



Topic: **Authority Board Agenda Item 7-1**

2019 May 20

Subject: **Environmental Planning & Permitting Manager**

Requested Action:

Consider approval of a contract with Forsythe Group, LLC for Environmental Planning & Permitting (EPP) Manager services.

Detailed Description/Background:

On April 17, 2019, a joint Authority/Reservoir Committee selection panel conducted interviews with 4 candidates who each submitted a Statement of Qualifications (SOQ) in response to the RFQ-01. RFQ-01 seeks to fill the role of the EPP Manager position, which primarily is responsible for directing and overseeing the work associated with Service Areas D (Reservoir Operation Simulations), E (Environmental Analysis), and F (Permitting and Agreements) and for working with other Managers to ensure the work of all Service Areas are integrated and align with the policies and direction that are established by the Sites Project Authority and the Reservoir Committee, respectively. As a result of this interview process, the Selection Panel unanimously selected Forsythe Group, LLC (Alicia Forsythe).

The RFQ was posted in January on the following websites: Sites Project, ACWA, Association of Environmental Professionals, and Sacramento Valley Section of the American Planning Association. Multiple people expressed interest in applying for the position, however four ultimately submitted SOQs.

Prior Authority Board Action:

The proposed selection process was presented and discussed in Agenda Item 2-1 at the December 20, 2018 Phase 1 Reservoir Committee meeting.

Fiscal Impact/Funding Source:

Funding for the EPP Manager position was included in the current approved 2019 Work Plan and is included in the revised 2019 Work Plan being considered by the Reservoir Committee and Authority Board in their May meetings.

Staff Contact:

Jim Watson

Attachments:

Attachment A – Forsythe Group, LLC Contract for EPP Services

**Sites Project Authority –
Environmental Planning and Permitting Manager
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, California 95955 and Forsythe Group, LLC (“Contractor”), with a principal place of business at 2025 Sisley Road, Penryn, California 95663.

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 Alicia Forsythe, 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 Term of this Agreement identified in Section 3.
- 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, unreasonably interfere with Contractor’s performance of services to Authority as required under this Agreement or create a conflict of interest for the 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 interests.

2. Payment

- 2.1. Services: In consideration for the services to be performed by Contractor, Authority agrees to pay Contractor a fixed fee of \$30,000 per month. Contractor shall be paid within sixty (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 related to the Sites Project and other Authority business. Reimbursement for air travel or relevant conferences require the General Manager’s prior approval.

For vehicle use by Contractor, the Authority will reimburse Contractor at the published IRS Standard Mileage Rate of 58¢ /mile. Such rate shall be adjusted each calendar year to reflect that years’ published IRS Standard Mileage Rate.

3. Term of Agreement

- 3.1. This agreement will become effective on June 01, 2019 and will terminate three years from the effective date, unless amended, or the date a party terminates the Agreement, whichever is earliest.
- 3.2. Either party may terminate this Agreement at any time, with or without cause, by giving thirty (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 (as defined in Section 12 herein), 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. Consistent with Section 1.3 above, the 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 itself as the agent or representative of the Authority, except as authorized in writing by the Authority's General Manager and within the scope of services defined in 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 shall be solely responsible for payment of all federal, state and local taxes incurred by Contractor 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.

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 and any associated fines, penalties and interest as specified above.

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 will provide evidence of such coverage upon request.

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.

10. Applicable Laws

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

11. 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.

12. Confidentiality

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 duties 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.

13. 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.

14. Furnished Items

- 14.1. Authority-furnished Items: The Authority will provide office space for the Contractor's use in the Sites Project Office located in Sacramento, 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.

14.2. Contractor-furnished Items - Vehicle, Equipment, and Materials: Contractor will furnish all vehicles and equipment used to provide the services required by this Agreement. At a minimum, this equipment shall include computers/laptops, peripherals such as printers and scanners, and a cellphone.

15. Additional Requirements

- 15.1. Exclusive Agreement: This is the entire Agreement between Contractor and the Authority.
- 15.2. Modifying the Agreement: This Agreement may be modified only by a writing signed by both parties.
- 15.3. No Partnership: This Agreement does not create a partnership relationship. Contractor does not have authority to enter into contracts on the Authority's behalf.
- 15.4. Assignment and Delegation: Neither Contractor nor the Authority may assign rights and may delegate duties under this Agreement.
- 15.5. 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 Managing Member of Forsythe Group, LLC.

Authority

Contractor

Jim Watson, General Manager
Sites Project Authority

Alicia Forsythe, Managing Partner
Forsythe Group, LLC

Date: _____

Date: _____

Exhibit: A Scope of Services

Exhibit A: Scope of Services

- Plan, organize, direct, control, assess and adjust all work provided by consultants under contract to perform the environmental planning and permitting technical activities and reports.
- Review and recommend acceptance or revision of technical activities and reports relating to the environmental planning and permitting work efforts.
- Review and recommend acceptance or revision of invoices and progress reports relating to the environmental planning and permitting work efforts.
- Report progress, issues, and potential solutions to the General Manager, Reservoir Committee and Authority Board.
- Coordinate with other project leadership (engineering, communications, administration, real estate) to incorporate the environmental planning and permitting work efforts into other Project efforts.
- Provide strategic and tactical advice to the General Manager and the Authority regarding project development.