



Topic: Authority Board Agenda Item 6-2

2019 November 25

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

Requested Action:

Consider approval of 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.

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.

Prior Authority Board Action:

At their October 21, 2019 meeting, the Authority Board discussed a no-cost extension of time to complete activities defined in the Agreement’s work plan (aka Exhibit B). Since the Phase 2 (2019) Work Plan was not approved, no action was taken.

At their September 23, 2019 meeting, the Authority Board 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.

At the August 15 and September 12, 2019 Joint Authority and Reservoir Committee workshops, preparations to execute a new agreement were discussed in conjunction with the stats of work being performed to improve the operational certainty (and permitability) and to improve the affordability for the Reservoir Committee members.

At the July 19, 2019 Reservoir Committee meeting, there was a general agreement to the timeline and development of the documents needed to prepare the Phase 2 (2020-2021) Participation Agreement and to resume work to obtain interim financing. This work would build from the documents prepared in late 2018.

At the August 16, 2018 Reservoir Committee meeting, the Phase 1 agreement was extended beyond December 31, 2018 to February 14, 2019. Then, at the November 16, 2018 meeting, Phase 1 was extended to March 31, 2019 and the Phase 2 Participation Agreement was formally rescinded. This version included a draft plan of finance and would have included terms of interim finance that would have been based on results of proposals received to the Bank Credit Facilities RFP.

Fiscal Impact/Funding Source:

Status:	Working draft	Preparer:	Watson	Phase:	2	Version:	A
Purpose:	Sites Authority Board Staff Report	QA/QC:		Date:	2019 November 25		
Caveat:	Informational	Authority Agent:	Trapasso	Ref/File #:	12.210-201		
Notes:				Page:	1	of	2

None.

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.

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 June 30, 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 June 30, 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: