



Topic: **Authority Board Agenda Item 6-5** **2019 Feb 25**

Subject: **Senior Advisor for Right of Way and Land Management (Wiseman)**

Requested Action:

Consider approval of a consulting agreement with Wiseman Consulting Group, LLC for Senior Advisor services for Right of Way and Land Management activities and authorize the General Manager to sign.

Detailed Description/Background:

The development of the Authority’s Real Estate and Land Management program is a critical path item for 2019. Specifically, the Authority will be working to establish protocols and procedures to support the right-of-entry activities for geotechnical, environmental, and cultural survey work and to development the foundations of the real estate program that will carry the project through the acquisition, and ultimately to the land management, phases of the project.

Wiseman Consulting Group, LLC would serve in a Senior Advisor role for the Sites Project Authority, supporting the Board and the Reservoir Committee, and assisting the Authority Agents in developing the processes, policies, and procedures consistent with the State of California laws, rules, and regulations governing the acquisition and management of land by public agencies specific to the needs of the Sites Project Authority.

The task order budget for the 2019 scope of services (February 26, 2019 – December 31, 2019) is \$75,000.

The Reservoir Committee will consider staff’s recommendation at their February 21, 2019 meeting.

Prior Authority Board Action:

None.

Fiscal Impact/Funding Source:

Funding for this task order has been assigned from the reprioritized Phase 1 Budget approved by the Authority Board of Directors and the Reservoir Committee and is included in the 2019 Project Agreement (April – December) budget.

Staff Contact:

Kevin Spesert

Attachments:

Attachment A – Consulting agreement

**Sites Project Authority
Right of Way, and Land Management Services
Independent Contractor Agreement**

This Agreement is made between the Sites Project Authority ("Authority") with a principal place of business at 122 Old Highway 99 West Maxwell, CA 95955 and Wiseman Consulting Group, LLC ("Contractor"), with a principal place of business at 528 Allison Ln., Ball Ground, GA 30107.

1. Services to Be Performed

- 1.1. Contractor agrees to perform the services described in Exhibit A (the "services"), which is attached to this Agreement. The services shall be performed by Peter Wiseman who is an employee of the Contractor.
- 1.2. Contractor's performance under the criteria defined in Exhibit A, will be factored into any decision by the Authority whether to extend or renew this Agreement beyond the completion of Phase 1.
- 1.3. Nothing contained in this Agreement shall limit the ability of the Contractor to perform the same or similar services for any other entity so long as such services do not create a conflict of interest for the Contractor.

2. Payment

- 2.1. Services: In consideration for the services to be performed by Contractor, Authority agrees to pay Contractor at rate of \$190.00 per hour. Contractor shall be paid within 60 days after the Contractor submits an invoice to Authority.
- 2.2. Expenses: Contractor shall be responsible for all expenses incurred while performing services under this Agreement.

The Authority will reimburse Contractor for expenses directly related to the Sites Project and other Authority business. Reimbursement for air travel or relevant conferences require the General Manager's prior approval. An email, text message or voicemail from the General Manager requesting Contractor attendance will serve as prior approval for reimbursement of all travel expenses.

For vehicle use by Contractor, the Authority will reimburse Contractor at the currently published IRS Standard Mileage Rate effective on the date mileage occurred.

3. Term of Agreement

- 3.1. This agreement will become effective on February 26, 2019 and will terminate within three years of the effective date, unless amended, or the date a party terminates the Agreement, whichever is earliest.

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3.2. Either party may terminate this Agreement at any time by giving 30 days' written notice to the other party of the intent to terminate.

3.3. The Authority may terminate this Agreement at any time without notice if it is determined that Contractor commits any material act of dishonesty, discloses any of the Confidential Information, acts with gross negligence or misconduct, unjustifiably neglects to perform the Services or acts in a manner that has a direct, substantial and adverse effect on the Authority. In the event of a Termination for Cause under this Paragraph, the Authority shall only be liable to compensate Contractor for the total amount of unpaid hours worked providing the Services up to the time of termination.

4. Independent Contractor

- 4.1. Status: Contractor is an independent contractor and shall not be deemed an employee of the Authority. Contractor has the right to perform services for others during the term of this Agreement. Contractor is not authorized to enter into or commit the Authority to any agreements, and Contractor shall not represent himself as the agent or representative of the Authority, except as authorized in writing by the Authority's General Manager and as defined in the scope of services attached as Exhibit A.
- 4.2. Fringe Benefits: The Authority does not participate in any employee benefit plans. Contractor understands that Contractor is not eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the Authority.
- 4.3. Unemployment Compensation: The Authority shall make no state or federal unemployment compensation payments on behalf of Contractor. Contractor will not be entitled to these benefits in connection with work performed under this Agreement.
- 4.4. Workers' Compensation: The Authority shall not provide workers' compensation insurance coverage on behalf of Contractor or Contractor's employees.

5. State and Federal Taxes

The Authority will not withhold FICA (Social Security and Medicare taxes) from Contractor's payments or make FICA payments on Contractor's behalf, make state or federal unemployment compensation contributions on Contractor's behalf, or withhold state or federal income tax from Contractor's payments. Contractor 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.

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Contractor shall pay all taxes incurred while performing services under this Agreement—including all applicable income taxes and, if Contractor is not a corporation, self-employment (Social Security) taxes. Upon demand, Contractor shall provide Authority with proof that such payments have been made.

6. Business Licenses, Permits, and Certificates

Contractor represents and warrants that Contractor will comply with all federal, state, and local laws requiring drivers and other licenses, business permits, and certificates required to carry out the services to be performed under this Agreement.

7. Indemnification

Contractor shall indemnify and hold the Authority and its officers, directors, employees and agents harmless from any claim, cause of action, loss or liability arising out of or related to acts or omissions of the Contractor in performing services under this Agreement.

8. Insurance

During the term of this Agreement, Contractor shall, at Contractor's sole expense, maintain vehicle liability, and other insurance in a minimum amount as required under California law, as deemed appropriate by the Authority. Contractor shall also maintain general liability insurance in an amount of not less than \$2 million for each occurrence. Contractor shall name Authority as an additional insured on all such policies and shall provide evidence of such coverage upon request.

9. 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, Contractor'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 Contractor'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

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and litigation, shall be available to the Parties unless they have exhausted the process provided for in this **Paragraph 9.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.

10. **No Advertisement of Services**

Unless approved in writing by Authority in its sole discretion, Contractor shall not advertise in any manner that it is performing the services for Authority.

11. **Disqualification.**

Contractor shall not make or participate in making or in any way attempt to use Contractor's position to influence a governmental decision in which Contractor knows or has reason to know Contractor has a direct or indirect financial interest other than the compensation promised by this Agreement. Contractor will not have such interest during the term hereof. Contractor will immediately advise Authority if Contractor learns of a financial interest of Contractor's during the term of this Agreement.

12. **Applicable Laws**

This Agreement will be governed by California law, without giving effect to conflict of laws principles.

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13. Attorney Fees

If any suit, action, arbitration or proceeding is instituted to enforce any of the provisions of this Agreement, the prevailing party will be entitled to recover, in addition to costs and disbursements, its reasonable attorney's fees as determined by any court or arbitrator in which such action or proceeding is tried, heard or decided, including any appeal.

14. Confidentiality

Contractor acknowledges that it will be necessary for the Authority to disclose certain confidential and proprietary information to Contractor in order for Contractor to perform duties under this Agreement. Contractor acknowledges that disclosure to a third party or misuse of this proprietary or confidential information would irreparably harm the Authority. Accordingly, Contractor will not disclose or use, either during or after the term of this Agreement, any proprietary or 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.

15. Proprietary Information

The product of all work performed under this Agreement ("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 agree not to challenge the validity of the Authority's ownership in the Work Product.

16. Furnished Items

16.1 Authority-furnished Items: The Authority will provide office space for the Contractor's use in the Sites Project Office located in Maxwell California. The Authority will also provide ancillary and support functions, in addition to those supplied by Contractor as provided below, such as printers, copiers, internet, phone and IT services, and miscellaneous office supplies for the Contractor's use when the Contractor is performing the services of this Agreement.

16.2 Contractor-furnished Items - Vehicle, Equipment, and Materials: Contractor will furnish all vehicles and equipment used to provide the services required by this

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Agreement At a minimum, this equipment shall include computers/laptops, peripherals such as printers and scanners, and a cellphone.

17. Additional Requirements

17.1 Exclusive Agreement: This is the entire Agreement between Contractor and the Authority.

17.2 Modifying the Agreement: This Agreement may be modified only by a writing signed by both parties.

17.3 No Partnership: This Agreement does not create a partnership relationship. Contractor does not have authority to enter into contracts on the Authority's behalf.

17.4 Assignment and Delegation: Neither Contractor nor the Authority may assign rights and may delegate duties under this Agreement. 17.5 Integration: This Agreement and Attachments 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.

IN WITNESS HEREOF, the Authority has caused this Agreement to be signed and executed in its behalf by its General Manager. It has also been executed by the president of Wiseman Consulting Group, Ltd.

Authority

Contractor

Jim Watson, General Manager
Sites Project Authority

Name Peter G. Wiseman
Company Wiseman Consulting Group
LLC
Taxpayer ID: 83-3499489

Date: 2019 February

Date:

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Exhibits:

- A Scope of Services
- B Certificate of Organization

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Exhibit A: Scope of Services

- Review and or develop processes, policies, and procedures consistent with the State of California laws, rules, and regulations governing the acquisition and management of land by public agencies specific to the needs of the Sites Project Authority.
- Review and or develop processes, policies, and procedures for Survey, Mapping and Right of Way consistent with the State of California laws, rules, and regulations specific to the needs of the Sites Project Authority.
- Review and or develop processes, policies and procedures necessary to the creation of a Geographic Information System (GIS) specific to the needs of the Sites Project Authority.
- Review and or develop task orders issued for consultants to perform work related to land surveying, right of way, real estate services, and land management services.
- Review consultant progress reports, identify potential issues and recommend possible solutions.
- Review and recommend acceptance or revision of deliverables based on task orders issued for land surveying, right of way, real estate, and land management services.
- Review and recommend acceptance or revision of consultant invoices related to land surveying, right of way, real estate, and land management services.
- Coordinate and integrate the requirements of other project disciplines into the workflow processes of the land surveying, right of way, real estate and land management efforts.
- Provide general and technical advice to the General Manager and Authority disciplines as required and requested.