



Topic: Authority Board Agenda Item 2.2

2020 May 27

Subject: Second Amendment to 2019 Reservoir Project Agreement

Requested Action:

Consider approval of the Second Amendment to 2019 Reservoir Project Agreement (Second Amendment).

Detailed Description/Background:

Staff worked with Authority bond counsel (Stradling Yocca Carlson & Rauth) and the Budget and Finance ad hoc Committee to prepare the proposed amendment. This amendment addresses multiple items including; 1) allowing for potential participation changes, 2) extending the agreement through December 2021 which is the end of the Amendment 2 Work Plan and 3) incorporating the Amendment 2 Work Plan revenues and expenses.

In prior staff reports a home board package was referenced to include the materials necessary for executing the Amendment 2 Work Plan. After further evaluation, Staff will be providing the home board package in a format as follows:

- A letter will be provided to each participant member representative requesting action by the agency. (Attachment A) The deadline to receive all the executed amendment forms is September 10, 2020.
- Accompanying the letter will be the Second Amendment for action by the authorized agency designee. (Attachment B)
- A web-based portal has been created and stores all of the information materials for download as needed by each agency. Staff is available to assist with these materials.

Prior Action:

April 17, 2020: Requested staff to address additional items in the draft Second Amendment to 2019 Reservoir Project Agreement including potential participation level changes.

November 21, 2019: Provided input to staff to aid in development of a work plan through June 30, 2020.

October 18, 2019: Approved the First Amendment to 2019 Reservoir Project Agreement.

September 20, 2019: Approved a no-cost extension of time to complete activities defined in the Agreement's work plan (aka Exhibit B). Their approval extended

Status:	Final	Preparer:	Robinette	Phase:	2	Version:	A
Purpose:	Staff Report	QA/QC:	Trapasso	Date:	2020 May 27		
Caveat:	Informational	Authority Agent:	Trapasso	Ref/File #:	12.221-210.018		
Notes:				Page:	1	of	2

the Agreement's period of performance December 31, 2019 through March 31, 2020.

Fiscal Impact/Funding Source:

Execution of the second amendment creates the contractual commitment by each agency to fund the Amendment 2 work plan through December 2021. It is likely that the Second Amendment will not be completely executed before the current amended agreement expiration of June 30, 2020. While not desirable, this situation was necessary to allow the flexibility and time that agencies needed for their cash call decision making. There is no impact on the project since the Phase 1B funds have already been received.

Staff Contact:

Joe Trapasso

Attachments:

Attachment A: Draft Cover Letter

Attachment B: Second Amendment to 2019 Reservoir Project Agreement



May 21, 2020

Dear Reservoir Committee Member,

In April 2020, actions were taken by the Project and Authority governing bodies to adopt the April 13, 2020, Sites Project Value Planning Alternatives Appraisal Report and the Amendment 2 Work Plan which together constitute the scope, schedule and budget for the next stage of project development through December 2021. In taking these actions, funding requirements were set which established the timing and amount due from each participating member that wishes to continue its participation in the Project during the Amendment 2 Work Plan period.

As a participating member in the original Phase 2 Project Agreement dated April 1, 2019 and the First Amendment dated January 1, 2020, the Authority hereby requests your determination of interest in continued participation by returning the attached Second Amendment completed and signed by your authorized agency designee, **no later than September 10, 2020.**

Please note that the Second Amendment requires the following information in addition to the authorized signature on the amendment:

- Indicate the amount of capacity shares in acre feet that you are securing through this phase of the project which, in accordance with the amended Section 6, will represent the capacity share amount to which your agency has first rights of refusal in any future phase of work. These capacity share amounts indicated by each participating member will be used for the final Exhibit A of the Second Amendment.
- Indicate your commitment to provide up to the total funding required for the capacity shares you have designated. The unit cost is the total for the original agreement already paid (\$60/AF) and the new commitment for the Amendment 2 Work Plan (not to exceed \$100/AF).

We have prepared a set of documents for you to use in your agency deliberations of this request. Documents are available for you to download at this link: <https://brwncald-my.sharepoint.com/:f/p/jrobinette/Epm9jMLcDwNOhIMc2840b6EBFm-igGMQPzc-HU2pCxovcQ?e=Z6687k>. Don't hesitate to contact Kevin Spesert, Sites Project Authority, External Affairs Manager, at kspesert@sitesproject.org if you need assistance with any of these materials.

The project team is excited to embark on this ambitious Amendment 2 Work Plan. It is critical that you receive timely information for your next decision prior to December 2021 where we will be seeking commitment of the total project local cost share which is one of the conditions for receiving the \$816M State WSIP funds.

Reservoir Committee Members Letter

May 21, 2020

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Please don't hesitate to contact me if there are any questions or you need my support regarding this request.

Jerry Brown

Executive Director, Sites Project Authority

Sincerely,

Jerry Brown, Executive Director
Sites Project Authority

SECOND AMENDMENT TO 2019 RESERVOIR PROJECT AGREEMENT

BY AND AMONG
SITES PROJECT AUTHORITY

and

THE PROJECT AGREEMENT MEMBERS LISTED HEREIN

Dated as of July 1, 2020

THIS SECOND AMENDMENT TO 2019 RESERVOIR PROJECT AGREEMENT (this “Second Amendment”), dated as of July 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 Agreement referenced below (the “Project Agreement Members”) and amends that certain 2019 Reservoir Project Agreement dated as of April 1, 2019 (the “Original Agreement”), as previously amended by the First Amendment to 2019 Reservoir Project Agreement dated as of January 1, 2020 (the “First Amendment” and, together with the Original Agreement, the “Agreement”), each by and among the Authority and the Project Agreement Members;

WITNESSETH:

WHEREAS, Authority and the Project Agreement Members have determined to approve an Amendment 2 Work Plan and to extend the term of the Agreement to December 31, 2021; and

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

NOW, THEREFORE, THIS SECOND 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 Agreement.

ARTICLE II

AMENDMENTS TO AGREEMENT

Section 2.01. **Project Agreement Members.**

(a) Effective September 1, 2020, the Project Agreement Members attached as Exhibit A to the Agreement shall be succeeded in their entirety by the Project Agreement Members attached hereto as Exhibit A.

Section 2.02. **Work Plan.**

(a) Effective September 1, 2020, the 2019 Work Plan attached as Exhibit B to the Agreement shall be supplemented by the Work Plan attached hereto as Exhibit B (the “Amendment 2 Work Plan”).

Section 2.03. **Funding.**

The Agreement is hereby amended to remove Section 4(a) in its entirety and replace it with the following:

“(a) **Budget.** The Committee shall, in cooperation with the Authority’s Board, provide and approve both a Fiscal Year operating budget and reestablish a Phase 2 budget target, annually or more frequently as needed. The Project Agreement Members shall contribute their respective pro-rata share of the budgeted sums reflected in the 2019 Work Plan (prior to November 1, 2020) and the Amendment 2 Work Plan (on and after November 1, 2020) in accordance with Section 5 of this Project Agreement; provided, however, that in no event shall the amount paid by a Project Agreement Member exceed \$160 per acre-foot (with \$60 of such amount being attributable to the 2019 Work Plan and \$100 of such amount being attributable to the Amendment 2 Work Plan) without the approval of such Project Agreement Member. The contribution with respect to the pro-rata budgeted sums reflected in the Amendment 2 Work Plan shall be payable by each Project Agreement Member in two installments. The first installment shall be in an amount equal to \$60 per acre-foot and shall be payable by no later than November 1, 2020. The second installment shall be in an amount up to \$40 per acre-foot and shall be payable by no later than April 1, 2021. The exact amount per acre-foot of the second installment shall be established by the Committee, in cooperation with the Authority’s Board, and notice of such amount shall be provided by the Authority to each Project Agreement Member.”

Section 2.04. **Future Development of the Sites Reservoir Project.**

The Agreement is hereby amended to remove Section 6(b) in its entirety and replace it with the following:

“(b) Without limiting the foregoing, any Project Agreement Member that elects to continue participating in the development, financing, and construction of the Sites Reservoir Project to the time when the Authority offers contracts for a water supply or other services, will be afforded a first right, equal to that Project Agreement Member’s Participation Percentage, to contract for a share of any water supply that is developed, and for storage capacity that may be available from, the Sites Reservoir Project. In any successor phase agreements, Project Agreement Members who are parties to this Project Agreement that submitted a proposal to participate before February 28, 2019, shall be granted rights to contract for a share, in an amount equal to that Project Agreement Member’s Participation Percentage as of the effective date of such successor phase agreement, of any water supply that is developed, and for storage capacity that may be available from the Sites Reservoir Project prior to the rights of those becoming parties to this Project Agreement after that date.

If a participating Project Agreement Member as of February 28, 2019 identifies a lesser amount in the Second Amendment than its Original Agreement requested amount, that participating Project Agreement Member’s first rights of refusal in the future are to be based on the Second Amendment amounts and not the February 28, 2019 amounts.

Provided, however, that if a Project Agreement Member withdraws from the Project Agreement pursuant to Section 9 of this Agreement but later requests to be reinstated, then to the extent there is unsubscribed participation in the Project as determined by the Committee, the

Committee may vote to readmit said withdrawn Member with a reinstated first right of refusal provided said withdrawing Member provides funding to the Project commensurate with the funding requirements met by all current Project Agreement Members in the current phase of the Project as well as any prior phase, as adjusted for any credits, payments and/or reimbursements made under the Authority's credit reimbursement policy (the "Credit Reimbursement Policy").

Further provided, that if a Project Agreement Member desires to increase its participation after execution of the Second Amendment, then to the extent there is unsubscribed participation in the Project as determined by the Committee, the Committee may vote to approve said increase, or portion thereof, with a first right of refusal attendant thereto, provided said increasing Project Agreement Member provides funding to the Project commensurate with the funding requirements met by all current Project Agreement Members in the current phase of the Project as well as any prior phase, as adjusted for any credits, payments and/or reimbursements made under the Credit Reimbursement Policy.

The Authority and the Project Agreement Members will cooperate on the drafting of provisions in the water supply contract that will allow a Project Agreement Member or other eligible entity that commits to purchase a Sites Reservoir Project water supply to transfer water that the entity may not need from time to time on terms and conditions acceptable to the Project Agreement Member."

Section 2.05. **Term.** The Agreement is hereby amended to remove Section 8(b) in its entirety and replace it with the following:

"(b) The term of this Project Agreement shall continue until December 31, 2021. In the event that this Second Amendment is not approved by Project Agreement Members with the requisite percentage of the total weighted vote as set forth in the Agreement by June 30, 2020, the Agreement shall be revived immediately upon approval by such requisite percentage, without any additional approval of the Project Agreement Members, and this Second Amendment shall become effective."

Section 2.06. **Executive Director.** All references to the "General Manager" in the Agreement shall be changed to "Executive Director."

ARTICLE III

PROJECT AGREEMENT MEMBER PARTICIPATION

Section 3.01. **Project Agreement Participation.** Each Project Agreement Member shall specify its participation in the Sites Reservoir Project by indicating its elected water participation amount in the Sites Reservoir Project and the associated cost in the space provided therefor on the signature page to this Second Amendment. Based upon the respective participation elections of the Project Agreement Members, the Authority shall update Exhibit A pursuant to Section 5 of the Agreement.

ARTICLE IV

MISCELLANEOUS

Section 4.01. **Effectiveness of Agreement.** Except as expressly amended by this Second Amendment, the 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 Second Amendment shall be incorporated as part of the Agreement upon their effectiveness in accordance with Section 11 of the Agreement.

Section 4.02. **Execution in Several Counterparts.** This Second 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 4.03. **Authorization, Ratification and Confirmation of Certain Actions.** The Authority and the Project Agreement Members each hereby authorize, ratify and confirm the extension of the term of the Agreement, as previously extended pursuant to the First Amendment, to June 30, 2020, and the expenditure of funds collected under the Agreement with respect to the 2019 Work Plan on and prior to June 30, 2020.

Section 4.04. **Laws Governing Second Amendment.** The effect and meaning of this Second 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:

PARTICIPATION AMOUNT

[PROJECT AGREEMENT MEMBER] hereby elects to participate in the Sites Reservoir Project in the amount and at the cost identified below.

**Participation
(Second Amendment
Annualized Acre-Foot):**

**Second Amendment Cost:
Not to Exceed \$100 per
Acre-Foot**

EXHIBIT A

PROJECT AGREEMENT MEMBERS

Participant	Participation	
	Preliminary	Percent
American Canyon, City of		
Antelope Valley-East Kern Water Agency		
Carter Mutual Water Company #		
Coachella Valley Water District		
Colusa County		
Colusa County Water District		
Cortina Water District		
Davis Water District		
Desert Water Agency		
Dunnigan Water District		
Glenn-Colusa Irrigation District		
LaGrande Water District		
Metropolitan Water District of S. CA		
Pacific Resources Mutual Water Company #		
Reclamation District 108		
San Bernardino Valley Municipal Water District		
San Geronio Pass Water Agency		
Santa Clara Valley Water District		
Santa Clarita Valley Water Agency		
Westside Water District		
Wheeler Ridge-Maricopa Water Storage District		
Zone 7 Water Agency		
Potential new participants		
Total:		

Participation Percentages exclude State of California and United States Bureau of Reclamation share of the Project.

Denotes a non-public agency. Refer to California Corporations Code Section 14300 et. seq. with additional requirements provided in both the Public Utilities Code and Water Code.

EXHIBIT B
AMENDMENT 2 WORK PLAN