have the authority to and shall not forward CEII to any assignee or potential assignee without SFWPA's prior written consent.
15. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against any Party, but shall be construed in the manner that most accurately reflects the Parties' intent as of the date they executed this Agreement.
16. Each person signing below warrants that he or she has been duly authorized by the Parties for whom he or she signs to execute this Agreement on behalf of that Party.
17. Attached hereto as Exhibit A are listed those employees/subconsultants of Consultant who are authorized to inspect CEII as required for work under the CSA, and no other person shall be so authorized unless prior approval is received from SFWPA. Each person listed on Exhibit A shall receive a copy of this agreement, and shall execute a memorandum that they have reviewed and shall adhere to the terms of this Agreement. In the event that Consultant, or any person listed on Exhibit A, becomes aware of a disclosure of CEII not otherwise authorized by the terms hereof, they shall immediately notify SFWPA, and shall take all necessary steps to recover CEII so released.

IN WITNESS WHEREOF,

Consultant and South Feather Water and Power Agency, through their duly authorized representatives, have caused this Agreement to be executed as of the date set forth in this Agreement.

SOUTH FEATHER WATER AND POWER AGENCY

By _____
Michael C. Glaze, General Manager

CONSULTANT

By _____
(Print Name) (Date)