



Topic: Reservoir Committee Agenda Item 5-2 2019 October 18

Subject: First Amendment to the Phase 2 (2019) Reservoir Project Agreement

Requested Action:

Consider approval of a recommendation to the Sites Project Authority to approve the "First Amendment to [the] 2019 Reservoir Project Agreement by and Among [the] Sites project Authority and the Project Agreement Members Listed Herein, dated as of January 1, 2020" (2019 Agreement) as presented in Attachment A or as further amended by the Reservoir Committee today, October 18, 2019.

Detailed Description/Background:

The need to amend this 2019 Agreement occurred when the Reservoir Committee approved a no-cost extension of time. The amendment is included as Attachment A to this Staff Report. For it to become effective, at least 75% of the total weighted vote needs to be in the affirmative.

NOTE: As written, Attachment A extends this 2019 Agreement from December 31, 2019 through March 31, 2020. However, depending upon the action taken under Agenda Item 4.3, a different completion date may be approved. *Should the Reservoir Committee approve an alternative date, Attachment A would need to be modified to match the date approved by the Reservoir Committee under Agenda Item 4.3.*

Prior Reservoir Committee Action:

At their September 20, 2019 meeting, the Reservoir Committee approved a no-cost extension of time to complete activities defined in the Agreement's work plan (aka Exhibit B). Their approval extends the Agreement's period of performance December 31, 2019 through March 31, 2020.

Fiscal Impact/Funding Source:

Refer to Agenda Item 4.3.

Staff Contact:

Jim Watson/Joe Trapasso

Attachments:

Attachment A – First Amendment to [the] 2019 Reservoir Project Agreement by and Among [the] Sites project Authority and the Project Agreement Members Listed Herein, dated as of January 1, 2020.

Status:	Working draft	Preparer:	Watson	Phase:	2	Version:	A
Purpose:	Sites Reservoir Committee Staff Report	QA/QC:		Date:	2019 October 18		
Caveat:	Informational	Authority Agent:	Trapasso	Ref/File #:	12.210-201		
Notes:				Page:	1	of	1

FIRST AMENDMENT TO 2019 RESERVOIR PROJECT AGREEMENT

BY AND AMONG
SITES PROJECT AUTHORITY

and

THE PROJECT AGREEMENT MEMBERS LISTED HEREIN

Dated as of January 1, 2020

THIS FIRST AMENDMENT TO RESERVOIR PROJECT AGREEMENT (this “First Amendment”), dated as of January 1, 2020, by and among SITES PROJECT AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the “Authority”), and the project agreement members listed in the Original Agreement referenced below (the “Project Agreement Members”) and amends that certain 2019 Reservoir Project Agreement dated as of April 1, 2019 (the “Original Agreement”), by and among the Authority and the Project Agreement Members;

WITNESSETH:

WHEREAS, Authority and the Project Agreement Members have determined to extend the term of the Original Agreement to March 31, 2020; and

WHEREAS, under Section 11 of the Original Agreement, the Original Agreement may be amended by a writing executed by the Authority and at least 75% of the total weighted vote as provided in Subsection 3(g) of the then-current Committee members; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this First Amendment do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this First Amendment;

NOW, THEREFORE, THIS FIRST AMENDMENT WITNESSETH, the Authority and the Project Agreement Members agree, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. **Definitions.** All capitalized terms not otherwise defined herein shall have the meaning set forth in the Original Agreement.

ARTICLE II

AMENDMENTS TO 209 ORIGINAL AGREEMENT

Section 2.01. **Amendments to Section 8(b) of the Original Agreement.**

(a) The reference in Section 8(b) of the Original Agreement to December 31, 2019 shall be changes to March 31, 2020.

Section 2.02. **Work Plan**

(a) The 2019 Work Plan attached to the Original Agreement as Exhibit B has been amended on _____, 2019. A copy of such amended 2019 Work Plan is attached hereto as Exhibit A.

ARTICLE III

MISCELLANEOUS

Section 3.01. **Effectiveness of Original Agreement.** Except as expressly amended by this First Amendment, the Original Agreement is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof. The amendments set forth in this First Amendment shall be incorporated as part of the Original Agreement upon their effectiveness in accordance with Section 11 of the Original Agreement.

Section 3.02. **Execution in Several Counterparts.** This First Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Project Agreement Members shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 3.03. **Laws Governing First Amendment.** The effect and meaning of this First Amendment and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State.

IN WITNESS WHEREOF, the Authority and Project Agreement Members hereto, pursuant to resolutions duly and regularly adopted by their respective governing bodies, have caused their names to be affixed by their proper and respective officers on the date shown below:

Dated: _____

SITES PROJECT AUTHORITY

By: _____

Name:

Title:

[PROJECT AGREEMENT MEMBER]

Dated: _____

(Authority & Project Agreement Member)

By: _____

Name:

Title: