



Topic: **Reservoir Committee Agenda Item 2.1** **2020 October 16**

Subject: **Approve Updated Consulting Contracts with Agents**

Requested Action:

Approve Updated Consulting Contracts with Agents including Forsythe Group, Trapasso Consulting Services and Spesert Consulting.

Detailed Description/Background:

The Executive Director contract approved in March 2020 established the standard form of contract that the Authority Board and Reservoir Committee wishes to establish with each of the Agents for consistency. Standard consulting contracts are a good practice which has been employed with other consultants on the Project. The proposed standard Agent contract that has been approved by legal counsel is attached.

Acceptable terms have been reached with each of the Agents that accomplishes transitioning to the standard form contract. The primary areas that were subject of negotiation involved the following:

- Compensation – It is proposed that monthly amounts be continued and be adjusted by 2% per year since each Agent's last adjustment (compounded for multiple years). This adjustment recognizes above average performance and inflation. New monthly amounts are as follows for each Agent:
 - Forsythe Group. \$30,600
 - Trapasso Consulting Services \$29,714
 - Spesert Consulting \$21,746
- Work Location and Mileage Reimbursement – The contract assigns a work location and mileage reimbursement for use of personal vehicle for work purposes from that location.
- Contract Term – Establish the term of the agreement through the end of Amendment 2 which is December 31, 2021.
- Annual Performance Review – Establish a performance review schedule with possibility of merit and inflation adjustments.
- Insurance Requirements – Standard general liability, automobile, professional liability and workers compensation insurance are required with the Authority as a named insured.
- Confidentiality and Proprietary Information – Added clarity that protects sensitive information of the Authority and obligations that remain after the contract expires.

- Reporting Structure – Added clarity that the Agents report to the Executive Director for day to day direction, but all contract terms are subject to Authority approval.
- Independent Contracting – Provided added clarify surrounding the independent nature of the services being provided.

Prior Action:

July 22, 2019: Approved the modification to the Spesert Consulting Contract to increase the Contractor's monthly fixed fee payment amount to of \$21,320.

May 20, 2019: Approved the Forsythe Group, LLC Contract for Environmental Planning & Permitting Manager services in the amount of \$30,000 per month.

September 18, 2017: Approved the Spesert Consulting Contract to provide services related to business operations and landowner/community management functions in an amount of \$16,667 per month.

September 18, 2017: Approved the Trapasso Consulting Services Contract, a California-certified SBE to provide services related to program operations management functions in the amount of \$28,000 per month.

Fiscal Impact/Funding Source:

Sufficient funds exist in the Amendment 2 work plan to cover the expenditures for these services under the proposed contracts.

Staff Contact:

Jerry Brown

Attachments:

Attachment A – SPA Consultant Services Agreement with Authority Agents.

**SITES PROJECT AUTHORITY AND
INDEPENDENT CONTRACTOR AGREEMENT**

External Affairs Manager

This Independent Contractor Agreement (Agreement) is by and between the Sites Project Authority ("Authority"), with its principle place of business at 122 Old Highway 99 West, P.O. Box 517, Maxwell, CA 95955, and **Spesert Consulting** ("Contractor"), with its principle place of business at **PO Box 544, Maxwell, CA 95955**. The Authority and Contractor may individually be referred to as a "Party" or collectively referred to as "Parties".

RECITALS

- a. The Authority has as its mission, to be a proponent and facilitator to design and potentially acquire, construct, manage, govern, and operate Sites Reservoir and related facilities; to increase and develop water supplies; to improve the operation of the state's water system; and to provide a net improvement in ecosystem and water quality conditions in the Sacramento River system and the Delta ("Project");
- b. The Sites Reservoir has been identified by the State of California and federal government as an important component of integrated water management in the Sacramento River watershed and could support the state's co-equal policy to improve water management and restore the ecological health for beneficial uses of the Sacramento-San Joaquin Delta and Sacramento River watershed;
- c. The Authority wishes to obtain professional services for the position of **External Affairs Manager** and, as a result, desires to engage Contractor to provide the professional services described herein (the "Services") in fulfillment of the Project; and
- d. Contractor desires to provide the Service subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the articles contained in this Agreement, the Authority and Contractor agree as follows:

