



Meeting: **Reservoir Committee Agenda Item 2.1**

January 21, 2022

Subject: **Amending Consulting Contracts with Executive Director & Authority Agents**

Requested Action:

Approve administrative amendments to the standard consulting contracts with the Executive Director and Authority Agents related to indemnification and limitation of liability. Authorize an adjustment in the monthly compensation amount with Spesert Consulting over the 3-year term of the agreement and add a requirement that additional insurance is carried by Spesert Consulting throughout the term of the contract.

Detailed Description/Background:

The Authority has standard consulting contracts in place with the Executive Director and Authority Agents as of October 2020. In November 2021, the Authority approved extending the contract terms 3 years and making compensation adjustments effective 1/1/22. An additional evaluation was conducted subsequent to the most recent action and determined the following amendments are recommended:

1. Modify the language in the standard consulting contract for Executive Director and Authority Agents to add clarification regarding the indemnifications between the contract parties and limit the liability of the contractor relative to the services being performed under the contract. See attachment A for specific proposed language change.
2. Adjust the monthly compensation in the contract with Spesert Consulting to reflect additional responsibilities during the Amendment 3 work period and adjustment for market conditions as follows (current authorized monthly compensation is \$22,834):
 - a. Starting 1/1/22 – monthly compensation to be \$24,000.
 - b. Include an additional amount of \$601 per month to then in effect monthly compensation as of 1/1/23.
 - c. Include an additional amount of \$600 per month to then in effect monthly compensation as of 1/1/24.
3. Add the requirement in Article 6.A.2 Professional Liability Insurance for Spesert Consulting to hold the coverage related to the following throughout the term of the agreement in recognition of the additional responsibilities related to real estate transactions: Acts arising out of or relating directly or

indirectly to investment advice or information or a failure to provide investment advice or information.

No other changes are proposed to these agreements at this time.

Prior Action:

November 2021: Approved the recommendation of the Ad Hoc Compensation Committee to update the consulting agreements with Agents including Forsythe Group, Trapasso Consulting Services, Spesert Consulting and the Executive Director, Waterology Consulting, as follows:

- a. Set the agreement duration to a 3-year term coincident with the Amendment 3 work period and
- b. Adjust the terms for compensation.

Fiscal Impact/Funding Source:

Sufficient funds exist in the approved Amendment 3 work plan to cover the expenditures authorized by this proposed amendment.

Staff Contact:

Jerry Brown

Attachments:

Attachment A: Proposed Change Related to Indemnification and Limitation of Liability

Replacement Language for Indemnification and Limitation of Liability
Standard Consulting Contract for Executive Director and Authority Agents
January 2022

The current Article 5 in the standard consulting contracts for the Executive Director and Authority Agents is as follows:

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.

Replace with the following:

ARTICLE 5: INDEMNITY and Limitation of Liability

1. Contractor agrees to indemnify and hold harmless, but not defend, the Authority, its officers or directors, and any other entity or person for which Contractor is legally liable, from and against any damages, losses, liabilities, judgments, settlements, expenses, and costs (including reasonable and necessary attorneys' fees, costs and expenses) to the extent caused by negligent acts, errors or omissions or willful misconduct of Contractor or of Contractor's agents, employees, representatives or shareholders in the performance of this Agreement. Contractor's liability under this Article is limited to the amounts recovered from the insurance that is provided for in Article 6.
2. The Authority agrees to indemnify and hold harmless Contractor, its shareholders, officers, directors and any other entity or person for which the Authority is legally liable, from and against any damages, losses, liabilities, judgments, settlements, expenses, and costs (including reasonable and necessary attorneys' fees, costs and expenses), arising out of or in relation to this Agreement, the operations of the Authority or the Sites Reservoir Project; except to the extent such damages, losses, liabilities, judgments, settlements, expenses, and costs are caused by the negligent acts, errors or omissions or willful misconduct of Contractor or its shareholders, officers, directors, or agents in the performance of professional services under this Agreement.
3. Waiver of Personal Liability: It is intended by the Parties that Contractor's services in connection with the Sites Reservoir Project shall not subject Contractor's officers, directors or shareholders, to any personal legal exposure for the risks associated with this Agreement. Therefore, and notwithstanding anything to the contrary contained herein, the Authority agrees that as Authority's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Contractor and not against individuals employed by Contractor and/or Contractor's shareholders, officers, or directors.