



Topic: **Reservoir Committee Agenda Item 2-1.c**

**2020 April 17**

Subject: **Second Amendment to 2019 Reservoir Project Agreement**

---

**Requested Action:**

Approve the draft Second Amendment to 2019 Reservoir Project Agreement.

**Detailed Description/Background:**

Staff worked with Authority bond counsel (Doug Brown, Stradling Yocca Carlson & Rauth) to prepare an amendment to the Authority approved First Amendment to 2019 Reservoir Project Agreement. This amendment addresses the two Project time periods noted below so home boards do not need to review and sign two separate amendments.

- The First Reservoir Participation Agreement Amendment addressed the initial Amendment 1B time period of January 1, 2020 through June 30, 2020. After issuance of the First Amendment to home boards for approval the Authority extended the Amendment 1B time period for an additional two months, though August 31, 2020. This extension requires approval by home boards.
- The Amendment 2 Work Plan time period is from September 1, 2020 through December 31, 2021 which requires approval by home boards.

The Second Amendment also addresses the cash call required to conduct the Amendment 2 scope of work. The second amendment to the 2019 Reservoir Project Agreement has been reviewed by the Ad-Hoc Budget and Finance Committee and no changes were requested.

**Prior Action:**

December 19, 2019: Approved extending the participation agreement's end date from June 30, 2020 to August 31, 2020 (aka amendment 1B).

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

Status:	Final	Preparer:	Trapasso	Phase:	2	Version:	A
Purpose:	Staff Report	QA/QC:	Watson	Date:	2020 April 17		
Caveat:	Informational	Authority Agent:	Trapasso	Ref/File #:	12.221-210.018		
Notes:				Page:	1	of	2

**Fiscal Impact/Funding Source:**

No impact as included in Amendment 1B and 2 Work Plans.

**Staff Contact:**

Joe Trapasso

**Attachments:**

Attachment A: Second Amendment to 2019 Reservoir Project Agreement

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 as provided in Subsection 3(g) of the then-current Committee members; 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. **Amendments to Section 8(b) of the Agreement.**

(a) The reference in Section 8(b) of the Agreement to June 30, 2020 shall be changed to 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 2.02. **Work Plan**

(a) Effective September 1, 2020, the 2019 Work Plan attached as Exhibit B to the Agreement shall be superseded in its entirety by the Work Plan attached hereto as Exhibit A (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 September 1, 2020) and the Amendment 2 Work Plan (on and after September 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.”

ARTICLE III

MISCELLANEOUS

Section 3.01. **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 3.02. **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 3.03. **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 August 31, 2020, and the expenditure of funds collected under the Agreement with respect to the 2019 Work Plan on and prior to August 31, 2020.

Section 3.04. **Laws Governing First 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:

EXHIBIT A  
AMENDMENT 2 WORK PLAN