AGREEMENT

ARTICLE 1: TERM OF AGREEMENT

- a. This Agreement shall become effective on October 1, 2020 ("EffectiveDate"), and shall remain in full force or effect until December 31, 2021, or until the earlier termination of this Agreement in the manner provided for herein (the "Term").
- b. The Term may be extended upon terms mutually agreed upon by the Parties. In order to extend the Term, a Party must communicate its interest in an extension no less than sixty (60) days prior to the expiration of the initial Term or any extended Term.
- c. Either Party may terminate this Agreement at any time with or without cause, by giving sixty (60) days' written notice to the other Party of the termination.
- d. The Authority may terminate this Agreement at any time prior to expiration of the Term without notice if the Contractor commits any material act of dishonesty, discloses confidential information, is guilty of gross carelessness or misconduct, or unjustifiably neglects their duties under this Agreement, commits any material breach of the terms of this Agreement or acts in any way that has a direct, substantial, and adverse effect on Authority's reputation. If Authority terminates for cause due to Contractor's material breach of this Agreement, Authority shall only be liable to compensate Contractor for Services provided up to the date of Contractor's receipt of the Authority's notice of termination.

ARTICLE 2: SCOPE OF SERVICES

This Agreement assigns the following responsibilities to each of the Parties:

- a. A Statement of Standard Services is attached hereto as Exhibit "A" and incorporated herein.
- b. Contractor shall determine the method, details, and means of performing the Services and otherwise upholding its obligations under this Agreement. Unless specifically requested by Authority in the case of a meeting, Contractor shall be generally available to the Authority but is not required to perform the Services during a fixed period of time.
- c. Contractor shall provide supplies necessary to perform the Services. However, Contractor may rely on Authority staff and other consultants retained by the Authority to perform (a) office management functions; (b) dedicated administrative and support functions; and (c) technical functions.

- d. Contractor's performance of the Services at the direction of the Authority's Executive Director, however all contract terms and conditions are subject to Authority Board approval.
- e. Nothing contained in this Agreement shall limit the ability of Contractor to perform the same or similar duties to the Services for any other authority, entity, or organization (each a "Third Party Client") other than Authority; provided, that Contractor shall inform the Authority in writing of any existing and future Third Party Client, and shall not perform services for a Third Party Client if they unreasonably interfere with Contractor's performance of the Services to Authority as required under this Agreement or create a conflict of interest for Contractor. Consistent with the foregoing, Contractor shall not advocate for other clients in a manner that would result in the communication of any position in any public forum that is contrary to the Authority's interest.
- f. Contractor shall perform the Services in a manner consistent with that degree of skill and care ordinarily exercised by practicing professionals performing similar services in California, relating to a project site comparable to the Project and under the same or similar circumstances and conditions as those concerning the Project.

ARTICLE 3: STATUS & WORK LOCATION

- a. Status as Independent Contractor: Contractor will act as an independent Contractor of the Authority in the performance of the Services under this Agreement. The Contractor will be responsible for the payment of all applicable federal, state, and local taxes arising out of or related to Contractor's Services for the Authority. Contractor further agrees to defend, indemnify, and hold the Authority harmless as to any claims or causes of action related to the payment of any federal, state, and local taxes for which Contractor is responsible. Nothing contained in this Agreement shall constitute or be deemed to create between the Authority and Contractor the relationship of employer/employee, it being expressly understood and agreed that the only relationship between Contractor and Authority created herein shall be that of an independent Contractor. Without limiting the foregoing, Contractor is not entitled to any rights or benefits afforded to Authority's employees, if any, including disability or unemployment insurance, workers 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.

- b. Subcontracting: Contractor shall not employ independent consultants, associates, or subcontractors to assist in the performance of Contractor's duties hereunder without the prior written consent of the Authority. As to any such subcontract to which Authority has not granted its express prior written consent, Authority shall not have any obligation to recognize, accept, compensate for, or otherwise assume any responsibility for it or for any work performed pursuant to it.

ARTICLE 4: FORCE MAJEURE

Neither Party to this Agreement shall be liable for its failure to perform its obligations hereunder due to events beyond its reasonable control, including, but not limited to, strikes, riots, wars, fire, earthquakes, acts of God and/or unusual acts of nature, acts in compliance with any law, regulation or order (whether valid or invalid) of the United States of America or any state thereof or any other domestic or foreign governmental body or instrument thereof having jurisdiction in the matter. Delay occasioned thereby shall not be considered a breach of this Agreement.

ARTICLE 5: INDEMNITY

- a. Contractor Indemnification: Contractor shall indemnify and hold the Authority and its officers, directors, employees and agents harmless from and against any claim, cause of action, loss or liability to the extent arising out of related to acts or omissions of the Contractor in performing the Services.
- b. Authority Indemnification: Authority shall indemnify and hold Contractor and its officers, directors, employees and agents harmless from and against any claim, cause of action, loss or liability to the extent arising out of related to acts or omissions of the Authority in performing its obligations as provided under this Agreement.

