

Topic: **Sites Project**

2017 October 10

Subject: **Gerald E. Johns, Contract Amendment #1**

Purpose: This amendment is for additional services to be provided by Gerald E. Johns to support the Sites Project Authority (Authority).

Services: In addition to continuing to provide the services listed in the Agreement's Attachment A,

- **Operations:** Assist in the evaluation of a potential repayment strategy based on storage as a potential alternative to repayment based on the acre-foot of water. Services will include benchmarking to determine if/how this strategy has been implemented elsewhere.
- **Water Rights:** Assist in the evaluation of the projects' proposed hydropower benefits as incidental to the primary water right filing to the SWRCB. Services will include benchmarking to determine if/how this approach has been implemented in California.

Budget: Not to exceed amount.

Current: \$50,000. Amendment #1: \$ 120,000.

Schedule & Deliverables:

- Initial findings and analysis by December 31, 2017
- Benchmarking results by April 1, 2018
- Develop a draft Complete Water Right Application by June 2018
- Recommended next steps (phase 2) by June 30, 2018

Notice to Proceed:

By signing Exhibit B, the Sites Project Authority (a) approves the budget increase and (b) intends to manage consultant's services using a 3-month rolling forecast of incurred cost as provided monthly combined with the 30-day provision in Section 3b of the Agreement.	Sites Project Authority	Consultant
	_____	_____
	Signature	Signature
	<u> James C. Watson </u>	<u> Gerald (Jerry) Johns </u>
	Printed Name	Printed Name
<u> General Manager </u>	<u> President </u>	
	Title	Title

CONSULTING SERVICES AGREEMENT WITH

Gerald E. Johns

This Consulting Services Agreement, hereafter referred to as "Agreement," is entered into this 8th day of February, by and between the Law Offices of Young Wooldridge, LLP ((hereinafter "YW") acting on behalf of its client Sites Project Authority ("SITES"), and Gerald E. Johns ("Consultant.") Under this Agreement, Consultant will provide its services to YW according to the following terms:

1. Scope of Services

a. YW retains Consultant to provide consulting services necessary to complete the tasks set forth in the Scope of Work, Attachment "A", in a professional, technically competent, and timely manner.

b. In performance of the services requested under this Agreement, Consultant shall report to and receive instructions from YW attorneys and the SITES General Manager or such person or officer whom they may designate.

2. Financial Arrangements

a. All payments by YW and SITES to Consultant under this Agreement shall be consistent with the budget and schedule of fees set out in Attachment "B." Fees under this Agreement shall be established and billed on an hourly basis. Consultant shall be entitled to reimbursement for documented reasonable and necessary direct expenses incurred in performing services under this Agreement, including travel, long-distance telephone calls, facsimile transmissions, postage and shipping, reproduction and printing of reports and other documents, computer processing, messengers and air couriers, and other expenses approved by SITES. Total fees, including expenses, for work performed under this Agreement shall not exceed **\$ 50,000**. Consultant agrees to provide written notice to YW and SITES when expenditures for each task under this Agreement reach seventy-five per cent (75%) of the total task expenditures.

3. Term and Termination

a. This Agreement shall be **effective on January 1, 2017**, and shall remain in effect until terminated earlier consistent with Section 3(b).

b. This Agreement may be terminated by either YW or SITES or Consultant upon thirty (30) days written notice or upon satisfactory completion of the services by Consultant and payment by SITES. Upon termination, SITES shall pay Consultant for services and expenses up to and including the effective date of termination, less any compensation to SITES for damages suffered as a result of Consultant's failure to comply with the terms of this Agreement. However, if this Agreement is terminated because the work of Consultant does not meet the terms or standards specified in this Agreement, then SITES shall be obligated to compensate Consultant only for that portion of Consultant's services which is of benefit to YW or SITES.

c. In the event of termination, all finished and unfinished data, studies, documents, and reports prepared by Consultant, shall become SITES's property and Consultant shall deliver such items to YW or SITES.

4. Billings and Payments

a. Any notice, billing, demand, or request regarding this Agreement shall be in writing, and shall be personally served or sent First Class U.S. Mail, postage prepaid, to the address supplied herein:

The Law Offices of Young Wooldridge, LLP
1800 30th Street, Fourth Floor
Bakersfield, CA 93301
Attn: Ernest A. Conant

With copy to:
Sites Project Authority
P.O Box 517
Maxwell, CA 95955
Attn: Jim Watson, General Manager

b. The Consultant, YW or SITES may, at any time, by written notice to the other party, designate different or additional persons or different addresses for the giving of notices hereunder.

c. For each Task set forth in Attachment A, the Consultant shall submit a monthly invoice, both electronically and pursuant to Section 4.a above, on or before the 7th day of each month to YW with a copy to SITES. The invoice shall contain a brief description of the work performed under the Agreement by Consultant during the current billing period, and shall also include total expenditures to date. Appropriate documentation shall be provided for all direct expenses billed by Consultant. The description of work performed shall be of

a form that is appropriate for briefing the SITES Board of Directors and Member Agencies, if appropriate.

d. SITES shall pay Consultant's billings within thirty (30) days of approval of such billings, provided it is timely submitted, or it shall issue Consultant a written objection to such billings within the same period.

5. Staffing

a. The Consultant agrees to perform and guide the work called for under this Agreement, utilizing personnel and subcontractors subject to YW's written approval.

b. The Consultant understands that YW with SITES approval entered into this Agreement based on the professional expertise and reputation of Consultant, No sub-consultants are allowed under this agreement.

6. Governing Law

a. The Consultant shall perform such services in accordance with recognized professional standards and will comply with all applicable regulatory requirements, including federal, state, and local laws, rules and regulations, codes, criteria, and standards in effect at the time the services are performed.

b. This Agreement shall be deemed a contract under the laws of the State of California, and for all purposes shall be interpreted in accordance with such laws. Any action arising out of this Agreement shall be brought in Sacramento County, California, regardless of where else venue may lie.

7. Entire Agreement

a. It is mutually agreed and understood that this Agreement represents the complete agreement of YW and SITES, and that no alteration or variation of the terms of the Agreement shall be valid and binding unless made in writing and signed by both parties.

8. Other Terms and Conditions

a. Unless such release is required by law, Consultant shall not release, or disclose information obtained in the course of Consultant's work for YW and SITES under this agreement to others without receiving prior written permission from YW and SITES or its designee, which consent shall be at the sole discretion of YW and SITES.

b. No delay or failure by either party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

c. Consultant will furnish consulting services in the capacity of an independent contractor and neither consultant nor any of its employees shall be considered, or be, an employee or agent of YW or SITES. The Consultant, and the agents, and employees, of the Consultant, in the performance of this Agreement, shall act as and be independent contractors and not officers, employees, or agents of YW or SITES. Consultant shall maintain all necessary business licenses, and their own place of business.

d. Consultant, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit YW or SITES to any decision or course of action, and shall not represent to any person or business that they have such power.

e. Consultant shall be responsible to YW and SITES for all services to be performed under this Agreement.

f. Consultant have and shall retain the right to exercise full control of the supervision of the services and work and over the employment, direction, compensation and discharge of all persons assisting in the performance of services under this Agreement. Consultant shall be solely responsible for all matters relating to the scheduling and payment of its employees, including but not limited to compliance with social security and income tax withholding, workers' compensation insurance and all regulations governing such matters.

g. Subject to the total fees set forth in paragraph 2(b) of this Agreement, in the performance of Consultant's services, the services and hours Consultant is to work in any given day will be within Consultant's control and YW and SITES will rely upon Consultant to put in such hours as are reasonably necessary to fulfill the spirit and purpose of this Agreement and accomplish Consultant's assignments within the agreed upon budget, as set forth in the Scope of Work.

h. The execution of this Agreement by the parties hereto shall constitute an authorization for Consultant to commence work hereunder. Consultant shall promptly notify YW and SITES of any anticipated delays or circumstances beyond Consultant's control that may affect any agreed-to work schedule.

i. All data, studies, and documents shall, upon payment in full for the services described in the Agreement, be furnished to and become property of SITES.

j. YW and SITES shall have the right under this Agreement to assign employees or agents to assist with oversight and management of activities under Attachment "A".

k. Consultant shall maintain and make available for inspection by YW or SITES and its auditors, accurate records of all of its costs, disbursements and receipts with respect to any work under this Agreement. Such inspections may be made during regular office hours, at any time, until six (6) months after the final payments under this Agreement are made to the Consultant.

9. Minimum Insurance Requirements

a. Consultant hereby warrants that it carries and shall maintain, at its sole cost and expense, in full force and effect during the full term of this Agreement and any extensions to this Agreement, the following described insurance coverage as outlined below:

POLICY	MINIMUM LIMITS OF LIABILITY
(1)	
(2) Comprehensive Automobile-: Insurance Services Office, form #CA 0001 covering Automobile Liability, code 1 (any auto).	Bodily Injury/Property Damage \$1,000,000 each accident.
(3) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).	\$1,000,000 per occurrence.

b. Deductibles and Self-insured Retentions any deductibles or self-insured retentions over \$5,000 must be declared to and approved by YW and SITES.

c. Required Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) SITES and YW shall be named as Additional Insureds

d. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by YW and SITES.

e. Certificate of Insurance and Additional Insured Requirement Consultant shall furnish to YW and SITES an original Certificate of Insurance on a standard ACORD form, or other form acceptable to YW and SITES, substantiating the required coverages and limits set forth above and also containing the following statement with respect to the Commercial General Liability policy: "YW and SITES and their respective partners, directors, officers, agents, employees, and volunteers are made additional insureds, but only insofar as the operations under this Agreement are concerned."

f. Certified Copies of Policies: Upon request by YW or SITES, Consultant shall allow YW or SITES to view a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

g. Consultant's Responsibility: Nothing herein shall be construed as limiting in anyway the extent to which Consultant may be held responsible for damages resulting from Consultant's operations, acts, omissions, or negligence. insurance coverage obtained in the minimum amounts specified above shall not relieve Consultant of liability in excess of such minimum coverage, nor shall it preclude YW or SITES from taking other actions available to it under this Agreement or by law, including but not limited to, actions pursuant to Consultant's indemnity obligations.

h. The required insurance coverage outlined herein shall not be suspended, voided, canceled or terminated, reduced in coverage, or in limits, by Consultant, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to YW and SITES."

10. Indemnity

a. All work covered by this Agreement shall be at the risk of Consultant alone. Consultant shall defend (with counsel reasonably acceptable to YW), indemnify and hold harmless, YW and SITES, and their respective partners, members, officers, directors, employees, agents, invitees, and volunteers (collectively the "Indemnitees") from and against any claims, damages, losses and expenses, including but not limited to attorneys' fees (collectively "Losses"), arising in connection with this Agreement to the extent that such liability arises from the negligent acts, errors or omissions or willful misconduct on

the part of Consultant, excepting only Losses caused by the sole, active negligence or willful misconduct of an Indemnitee. Consultant shall pay all costs and expenses that may be incurred by YW or SITES in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this section shall survive the expiration, termination, or assignment of this Agreement.

11. Counterparts

This Agreement may be executed in counterparts. Each counterpart shall be deemed an original, and all counterparts shall be deemed the same instrument with the same effect as if all parties hereto had signed the same signature page.

12. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of YW or SITES to enforce at any time the provisions of this Agreement or to require at any time performance by the Consultant of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of YW or SITES to enforce these provisions.

13. Litigation

Consultant shall notify YW and SITES immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or YW and SITES, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of YW and SITES.

14. Ownership; Permission

a. Consultant agrees that all work products, including but not limited to, notes, designs, drawings, reports, memoranda, and all other tangible personal property produced in the performance of this Agreement, shall be the sole property of YW and SITES, provided that Consultant may retain file copies of said work products. Consultant shall provide said work products to YW or SITES upon request.

b. Consultant represents and warrants that: (i) all materials used or work products produced in the performance of this Agreement, including, without limitation, all computer software materials and all written materials, are either owned by or produced by Consultant or that all required permissions and license agreements have been obtained and paid for by Consultant; and (ii) SITES is free to use, reuse, publish or otherwise deal with all such materials or work products except as otherwise specifically provided in Attachment "A." Consultant shall defend, indemnify and hold harmless YW and SITES and its directors, officers, employees, and agents from any claim, loss, damage,

cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

15. Costs and Attorneys' Fees

If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

16. Integration

This agreement represents the entire understanding of YW and SITES and Consultant as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7.

17. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

18. Headings

The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

19. Authority


Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the Authority to bind that party to the terms and conditions.

IN WITNESS THEREOF, YW and Consultant have executed this Agreement on the date set forth above.

Law Offices of Young Wooldridge, LLP

By 
Ernest A. Conant, Partner

CONSULTANT

By 
Gerald E. Johns

APPROVED:

Sites Project Authority

By 
Jim Watson, General Manager March 19, 2017

ATTACHMENT "A"

SCOPE OF WORK FOR CONSULTANT

Gerald (Jerry) Johns will provide both water right and project operations expertise to assist in the development of various documents needed to obtain both water user and regulatory agency approval for the Sites Reservoir. Tasks will include:

OPERATIONS

- Review existing operations studies assumptions and suggest changes in to those assumptions that better meet the expectations of the water users, DWR, USBR and fishery agencies.
- Review the fishery related proposed bypass flows to see if they will likely be acceptable to the State and Fishery agencies for issuance of the Biological Opinions needed for Sites Reservoir.
- Work with fishery agencies to help determine the extent and timing of "public benefit" water they would like to have from sites reservoir.
- Assist in the development of new operation studies, if needed, for Sites Reservoir under the revised operational assumptions. This includes helping to define the operational rules, reviewing the results of the studies and helping to summarize the findings of these studies. It does not include performing the operation studies themselves.
- Assist in the development of a "Term Sheet" related to the coordination of the Sites Reservoir operations with both the State Water Project and the Central valley Project.
- Assist in the development of the application to the Water Commission related to Sites reservoir.
- Attend meetings with water users, fishery agencies, DWR, USBR, NGO's and the Sites Team to accomplish the tasks listed above.

WATER RIGHTS

- Review the current State Filing for Sites Reservoir (A025517) on file with the State Water Resources Control Board (SWRCB)
- Determine what amendments to the A025517 are needed to meet the physical and operational needs of the Sites Reservoir Project.
- Determine if any new water right applications are needed to meet the physical and operational needs of the Sites Reservoir Project.
- Assist in the description of studies or additional work that is needed before amendments or new applications are filed with the SWRCB.
- Assist in the preparation of either amendment to A025517 or new water right applications or both.
- Meet with SWRCB staff and others to help develop documents that will be submitted to the SWRCB.

ATTACHMENT "B"
SCHEDULE OF FEES AND BUDGET
For Professional Services by "Gerald E. Johns"

Schedule of Fees

Hourly Rate for Engineers and Scientists

\$250.00 per hour

Budget

Not to Exceed \$50,000