



Topic: **Authority Board Agenda Item 4-4**

2018 July 16

Subject: **Sites Consulting Service Agreement**

Requested Action:

Consider conditional approval of the standardized Consulting Service Agreement.

Conditional approval is predicated on the Reservoir Committee approving this agreement for form and substance to enable it to be included as an exhibit to the upcoming Request for Qualifications.

Detailed Description/Background:

The Sites Project Authority’s staff, in coordination with General Counsel, developed the Sites Consulting Services Agreement to be used as a standard contract template for future procurement activities to retain consultant services. The Agreement is intended to be used for the upcoming Phase 2 consulting contracts. Members of the Authority Board and Reservoir Committee reviewed and provided comments/edits to the Agreement. Comments received were reviewed and incorporated into the draft Agreement, as appropriate.

Upon completion of the upcoming Phase 2 Procurement process, final contracts will be brought to both the Reservoir Committee and the Authority Board for their respective consideration.

Prior Authority Board Action:

None.

Fiscal Impact/Funding Source:

None.

Staff Contact:

Joe Trapasso

Attachments:

Attachment A – Draft Sites Consulting Service Agreement



CONSULTING SERVICES AGREEMENT

This **CONSULTING SERVICES AGREEMENT** (this “**Agreement**”) is executed, delivered and intended to be effective as of _____ (“**Effective Date**”) by and between the SITES PROJECT AUTHORITY, a California joint powers authority duly formed and existing under and pursuant to the California Joint Exercise of Powers Act (Government Code § 6500 *et seq.*) (“**Authority**”), and _____, a _____ (“**Consultant**”). Authority and Consultant may be individually referred to as a “**Party**” or collectively as the “**Parties.**”

AGREEMENT

1. Services.

- a. **Services.** The services to be provided for pursuant to the Agreement include _____ (“**Services**”). The “**Services**” shall mean all work to be performed by Consultant hereunder, as the same may be supplemented, expanded, reduced or otherwise modified from time to time pursuant to a Task Order or Change Order described below.
- b. **Task Orders.** At such time as the Parties identify with particularity the scope of Services, the particular tasks that comprise the Services, and the time for performance thereof, the same shall be set forth in the task order(s) attached hereto and incorporated herein as **Exhibit A** (each, a “**Task Order**”). In the event the Parties intend for the Services to be performed in phases the Parties shall execute additional Task Orders, each of which shall, as applicable, be considered a separate and additional Task Order, and all of which together shall constitute **Exhibit A** hereto. Consultant shall be solely responsible for bearing the costs associated with preparing a Task Order.
- c. **Change Orders.** From time to time, the Parties may make changes to or authorize certain work set forth in a Task Order, including, without limitation, issuing additional instructions, requiring additional work, deleting work previously ordered, or increasing or decreasing the time for performance, by executing one or more change orders (each a “**Change Order**”) substantially in the form of **Exhibit B** attached hereto. The provisions of this Agreement shall apply to all such Change Orders. Authority shall be solely responsible for bearing the costs associated with preparing a Change Order.

- d. **Relationship of Trust and Confidence.** Consultant accepts the relationship of trust and confidence established between Consultant and Authority under this Agreement. Consultant shall perform all Services in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and competence ordinarily exercised by members of the profession currently practicing under similar conditions in the geographic area in which the Services are provided. Consultant shall at all times during the Term furnish its best skill and judgment and cooperate with Authority and other consultants performing services for Authority. Consultant shall perform its duties and obligations under this Agreement in an efficient, expeditious and economical manner.
- e. **Independent Contractor Status.** Consultant enters into this Agreement as, and shall remain throughout the Term, an independent contractor, and is not, and shall not become by virtue of this Agreement an employee, partner, agent or principal of Authority. Consultant shall determine the method, details and means of performing the Services, as an independent contractor. Consultant shall not have the power to enter into contracts on behalf of Authority, and Consultant shall not represent that it has such power. Specifically, and without limiting the foregoing, as an independent contractor:
- i. **No Liability Insurance.** Authority is under no obligation to Consultant to maintain public, professional, product or other liability insurance to cover risks, if any, to Consultant.
 - ii. **No Worker's Compensation Insurance.** Consultant is excluded from the benefits of the Authority's state worker's compensation insurance, if any. To the extent desired by Consultant, adequate levels of medical and disability insurance coverage should be maintained by Consultant to provide benefits in the event that Consultant or its personnel sustain injuries while performing Services under this Agreement.
 - iii. **No Disability Insurance.** Consultant is excluded from receiving state unemployment and disability insurance benefits from the Authority.
 - iv. **No Withholding.** Authority shall not make deductions from the Consultant's compensation for federal or state income tax withholding, Federal Insurance Contribution Act, state disability funds, or Federal Unemployment Tax Act.
 - v. **No Employee Status; No Employee Benefits.** Consultant is not entitled to any rights or benefits afforded to Authority's employees, if any, including disability or unemployment insurance, worker's compensation, medical or life insurance, vacation, holidays, personal leave or any other employment benefit that Authority may provide to its employees from time to time.
- f. **Fees and Taxes.**
- i. **Patent and Copyright Fees and Royalties.** Consultant shall pay all fees and royalties and be responsible for all costs and expenses incident to the performance of the Services and shall not infringe upon the patent, copyright or similar rights of others.

- ii. **Taxes.** Consultant shall pay when due all sales, use and personal property taxes, income taxes (including estimated taxes), payroll taxes, self-employment taxes, social security and other contributions based on the compensation paid to Consultant, and all other taxes assessed or levied in connection with the Services, and for providing, at Consultant's sole cost, disability, unemployment and other insurance, worker's compensation, training, permits and licenses for Consultant and Consultant's employees, subconsultants and subcontractors. Upon request, Consultant shall provide Authority with proof of timely payment. If any local, state or federal license, excise or other taxes are imposed on any sums due Consultant, Authority is authorized to pay the same and then to withhold or deduct such taxes applicable or proportionate to the sums otherwise due Consultant.

- g. **Use of Employees, Subconsultants and Subcontractors.** Consultant shall furnish sufficient qualified personnel necessary to perform the Services and shall provide and employ all required equipment, materials and supplies necessary to perform the Services in accordance with the completion schedule for the Services. Any subconsultant or subcontractor that will provide services shall be listed in the Task Order with a corresponding Hourly Rate Schedule. Consultant shall not commission the services of any new or additional subconsultant or subcontractor without the approval of the Authority, which approval the Authority may withhold or condition in its reasonable discretion to ensure adherence to the terms and conditions of this Agreement, and which approval shall, if granted, be memorialized in the form of a Change Order. Consultant shall determine the method, details, and means of performing the Services and may at its own cost, employ such employees, subconsultants and subcontractors as it deems necessary to perform the Services. Authority may not control, direct or supervise Consultant's employees, subconsultants or subcontractors in the performance of the Services, and Authority shall not be liable for any expenses or costs relating to Consultant's employees, subconsultants or subcontractors unless Authority has agreed in writing, prior to the time such expenses or costs are incurred, to reimburse Consultant for such expenses. Consultant shall ensure that any contract entered into with any subconsultant or subcontractor is expressly subject to all applicable terms and conditions of this Agreement, which applicable terms and conditions include, without limitation, those governing insurance, indemnification, ownership of work product, confidentiality and conflicts of interest.

- h. **Supervision by Licensed Professional.** If required under applicable law, the Services shall be performed by or under the supervision of a professional duly registered and licensed in and by the State of California, or as otherwise approved by Authority in writing, and shall be performed in accordance with the standards of practice and due care applicable to Consultant in the State of California in effect at the time of performance. Where required by Authority, completed reports prepared by Consultant shall bear appropriate certifications, stamps and/or signatures of said registered and licensed professional.

- i. **Services Free of Claims.** Consultant shall furnish and pay for all labor, materials, supplies, supervision, equipment and other facilities customary or necessary for the performance of the Services. The Services shall be provided free of any claims or liens against Authority's or any of its Member's businesses, bank or other financial accounts, projects or underlying real property ("**Property**") arising out of, resulting from or relating

to the Services and shall be performed in accordance with all specifications, plans, reports and documents described or referenced in **Exhibit A**. As used in this Agreement, "**Members**" shall mean the voting and non-voting members of the Authority, and the voting and non-voting members of any Project Agreement Committee established by the Authority.

- j. Lien Waivers against Property.** Consultant shall not suffer or permit to be enforced against the Property, or any portion thereof, any liens or claims, including, without limitation, stop notices, bonded stop notices, mechanics', materialmen's, contractors' or subcontractors' liens or claims for damages arising from the Services performed by Consultant and its employees, subconsultants and subcontractors. Consultant shall pay or cause to be paid all liens, claims or demands before any action is brought to enforce the same against the Property or any funds of Authority or any lender of Authority, and Consultant shall, within 10 days after demand from Authority furnish all bonds necessary to release the Property and any funds subject to a mechanic's or materialmen's lien, stop notice or bonded stop notice, at Consultant's sole cost. Consultant shall identify to Authority in writing all persons or entities who performed work or supplied materials, equipment or services to the Property before allowing any such person, or any agent or employee of any such person or entity, to enter onto the Property or to perform any such work or supply any such materials, equipment or services to the Property, and Consultant consents to direct communications between Authority and said persons and entities for purposes of verifying liens, account balances, deliveries and all other matters pertaining to the Property.
- k. Access to Provide Services.** Consultant shall use commercially reasonable efforts to provide Authority with an anticipated schedule of necessary access to Authority's premises and property or any other such premises or property that have been dedicated to the Authority or made available for the Authority's use. Consultant shall perform the Services in a manner that is consistent with Authority's requirements and conditions applicable to the Authority's use of premises or property, and will minimize any interference with the operations of the Authority and its related entities and its agents and other consultants.
- l. Outside Services.** Subject to the confidentiality provisions contained in **Paragraph 13** and Consultant's obligation to fully perform the Services, Consultant may offer its services to any other person or entity. This Agreement is not intended to create an exclusive contractual relationship between Consultant and Authority.
- m. Project Management.**

 - i. Consultant's Representative.** _____ ("**Consultant's Representative**") is hereby designated as the principal and representative of Consultant authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection herewith. Consultant shall not substitute Consultant's Representative without first notifying Authority in writing of Consultant's intent.

- ii. **Authority's Representative.** _____ (“**Authority's Representative**”) is hereby designated to represent Authority and except as otherwise provided herein authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection therewith. Authority may substitute Authority's Representative at any time upon written notice to Consultant.
- n. **Books and Records.** Consultant shall keep and shall preserve for four (4) years after final payment for all Services under this Agreement, accurate and detailed records of all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents or records evidencing or relating to the Services and disbursements charged to Authority under this Agreement (collectively, “**Books and Records**”). Any and all Books and Records must be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the Services provided by Consultant under this Agreement. During such four (4) year period, Consultant shall give Authority and its agents, during normal business hours, access to such Books and Records. Authority and its agents shall have the right to make copies of any of the said Books and Records.
2. **Term of Agreement.** Subject to the right to terminate in **Paragraph 3**, the term of this Agreement (“**Term**”) shall commence on the Effective Date. The Term shall continue (i) until the scheduled completion date for Services set forth in **Exhibit A**, if any, or (ii) if no completion date is specified, for one year, renewable annually on the anniversary date of the Effective Date unless either Party delivers written notice of non-renewal to the other Party (“**Non-Renewal Notice**”) at least 60 days prior to the expiration of that year's Term.
3. **Termination of Agreement; Suspension of Services.**
- a. **Termination Notice by Either Party.** Neither Party may terminate this Agreement except in the manner provided in **Paragraphs 3.b** and **3.c**. Such termination shall be effective ten (10) calendar days following the receipt of written notice from one Party to the other Party (“**Termination Notice**”).
- b. **Termination by Authority.**
- i. **Grounds for Termination.** Authority shall have the right to terminate this Agreement, in whole or in part, with or without cause, including (A) for a breach by Consultant of any term of this Agreement, (B) for an act of negligence or misconduct by Consultant, (C) for an act by Consultant which Authority determines, in its sole discretion, reflects negatively on Authority, (D) if Authority determines, in its sole discretion, that Consultant is not performing the Services to Authority's sole satisfaction, or (E) if Authority determines, in its sole discretion, that the Services are no longer needed, whether or not Consultant performed the Services to Authority's sole satisfaction. Upon receipt of the Termination Notice, Consultant shall promptly discontinue Services except to the extent the Termination Notice directs otherwise.
- ii. **Termination with Cause – Compensation.** In the event of termination under **Paragraph 3.b.i(A)**, (B), or (C), Consultant shall be entitled to compensation for all

Services properly rendered prior to the effective date of the Termination Notice and all further Services set forth in the Termination Notice. Consultant shall not be entitled to any other or further compensation and shall not charge for documenting the status of the Services as of the date of termination. Authority shall be entitled to reimbursement for any compensation paid in excess of Services properly rendered and shall be entitled to withhold compensation for defective Services or other damages caused by Consultant's work. Authority shall have no other or further obligation or liability to Consultant. Termination of this Agreement by Authority shall not affect Consultant's obligations or liabilities to Authority other than Consultant's obligation to continue to render the Services, which shall terminate.

iii. **Termination without Cause – Compensation.** In the event of termination under **Paragraph 3.b.i(D)** or **(E)**, Consultant shall be entitled to compensation for all Services properly rendered prior to the effective date of the Termination Notice, for reasonable charges for documenting the status of the Services as of the date of termination as approved by Authority, and for all further Services set forth in the Termination Notice, after Authority's receipt of a final Application for Payment and supporting documentation and work product as described in **Paragraph 5.b.** Authority shall have no other or further obligation or liability to Consultant. Consultant acknowledges Authority's right to terminate this Agreement as provided in this **Paragraph 3.b.iii**, and hereby waives any and all claims for damages that might arise from Authority's termination of this Agreement herein. Termination of this Agreement by Authority shall not affect Consultant's obligations or liabilities to Authority other than Consultant's obligation to continue to render the Services, which shall terminate.

iv. **Partial Termination.** As an alternative to full termination of this Agreement, Authority may **(A)** terminate this Agreement only as to specific Services, **(B)** reject non-conforming Services, in whole or in part, and withhold any payments due Consultant until the Services are properly performed, and/or **(C)** require that Consultant either re-perform the Services, at no additional charge to Authority, or refund to Authority the fees paid for non-conforming Services.

c. **Termination by Consultant.**

i. **Grounds for Termination.** Consultant shall have the right to terminate this Agreement for a breach by Authority of any material term of this Agreement that occurs through no fault of Consultant, including the failure to pay for Services. If the default is for the failure of Authority to pay for Services, Consultant shall first give Authority a 10-day written notice of default, before Consultant may deliver a Termination Notice, and during such 10-day period, Consultant may suspend performance of Services. However, Consultant may not suspend performance of Services if there is a bona fide dispute between Consultant and Authority involving \$_____ or less.

ii. **Termination – Compensation.** In the event of termination by Consultant, Consultant shall be entitled to compensation for all Services properly rendered prior to the

effective date of the Termination Notice, after Authority's receipt of a final Application for Payment and supporting documentation and work product as described in **Paragraph 5.b**.

- d. **Limitation on Damages.** In no event shall either Party be liable to the other Party for the payment of any consequential (including lost profits), punitive or exemplary damages.
 - e. **Suspension of Services.** Authority may order Consultant in writing to suspend, delay or interrupt performance of all or any part of the Services under any Task Order for the convenience of Authority, or for work stoppage beyond the control of Authority ("Suspension Notice"). If the performance of the Services is so suspended, delayed or interrupted, Authority shall pay Consultant for Services rendered prior to receipt of the Suspension Notice, and for reasonable charges for documenting the status of such Services as of the date of suspension, but no further payment shall be due unless and until Authority gives written notice that performance of such Services shall be resumed.
 - f. **Closeout.** Following expiration or earlier termination of this Agreement, Consultant shall cooperate with Authority in all matters relating to the closing out of its pending work on behalf of Authority and if applicable, the orderly transfer of any such pending work to such other persons as may be designated by Authority. Regardless of the grounds of termination, or whenever requested by Authority, Consultant shall immediately turn over to Authority a completed closeout memorandum in a form that Authority shall furnish to Consultant (the "**Closeout Memo**"), and all of Authority's property, including the Work (defined in **Paragraph 12.a**), whether or not previously delivered.
 - g. **Assumption of Subconsultant Agreement.** In connection with the termination of this Agreement by either Party, the Authority shall have the right but not the obligation to either (i) assume a contract entered into by and between Consultant and any of its subconsultants in connection with this Agreement, or (ii) enter into a new contract directly with any such subconsultant. If Authority exercises its rights under this **Paragraph 3.g**, Consultant shall, if and as applicable, assign such contracts with such subconsultants as the Authority specifies. Any contract between Consultant and any of its subcontractors entered into in connection with this Agreement shall make express reference to and allocation for Authority's rights under this **Paragraph 3.g**.
4. **Compensation.** For each Task Order, Authority shall pay Consultant compensation for the Services as follows:
- a. **Services Per Budget.** Consultant's total compensation for the Services is budgeted at the amount of \$ _____ ("**Budget**").
 - b. **Services Exceeding Budget.** At such time as Consultant is within 90% of the Budget for the Services, Consultant shall notify Authority in writing, and the Parties shall in good faith assess the scope of Services and discuss completion of and compensation for completion of the Services. Consultant shall not be entitled to compensation in excess of the Budget, as might be amended from time to time in the Authority's reasonable discretion. .