ARTICLE 6: INSURANCE

- a. Contractor shall maintain the following insurance:
 - 1. Commercial General Liability (CGL) Insurance:

Commercial General Liability Insurance, including coverage for bodily injury and property damage liability arising out of premises, operations, products, and completed operations in addition to advertising injury and personal injury liability coverage with a limit of \$1,000,000 per occurrence and \$1,000,000 general aggregate limit.

Non-owned and hired automobile liability coverage applies by endorsement to this policy with a limit of \$1,000,000 bodily injury and property damage per occurrence and \$1,000,000 general bodily injury and property damage aggregate limit.

With respect to the Services performed by Contractor, Contractor's Commercial General Liability policy shall be primary to similar insurance of the Authority and shall waive subrogation against Authority.

The Authority, and its directors, officers, and authorized agents shall be added as an additional insured by additional insured coverage endorsements CG 2010 04 13 and CG 2037 04 13, or equivalent additional insured coverage endorsements, on Contractor's Commercial General Liability insurance policy.

2. Professional Liability Insurance:

If Authority determines in its reasonable discretion and consistent with industry standards that Contractor should obtain and maintain professional liability insurance, then Contract shall so obtain and maintain a \$1,000,000 per claim and \$1,000,000 annual aggregate limit professional liability insurance policy, with prior acts coverage sufficient to cover the services performed under this Agreement.

3. Commercial Automobile Liability Insurance:

Contractor agrees to maintain Business Automobile liability insurance during the term of this Agreement, with a limit for property damage and bodily injury of \$1,000,000 per occurrence and \$1,000,000 general aggregate limit, together with an equivalent rider to the Commercial General Liability Insurance required in Article 6(a)(1) above for hired and non-owned automobiles.

4. Workers Compensation Insurance:

When applicable, Contractor shall maintain Workers Compensation Insurance, including Employer's Liability, at a minimum limit acceptable to the Parties for all persons whom Contractor may employ in performing the Services. Such insurance shall be in strict accordance with the requirements of the most current and applicable Workers Compensation Insurance Laws in effect from time to time. Contractor shall furnish to Authority confirmation of Contractor's experience modification rate, which the Authority may request from time to time.

- b. Such policies shall, as applicable, contain or be endorsed with the provision that coverage shall not be cancelled by the insurance company in coverage without thirty (30) days prior written notice to the Authority.

ARTICLE 7: CONFIDENTIALITY AND PROPRIETARY INFORMATION

Contractor acknowledges that it will be necessary for the Authority to disclose certain confidential and proprietary information (the "Confidential Information") to Contractor in order for Contractor to perform the Services under this Agreement. Contractor acknowledges that disclosure to a third party or misuse of this Confidential Information would irreparably harm the Authority. Accordingly, Contractor will not disclose or use, either during or after the term of this Agreement, any Confidential Information of the Authority without the Authority's prior written permission except to the extent necessary to perform Services on the Authority's behalf.

The product of all Services performed under this Agreement (for purposes of this Article 7, the "Work Product"), including without limitation all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, work-in-progress and deliverables will be the sole property of the Authority, and Contractor hereby assigns to the Authority all right, title and interest therein, including but not limited to all audiovisual, literary, moral rights and other copyrights, patent rights, trade secret rights and other proprietary rights therein. Contractor retains no right to use the Work Product and agrees not to challenge the validity of the Authority's ownership in the Work Product.

Upon expiration or earlier termination of this Agreement, Contractor shall turn over to the Authority all Confidential Information and Work Product in Contractor's possession within ten (10) business days of the date of expiration or termination.

For the period of two (2) years after expiration or termination of this Agreement for any reason, Contractor shall not interfere with any relationship between the Authority and any of its members, employees, consultants, agents, representatives or suppliers by persuading, enticing, or attempting to persuade or entice any such member, employee, consultant, agent, representative, or supplier to disengage from the Project.

For the period of two (2) years after expiration or earlier termination of this Agreement for any reason, within a fifty (50) mile radius of the Authority's main office or satellite office, Consultant shall not use or access the Confidential Information in any manner to solicit or attempt to solicit, either for itself or for a third party, any of the Authority's members, consultants or employees with the intent or purpose of providing services to those members which are the same or similar as those provided to the Authority, or to offer employment or engagement to any Authority employee or consultant which is the same or similar as that provided by the Authority.

