

**SITES PROJECT AUTHORITY AND  
EXECUTIVE DIRECTOR  
INDEPENDENT CONTRACTOR AGREEMENT**

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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 Waterology Consulting, a California Limited Liability Company ("Contractor"), with its principle place of business at PO Box 10781, Pleasanton, CA 94588. 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 has undergone a competitive selection process to obtain professional services for the position of Executive Director and, as a result, desires to engage Contractor to provide the Executive Director 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 March 30, 2020 ("Effective Date"), and shall remain in full force or effect for eighteen (18) months from the Effective Date or 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) 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 his 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 Executive Director Standard Services (Part A) and an Executive Director Statement of Initial Goals and Deliverables (Part B) shall be negotiated between the Parties within thirty (30) days of the Effective Date, and shall be incorporated herein as Exhibit "A". Following satisfactory performance of the Services within the first six (6) months of this Agreement, Exhibit "A" will be updated upon mutual agreement of the Parties without amendment of the Agreement.
- 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 shall perform the duties of Executive Director as defined herein. Contractor's performance shall be subject to review by the Authority's Board of Directors.
- 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 his duties 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. 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. Any such purported subcontract without the Authority's prior written consent shall be null and void.

#### **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:

Contractor shall 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.

Such insurance will be renewed so as to provide continuous coverage during the term of this Agreement and for a period of thirty six (36) months following the date of the last day of Contractor's professional services under this Agreement or any successor to this Agreement.

3. Commercial Automobile Liability Insurance:

Contractor agrees to maintain Business Automobile liability insurance should any motor vehicle be acquired 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.

4. Workers' Compensation Insurance:

When applicable, Contractor shall maintain Worker's 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 Worker's 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 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.

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, agents, representatives or suppliers.

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 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 to any Authority employee 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 \$405,000.00 per year. Upon successful completion of the Services after the first six (6) months following the Effective Date, and subject to satisfaction of the standards set forth in Exhibit "A", Authority shall, commencing on the first day of the seventh month following the Effective Date, compensate Contractor for performance of the services at a monthly rate equivalent to \$426,000.00 per year.
  2. Project-Related Business Travel & Expenses: On a monthly basis, Contractor will also invoice the Authority for the associated cost of business travel and expenses that Contractor incurs in performance of the Services; provided that Authority shall not be required to reimburse Contractor for travel expenses incurred in connection with Contractor's travel to the Authority's main office in Maxwell, California, Authority's satellite office in Sacramento, California, or such other main or satellite office as Authority may designate from time to time.
  3. Annual Review: Authority will evaluate Contractor performance under this Agreement at an annual review considering the Contractor's goals and deliverables as set forth in Exhibit "A". At the annual review the Authority will consider an adjustment of Contractor compensation for Services, including an index based cost of living and merit adjustment 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 Treasurer at least ten (10) calendar days in advance of the Sites Project Authority's Board meeting. 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. Any such purported assignment without prior written consent by the non-assigning Party 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: FRITZ DIERST

Date: 3-30-2020

**WATEROLOGY CONSULTING**

By: [Signature]

Date: MARCH 25, 2020

# **EXHIBIT "A"**

**PART A: Statement of Executive Director Standard Services-**

[To be negotiated between the Parties – Article 2(a) Scope of Services.]

**PART B: Executive Director Statement of Initial Goals and Deliverables-**

[To be negotiated between the Parties – Article 2(a) Scope of Services.]

**First Discussion Draft**

<b>Key Job Responsibility</b>	<b>Results to Be Achieved</b>
<b><u>Staff Support to and Working with Authority Board and Reservoir Committee</u></b>	Provide assistance that may be required by the Board and Committee to improve communications, teamwork, and professional relationships between Board, Committee, consultants and staff.
	Continue providing timely and significant information weekly in Executive Director Updates to the Board and Committee members.
	Anticipate issues of concern to the Board and Committee and communicate them as soon as possible.
	Direct the planning and facilitation of an initial Strategic Planning Session and various Board Workshops as needed with specific desired outcomes to support the project objectives.
	Review 3 month look ahead for the agenda schedule with Board and Committee chairs bi-weekly to enable their effective facilitation of the Board and Committee functions.

<b>Key Job Responsibility</b>	<b>Results to Be Achieved</b>
	Modify project reports coming to the Board and Committee to ensure an inclusive, effective and efficient decision-making process.
<b><u>Management of the Project</u></b>	Manage the revenues and expenditures of the Project to always be cash positive unless otherwise directed by the Board and Committee.
	Achieve a complete and executed Updated Phase 2 Project Agreement that provides for necessary authority to continue the project through December 2021.
	Conduct an assessment of the project organizational structure (including consultant and staffing needs) to complete the Updated Phase 2 Project Agreement and obtain Committee and Board support for the recommended program.
	Evaluate options for restarting the environmental review, gain Board and Committee acceptance of path forward, and initiate implementation.
<b><u>Project Information, Education and Outreach</u></b>	Conduct outreach to key local and NGO stakeholders with the objective of creating a collaborative environment for addressing concerns and issues groups might have with the project.
	Create an outreach package that Board and Committee members can use for speaking opportunities to promote the project.
	Conduct outreach to "home boards" as requested by Committee members to garner continued project support and ensure clear communication of project direction and timing.
	Conduct effective and timely outreach to State and Federal legislative offices regarding the updated Project Configuration and Critical Operating Elements.
<b><u>State and Federal Agency Cooperation</u></b>	Evaluate the pros and cons of Federal agency funding options and determine the extent and timing for pursuit.
	Achieve a documented understanding with USBR Mid Pacific leadership describing the level participation in the environmental review and permitting for the updated Project Configuration and Critical Operating Elements.
	Continue discussions with State and Federal environmental and water rights permitting agencies and establish a collaborative environment that leads to meeting the project schedule.