- c. **Fees Paid by Authority.** Except as specifically provided in a Task Order, Authority shall pay the cost of plan checking and inspection fees, zoning and annexation application fees, assessment fees, and other fees, permits, bonds, premiums, title company charges, and all other charges not specifically covered by the terms of this Agreement which are required to use or apply, but not perform or produce, the Services or work product.

5. **Application for Payments.**

- a. **Progress Payments.** Consultant shall submit to Authority once per month an invoice in substantially the same form of an Application for Payment as provided in **Exhibit D**, attached hereto. Said Application for Payment together with supporting documentation, including without limitation the Monthly Progress Report referenced in **Paragraph 5.b**, shall be submitted so that it is received by Authority on the date set forth in the Task Order. Authority shall pay the amount requested and not disputed by Authority no later than sixty (60) days following Authority's receipt of the Application for Payment. An Application for Payment without proper supporting documentation, or for Services for which Contractor has not timely submitted a corresponding Monthly Progress Report, are subject to delays or non-payment.
- b. **Monthly Progress Report.** A Monthly Progress Report in the form provided in **Exhibit E**, attached hereto, shall accompany an Application for Payment. The Monthly Progress Report shall include, for each Task Order, a narrative description of the principle accomplishments for the prior calendar month along with an explanation of the work that is estimated to be performed for each of the following three months. For each of the future months, an estimate of cost shall also be provided. Where Consultant is providing Key Personnel, the Monthly Progress Report shall include a brief narrative documenting each of their monthly accomplishments. The reasonable cost to prepare said narratives shall be a reimbursable to Consultant.
- c. **Final Payment.** In addition to the Closeout Memo and other deliverables due in connection with termination or expiration of this Agreement pursuant to **Paragraph 3(f)**, Consultant shall deliver and assign to Authority, prior to receiving final payment for the performance of the Services, originals or, if not available, copies of any and all tests, investigations, data, reports and other work product relating to the Services, all such work product being a "work made for hire" or its alternative as provided in **Paragraph 12**. The acceptance by Consultant of final payment shall constitute a full and complete release of Authority from any and all claims, demands and causes of action whatsoever which Consultant, including Consultant's successors or assigns, has or may have against Authority under this Agreement. However, except for Consultant's obligation to continue to render the Services, the making of such final payment shall not be deemed to be a release of Consultant from Consultant's obligations or liabilities under this Agreement. Consultant's other obligations and liabilities, including without limitation, the obligations set forth in **Paragraphs 10 and 13**, shall survive final payment as well as the expiration or earlier termination of this Agreement.

- 6. **Commencement and Completion of Services.** Consultant shall commence performance of the Services upon the Effective Date, unless otherwise directed by Authority, and shall

complete the Services by the scheduled completion date for Services set forth in **Exhibit A**, if any, or within the Term if no date is specified. Consultant shall perform the Services diligently, expeditiously and with adequate qualified personnel for completion consistent with the terms of this Agreement and the exigencies of the assigned work.

7. **Force Majeure.** Consultant is not responsible for delays resulting from non-monetary factors or activities beyond Consultant's reasonable control, including without limitation delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God or nature, failure of Authority to timely furnish information or approve or disapprove Consultant's work, breach by Authority or other contractors (excluding Consultant and Consultant's subconsultants, subcontractors and suppliers, if any, or governmental agencies), so long as Consultant informs Authority of such delay within five business days of its commencement. When delays caused by non-monetary factors or activities beyond Consultant's reasonable control occur and Authority is informed of the same on a timely basis as required herein, Consultant shall not be responsible for damages resulting therefrom and Consultant shall not be deemed to be in default under or in breach of this Agreement.
8. **Compliance with Laws.** The Services shall conform to the requirements of all governmental agencies having jurisdiction over the Services. Consultant shall also comply with all federal, state and local laws, ordinances, rules, regulations and orders applicable to the performance of its obligations under this Agreement, including all licensing requirements and occupational, health, safety, employment and environmental laws. Consultant shall bear all costs, expenses and liabilities related to any changes in the Services to conform to such laws, ordinances, rules, regulations and orders.
9. **Compliance with Specific Governmental Requirements.** If Consultant is retained to produce plans, specifications, CEQA documents, maps, applications or other documents or field work designed to be submitted to a governmental agency, such work product shall conform to governmental agency ordinances, applicable law and other policies and requirements applicable when the work is being performed. If Consultant produces plans, specifications, other documents and/or field work, including without limitation, CEQA documents, maps, applications and or the like, and such work is required by a governmental agency, and the governmental agency changes its ordinances, policies, procedures or requirements after the effective date of the applicable Task Order, which changes could not have been reasonably anticipated by Consultant, any additional required office or field work shall be paid for by Authority as additional Services, if approved by Authority under a Change Order, such approval not to be unreasonably withheld. Otherwise Consultant shall correct Consultant's work at Consultant's sole cost. Except as specifically provided in **Exhibit A**, it is Authority's responsibility to maintain in good standing all government approvals and permits, and to apply for any extensions, required for the proper performance of the Services.
10. **Indemnification.** Consultant shall indemnify, defend, and hold harmless Authority, its Members, and each of their officers, directors, agents, officials, employees, representatives, affiliates, subsidiaries, predecessors, successors, and assigns (collectively, "**Indemnitees**"), from and against any and all claims, demands, liabilities, damages, losses, liens, obligations, costs and expenses, including without limitation attorneys' fees and expenses ("**Claims**") arising out of, resulting from or relating to, in whole or in part, intentional or negligent acts,

errors, omissions, breaches, defaults or failures to perform the Services, other work performed or materials supplied, by Consultant or any of its employees, subconsultants, subcontractors, agents or representatives under this Agreement, specifically including failure to pay fees or taxes or to carry the insurance coverage specified in **Paragraph 11**. Consultant's indemnification obligations shall exclude, individually as to each Indemnitee, any Claims to the extent they are proven by a final judgment to have been principally the fault of that Indemnitee. The indemnification responsibility of Consultant, with respect to the Services shall exist and continue regardless of the extent to which Authority may have reviewed and approved the Services performed by Consultant. Consultant's indemnification obligations shall not be affected by any insurance provisions contained in this Agreement. Consultant's indemnification obligations shall survive expiration or earlier termination of this Agreement.

11. Insurance. Consultant shall, at its own cost, purchase and maintain the insurance coverage described in this **Paragraph 11** throughout the Term. Prior to commencing any Services under this Agreement, Consultant shall submit to Authority certificates and endorsements in form and substance satisfactory to Authority evidencing that the required insurance coverage is in effect for at least one year prior to the Effective Date. The existence of the required insurance coverage under this Agreement shall not be deemed to satisfy, substitute for, or otherwise limit Consultant's indemnification obligations under this Agreement. Consultant may request in writing to Authority that Authority waive insurance requirements or liability amounts. Authority may grant or deny any such requests in its sole discretion. Any amended terms of this **Paragraph 11** shall either be reflected by revisions to this **Paragraph 11** or may be contained in a separate letter agreement, signed by both Parties.

a. Insurance Carriers and Requirements. All insurance shall be maintained with insurance carriers licensed and approved to do business in California, having a general policyholders rating of not less than an ____ and financial rating of not less than ____ in the most current [Best's Key Rating Guide]. In no event will such insurance be terminated or otherwise allowed to lapse prior to at least one year following the Effective Date. Consultant may provide the insurance required under this **Paragraph 11**, in whole or in part, through a policy or policies covering other liabilities and projects of Consultant. Such insurance shall be primary to and non-contributory with any insurance carried independently by the Authority.

b. Evidence of Insurance. As evidence of specified insurance coverage, Consultant shall deliver to Authority certificates and endorsements issued by Consultant's insurance carrier applicable to Authority showing such policies in force for the specified period, but Authority has the right to require Consultant to submit for Authority's review certified policies. Such evidence shall be delivered to Authority on or before the Effective Date. Each policy and certificate shall be subject to reasonable approval by Authority and shall provide that such policy shall not be subject to cancellation without 30 days notice in writing to be delivered by certified mail to Authority at the address set forth in **Paragraph 17**. Should any policy expire or be canceled before the expiration of the Term and Consultant fails immediately to procure other insurance as specified, Authority reserves the right, but shall have no obligation, to procure such insurance and to deduct the cost thereof from any sum due Consultant under this Agreement.

- c. **Insurance in Addition to Indemnification.** Nothing contained in these insurance requirements shall be construed as limiting the type, quality or quantity of insurance Consultant should maintain or the extent of Consultant's responsibility or liability for payment of damages resulting from performing the Services or otherwise, or a limitation on Consultant's liability under this Agreement or as a matter of law.
- d. **Worker's Compensation Insurance.** When applicable, Consultant shall maintain Worker's Compensation Insurance, including Employer's Liability, at a minimum limit of \$ _____ for all persons whom it employs in performing the Services. Such insurance shall be in strict accordance with the requirements of the most current and applicable Worker's Compensation Insurance Laws in effect from time to time. Consultant shall furnish to Authority confirmation of Consultant's experience modification rate, which the Authority may request from time to time.
- e. **Comprehensive or Commercial General Liability Insurance.** Consultant shall maintain Comprehensive or Commercial General Liability Insurance on an "occurrence" basis, with deductibles reasonably acceptable to Authority, with a combined single limit for bodily injury and property damage of \$ _____, or limit carried, whichever is greater, covering Operations, Independent Contractors, Contractual Liability, specifically covering the indemnification obligations contained in this Agreement, Broad Form Property Damage, including completed operations, Severability of Interest and Cross-Liability clauses and Personal Injury. The limits of liability specified in this **Paragraph 11.e** may be provided by any combination of primary and excess liability insurance policies.
- f. **Automobile Liability Insurance.** Consultant shall maintain owned, hired and non-owned Automobile Liability Insurance covering all use of all automobiles, trucks and other motor vehicles utilized by Consultant in connection with this Agreement with a combined single limit for bodily injury and property damage of \$ _____, or limit carried, whichever is greater.
- g. **Professional Errors and Omissions.** Consultant shall maintain Professional Errors and Omissions Insurance on an occurrence basis, with limits of liability of not less than \$ _____, with supplementary coverage of contractual liability obligations for obligations of Consultant under this Agreement.
- h. **Subconsultant and Subcontractor Insurance.** Consultant shall not allow any subconsultants or subcontractors to commence or perform any Services until Consultant obtains from such subconsultant or subcontractor the same insurance required to be carried by Consultant under this **Paragraph 11**, or in such other amounts as Authority might agree to or require in Authority's discretion. Consultant shall also obtain from any subconsultant or subcontractor an indemnification in form and substance identical to the indemnification set forth in **Paragraph 10** for the benefit of Consultant and the Indemnitees. Upon request, Consultant shall deliver to Authority certificates and endorsements issued by each subconsultant's or subcontractor's insurance carrier applicable to Authority showing such policies in force for the specified period, but Authority has the right to require subcontractors or subconsultants to submit for Authority's review certified policies.

- i. **Additional Insureds.** Authority shall be included as an additional insured under the coverage specified in **Paragraphs 11.e, f, and h**, with the following endorsement or provision included within each applicable policy: “It is understood and agreed that coverage afforded by this policy shall also apply to the Sites Project Authority and its Members and each of their officers, directors, agents, representatives, and employees, all as additional insureds, but only with respect to legal liabilities or claims caused by, arising out of or resulting from the acts or omissions of the named insured or of others performed on behalf of the named insured. This Insurance is primary and any other insurance maintained by such additional insured is noncontributing with this insurance as respect claims or liability arising out of or resulting from the acts or omissions of the named insured.”

12. Ownership of Work Product.

- a. Consultant acknowledges and agrees that any work, including all designs, drawings, plans, specifications, reports, data, field logs, field notes, work papers, deliberative process documents, drafts, related materials and other documents prepared by Consultant or any of its agents, employees, representatives, subconsultants or subcontractors in the performance of the Services (collectively “**Work**”) or otherwise prepared for Authority under this Agreement shall be a “work made for hire” and from its inception shall irrevocably become and remain the sole and exclusive property of Authority. If any Work is deemed for any reason not to be a work made for hire, Consultant hereby assigns all right, title and interest in the copyright or other ownership claim in the Work, and all extensions and renewals thereof, to Authority, and agrees to provide all assistance reasonably requested by Authority in the establishment, preservation and enforcement of its copyright or other ownership claim in the Work. Such assistance shall be provided without any additional compensation to Consultant. Perfection of such assignment shall be a condition to final payment as provided in **Paragraph 5.b**. Consultant shall not use any Work except as it relates to the Services or as otherwise authorized by Authority in writing. Consultant shall provide Authority with duplicate reproducible versions of any Work at regular intervals or as requested by Authority, and Authority shall otherwise have access to the Work at all times to inspect and make copies. All Work and any Confidential Information shall be conspicuously marked “**DRAFT**” or “**PRIVILEGED AND CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION AND/OR ATTORNEY WORK PRODUCT**”, or “**INTERNAL DELIBERATIVE PROCESS DOCUMENTS**”, as applicable, unless requested to do otherwise by Authority.
- b. Authority shall not use the Work except as it relates to the Services or as otherwise authorized by Consultant in writing. Authority assumes all risks associated with Authority’s failure to adhere to the terms and conditions of this **Paragraph 12.b**, and Consultant shall have no liability therefor.

13. Confidentiality.

- a. **Acknowledgement of Confidentiality.** Every person performing any kind of service for Authority, including as a consultant, must acknowledge that notwithstanding Authority’s status as a governmental entity, Authority may nevertheless be authorized from time to time

under applicable law to assert privilege and/or claims of confidentiality to select information exchanged between the Parties or produced in connection with or as a result of this Agreement (“**Confidential Information**”). Consultant shall therefore treat all information exchanged between the Parties or produced in connection with or as a result of this Agreement as Confidential Information, shall prepare, handle, store and transmit all such information in accordance with Authority’s labeling and distribution policies, shall take all reasonably appropriate steps to safeguard Confidential Information and to protect it against disclosure, misuse, loss and theft, and shall not directly or indirectly, use, reveal, publish or disclose any such information without Authority’s prior written consent. Consultant agrees to abide by the confidentiality terms of this Agreement and acknowledges that they are designed to protect Authority’s and the public’s vital interests. Consultant further acknowledges that Authority will treat any violation of the confidentiality terms of this Agreement as a matter of the highest importance, and will vigorously pursue any and all legal and equitable rights and remedies to protect its interest hereunder. This could include a civil action leading to money damages and/or criminal prosecution against Consultant. Consultant’s confidentiality obligations shall survive expiration or earlier termination of this Agreement.

b. Return of All Authority Property and All Confidential Authority Information Upon Termination of Relationship. Consultant agrees that, upon termination of this Agreement with Authority, voluntary or otherwise, Consultant shall return all Authority property, including all Confidential Information, including all copies thereof, then in its or its employees’ possession or control.

14. No Advertisement of Services. Unless approved in writing by Authority in its sole discretion, Consultant shall not advertise in any manner that it is performing Services for Authority.

15. Electronic Communications. During the course of this Agreement, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Contractor and the Authority acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses, or similar destructive electronic programs. Contractor and Authority view the issues raised by these viruses seriously and each has invested in commercially available document and e-mail scanning software that identifies and rejects files containing known viruses. Contractor agrees to update its system with its software vendor’s most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the Parties may occasionally reject a communication. The Parties acknowledge that this occurrence is to be expected as part of the ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither Party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each Party will use commercially reasonable efforts to assure that its communications are virus free, neither Party warrants that its documents will be virus free. Each Party agrees to advise the other if it discovers a virus in its system that may have been communicated to the other Party.

16. Dispute Resolution

- a. Meet and Confer.** The Parties agree to undertake good faith efforts to resolve any dispute arising under or in connection with this Agreement within sixty (60) days of such disputed item arising prior to resorting to formal means of dispute resolution. If any dispute is not capable of resolution by and among the representatives of each Party authorized to administer this Agreement, Consultant's principal and the Authority's board chair or his/her authorized representative (who shall be the general manager of the Authority or a member of the Authority's board) shall meet and confer in an effort to resolve any such dispute. If such efforts between Consultant's principal and the Authority's designee do not result in resolution of the dispute within thirty (30) days of their commencement, the Parties shall have such other remedies available to them as are provided for in this Agreement or as otherwise exist at law or in equity. No other means of dispute resolution, including arbitration and litigation, shall be available to the Parties unless they have exhausted the process provided for in this **Paragraph 16.a.**
- b. Arbitration.** Any controversy between the Parties relating to this Agreement shall, on the written request of one Party to the other Party, be submitted to arbitration. The arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure. The Parties shall each appoint one person to hear and determine the dispute. If those two arbitrators are unable to agree, then they shall select a third impartial arbitrator whose decision shall be final and binding on both Parties. The costs of arbitration, including attorneys' fees, shall be paid as the arbitrators determine.
- c. Continuing Enforcement.** No dispute arising under or in connection with this Agreement shall result in Consultant's suspension of the Services or in suspension of Authority's payment obligations as to any portion of the Services or payment therefor that are not directly the subject of the dispute.

- 17. Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given **(i)** if delivered by hand and actually received by the Party addressee, on the date of such receipt, or **(ii)** if mailed by domestic certified or registered mail, postage prepaid, on the third business day after the date postmarked or **(iii)** if sent by overnight courier of recognized standing, on the date of such receipt. The foregoing notwithstanding, the Parties agree that day-to-day communications concerning routine matters under this Agreement should be communicated electronically using such e-mail addresses as the Parties may provide to one another from time to time. Addresses for notice to the Parties are as shown below, or as subsequently modified by written notice given pursuant to this **Paragraph 17.**

Authority: Sites Project Authority
Attn: Joe Trapasso
Program Operations Manager
P.O. Box 517 (if by USPS)
122 Old Hwy 99W (if by courier)
Maxwell, CA 95955
Telephone: _____
Email: jtrapasso@sitesproject.org

Consultant: _____
Attn: _____

Telephone: _____
Email: _____

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18. Covenant Against Contingent Fees. Consultant agrees that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. In the event of a breach or violation of this covenant, Authority shall have the right to terminate this Agreement pursuant to **Paragraph 3(b)(i)(A)**, or, in its discretion, to deduct from Consultant's compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

19. Conflict of Interest.

- a. Conflict of Interest Code Compliance.** In providing Services the Consultant shall act consistent with any determination made by the Authority's general manager or designated representative that this Agreement requires or permits Consultant to make a governmental decision as specified in 23 CCR 18700.3(a)(1), or serve in a staff capacity as specified in 23 CCR 18700.3(a)(2), and therefore confers on Consultant and select employees of Consultant the status of a "designated employee" or "Consultant" of the Authority for the purposes of Authority's Conflict of Interest Code and the California Political Reform Act. Consultant acknowledges that if the Authority through its general manager determines that some of the Consultant's key personnel are a "designated employee" or "Consultant", Consultant shall **(i)** acknowledge and accept said determination, **(ii)** become familiar with the terms of the Political Reform Act, the Authority's Conflict of Interest Code, and the obligations and limitations said laws impose upon Consultant, and **(iii)** not commence any Services provided for herein until Consultant and each of its designated employees has filed a Form 700 Statement of Economic Interest with the Authority. Authority reserves the right to reevaluate the determination under this **Paragraph 19.a** from time to time, and Consultant acknowledges that said determination is subject to change if and as the Parties amend this Agreement and the nature of the Services. Consultant shall be solely responsible for bearing the costs associated with compliance with Authority's Conflict of Interest Code and the California Political Reform Act.
- b. Disqualification.** Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a direct or indirect financial interest other than the compensation promised by this Agreement. Consultant will not have such interest during the Term hereof. Consultant will immediately advise Authority if Consultant learns of a financial interest of Consultant's during the term of this Agreement. Without limiting the foregoing, if Consultant's participation in another Authority project or a project being implemented by one of its members or a member to a Project Agreement Committee would create an actual or potential conflict of interest, in the opinion of the Authority, the Authority may disqualify Consultant from participation in such other project during the Term hereof.

- c. **Subject Matter Conflicts.** Consultant covenants and agrees that in the event Consultant is providing services to other clients whose interests are not aligned with those of the Authority, Consultant shall not advocate for such other clients in a manner that would result in the communication of such contradictory positions in any public forum.

20. **Miscellaneous Provisions.**

- a. **Waiver.** No waiver by either Party of any breach or default by the other Party under this Agreement shall be construed as a waiver of the same or any subsequent breach or default, nor shall any delay or failure to seek a remedy or exercise a right be construed as a waiver by either Party of its rights or remedies with respect to such breach or default.
- b. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be and remain valid, binding and enforceable to the fullest extent permitted by law.
- c. **No Partnership.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any other similar arrangement between the parties to this Agreement. Consultant's only relationship with Authority is that of an independent contractor.
- d. **No Third Party Beneficiaries.** Except as is specifically set forth in this Agreement, such as to the Indemnitees, no provision of this Agreement is intended to create or grant claims or rights of action against Authority for the benefit of any third parties.
- e. **Further Assurances.** The Parties shall execute such further documents and take such further actions as may be necessary to fully perform under this Agreement.
- f. **Binding on Heirs, Successors and Assigns.** Subject to **Paragraph 18.g**, this Agreement inures to the benefit of and is binding on the heirs, successors, assigns, representatives, agents, employees, subsidiaries and affiliated companies of the Parties, including by transfer of all or substantially all of the assets or any successor by merger or consolidation.
- g. **No Assignment.** Subject to **Paragraph 3.g** above, Consultant shall not assign, transfer or subcontract, in whole or in part, any of its rights or obligations under this Agreement, including without limitation, any payments that may become due or which are due to Consultant, without the prior written consent of Authority, which Authority may grant, condition or deny in its sole discretion. Except as permitted above, no assignment or transfer by Consultant, whether voluntary, by operation of law or otherwise, shall be valid or effective.
- h. **Amendment.** Except as expressly provided for herein, no amendment to this Agreement, including to any of the Exhibits, all of which are incorporated herein, shall be effective unless signed by all of the Parties.
- i. **Entire Agreement.** This Agreement, including the Exhibits, represents and contains the entire agreement and understanding between the Parties relating to the Services, and all previous statements or understandings, whether express or implied, oral or written, relating

to those subject matters are fully and completely extinguished and superseded by this Agreement.

- j. Construction.** The masculine, feminine or neutral gender and the singular or plural number shall be deemed to include the other whenever the context so requires. The captions appearing at the beginning of the Paragraphs are descriptive only and for convenience in reference. If there is any conflict between any caption and the content of the Paragraph, the Paragraph, and not the caption, shall control and govern the construction of this Agreement.
- k. Advice of Counsel.** The Parties acknowledge that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement is the product of negotiation and therefore shall not be construed against any Party.
- l. Governing Law; Venue.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California without giving effect to the principles of conflicts of laws. Any action instituted under this Agreement shall be brought only in the Colusa County, California, Superior Court.
- m. Remedies.** Any remedies reserved to the Parties in this Agreement shall not be exclusive remedies.
- n. Attorneys' Fees.** In the event of any litigation under or relating to this Agreement, the prevailing Party shall be entitled to recover such Party's reasonable costs incurred in connection therewith, including, without limitation, reasonable attorney's fees. Attorneys' fees in an arbitration shall be determined under **Paragraph 16.**
- o. Time of Essence.** Time is of the essence in this Agreement.
- p. Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile transmission, each of which shall constitute an original.
- q. Authority.** Each individual executing this Agreement represents and warrants that they are duly authorized to execute and deliver this Agreement on behalf of the corporation or organization named herein and that this Agreement is binding upon said corporation or organization in accordance with its terms.

[Signatures Follow on Next Page]

The Parties have duly executed, delivered and intend this Agreement to be effective as of the Effective Date.

AUTHORITY:

By _____

Title _____

Date _____

By _____

Title _____

Date _____

CONSULTANT:

By _____

Title _____

Date _____

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EXHIBIT A

TASK ORDER

TASK #___

As referenced in **Paragraph 1** of the attached Consulting Services Agreement (“**Agreement**”), Consultant shall provide the following services (“**Services**”):

- Services

Total: \$

1. As provided in **Paragraph 1.b** of the Agreement, the Parties may amend or supplement the Services to be provided under the Agreement by executing an additional Task Order in the form of this **Exhibit A**.
2. The Services are budgeted at \$ _____, based on _____ (“**Budget**”).
3. If Consultant is within 10% of the Budget for the Services, and believes that the Services are less than 90% complete, Consultant shall notify Authority in writing, and the Parties shall in good faith assess the Scope of Services and discuss completion of and compensation for completion of the Services.
4. As provided in **Paragraph 1.c** of the Agreement, Authority shall have the right to increase or modify the Services by executing a change order (“**Change Order**”) in a form provided by Authority. Consultant shall promptly proceed with the increased or modified Services, and the cost or savings of the Services shall be determined by the Hourly Rate Schedule set forth in **Exhibit C**, unless otherwise agreed to in writing by the Parties. Consultant shall not be compensated for any work other than the Services as described herein or in a Change Order duly executed by Authority.
5. Reimbursable expenses include both in-house and outside third party expenses associated with printing, photography, production, mailing, delivery services, travel and mileage. Such expenses shall be billed at actual cost, with no overhead or profit factor. For all reimbursable expenses, invoices must include supporting documentation with descriptive information so that such expenses are separately identified.
6. Notwithstanding **Paragraph 5** of this **Exhibit A**, Consultant shall not be entitled to any reimbursable expenses in excess of \$ [Total] without the prior written authorization from Authority.
7. The scheduled date for completion of the Services is agreed upon between Consultant and Authority. **[Include Key Personnel and Subs]**

EXHIBIT B
CHANGE ORDER

[Attached]

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EXHIBIT C

HOURLY RATE SCHEDULE & INVOICING

1. Billing for Services shall be based upon the actual hours worked on by Consultant and invoiced monthly at Consultant's hourly rates as follows:

“See Attached Rate Schedule”

2. The hourly rates (“**Rates**”) shall remain in effect for twelve months from the Effective Date, or until such later date as the Services are completed (“**Rate Change Date**”). After the Rate Change Date, Consultant shall not increase the Rates without at least 30 days written notice from Consultant to Authority, and there must be at least six months between increases in the Rates. If the Authority approves the Rates increase, the new Rates shall apply only to that portion of Services remaining to be completed after the Rate Change Date.
3. In order to be accepted for processing, all invoices must be submitted along with the Application for Payment in the form attached as **Exhibit D**. Invoices for Services performed on a Time and Materials basis shall include a recap of the actual hours worked along with the rate(s) of the person(s) performing the Services, and a description of work performed by each person. Invoices for Services performed on a Not-to-Exceed or Lump Sum basis shall include a summary description of the actual Services performed for that billing period.
4. Consultant shall certify in its invoices that **(i)** the labor, service and materials, if any, covered by the invoice have actually been furnished and performed, **(ii)** any liens which arise as a result of applicable law have been released or waived to the extent of the invoice and **(iii)** all subconsultants, subcontractors, suppliers or other persons performing work for Consultant have been paid in full for any labor, materials or services included in the invoice.

EXHIBIT D
APPLICATION FOR PAYMENT

[Attached]

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EXHIBIT E
MONTHLY PROGRESS REPORT

[Attached]

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