ARTICLE 8: COMPENSATION

- a. Method of Payment: The Authority shall pay Contractor for its services and project-related business travel and expenses in accordance with the following:
1. Compensation for Services: Authority shall compensate Contractor for performance of the Services at a monthly rate equivalent to \$21,746 per month.
 2. Project-Related Business Travel & Expenses: Authority agrees to provide office space to Contractor at the Authority's main office in [REDACTED], or such other main or satellite office as Authority may designate from time to time. Such office shall be referred to as Contractor's "Designated Office Location." On a monthly basis, Contractor may invoice the Authority for the authorized costs of business travel and expenses that Contractor incurs in performance of the Services that originates at Contractor's Designated Office Location. Such authorized travel that is eligible for reimbursement does not include Contractor's travel to and from the Contractor's residence and Contractor's Designated Office Location.
 3. Annual Review: Authority will evaluate Contractor's performance under this Agreement at an annual review. The annual review is expected each September. As part of the annual review the Authority will consider an adjustment of Contractor's compensation for Services, including a merit adjustment and/or an index-based cost of living adjustment and, as the Authority determines appropriate.
- b. Payment Process: Contractor shall invoice the Authority for Services performed and reimbursable costs incurred on a monthly basis. Any invoice shall be sent electronically to the Authority's Executive Director the first Monday of the month. If approved by the Authority's Board, the amount of the invoice shall be paid to Contractor within seven (7) business days after the Board Meeting. The Authority may reduce its payment of an invoice by the amount deemed by the Authority's Board to be in dispute until any such disputed item resolved between Authority and Contractor.

ARTICLE 9: DISPUTE RESOLUTION

If a dispute arises under this Agreement, the Parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the Parties. If it proves impossible to arrive at a mutually satisfactory solution through mediation, the Parties agree to submit the dispute to a mutually agreed-upon arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having

jurisdiction to do so. Costs of arbitration, including attorney fees, will be allocated by the arbitrator.

ARTICLE 10: MISCELLANEOUS

- a. Governing Law: This Agreement shall be governed by the laws of the State of California.
- b. Amendment: This Agreement shall not be amended except by written agreement signed by both Parties.
- c. Successor and Assigns: This Agreement and the covenants and conditions contained herein shall apply and be binding upon and inure to the benefit of the permitted administrators, executors, legal representatives, assignees, successors, agents and heirs of each Party hereto.
- d. Assignments: This Agreement is not assignable by Consultant without the consent of the Authority, which consent the Authority may grant or withhold for any or no reason in its sole discretion. Any such purported assignment without prior written consent by the Authority shall be null and void. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge either Party from any obligation under this Agreement.
- e. No Third-Party Beneficiaries: Except for rights of indemnitees specifically referenced in this Agreement, 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.
- f. Integration: This Agreement is intended to be the final, complete, and exclusive statement of the terms of Contractor's terms of service to the Authority. This Agreement supersedes all other prior or contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the Services of Contractor to the Authority, and it may not be contradicted by evidence or any prior or contemporaneous statements or agreements. To the extent the practices, policies, or procedures of the Authority, now or in the future, apply to Contractor and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.
- g. Waiver: A waiver by either the Authority or Contractor of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

- h. 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.
- i. Counterparts: This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.
- j. Notices: Any notices required by this Agreement shall be in writing and either given in person or by first class mail with the postage prepaid and addressed as provided for in the opening paragraph of this Agreement, and are deemed given on the date they are provided (in the event of personal delivery or delivery by courier) or three (3) business days after being postmarked (in the event of mail delivery).
- k. Representation by Attorney: The Parties expressly represent and warrant that they have had the opportunity to receive, and/or have received independent legal advice from their respective attorneys with respect to the advisability and effect of entering into this Agreement.
- l. Attorney's Fees: In the event of litigation for breach of this Agreement, or arising out of or related to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, expert fees, and costs incurred.
- m. Captions: Any paragraph captions are for reference only and shall not be considered in construing this Agreement.
- n. Authority to Enter: The Parties each warrant and represent that they each have the authority to enter in to this Agreement, and that the signatories below are authorized to sign this Agreement on behalf of the Parties.

SITES PROJECT AUTHORITY



By: _____

By: _____

Date: _____

Date: _____

EXHIBIT "A"



Reports To:

Executive Director

Functions Reporting to Position:

Committee/Working Group Staff Assignment:

Roles & Responsibilities: