



**Sites Project Authority
Request for Proposals No. 25-05
Independent Accounting Services**

Addendum No. 2

The following changes, corrections, additions and deletions are incorporated into the Sites Authority's Financial Accounting Services Request For Proposals (RFP) 25-05. It is the Respondent's responsibility to understand and comply with this Addendum. This Addendum shall become part of the RFP in the sections as noted and all other provisions of the RFP shall remain unchanged.

1. The submittal due date has been **REVISED** to "Friday, July 11, 2025 at 2:00 PM PST" in the following RFP locations:
 - a. The Cover Page
 - b. Section 5.0, Subsection 5.1
 - c. Section 6.0, Subsection 6.2
 - d. Section 8.0

The "Tentative Solicitation Schedule (subject to changes)" is **REVISED** as follows:

Activity	Date (2025)
RFP release and posting to PlanetBids .	June 2, 2025
Respondents' submission of written questions.	June 13, 2025 12:00 PM PST
Response to written questions to Respondents via PlanetBids .	June 18, 2025
Proposals due in PlanetBids .	July 11, 2025 at 2:00 PM PST
Selected Respondent(s) interviews held, if conducted, and conclude negotiations of contract terms with highest rated Respondent.	July 23, 2025 to July 25, 2025
Budget and Finance Committee	August 15, 2025
Sites Authority Board meeting to consider approval of contract.	August 22, 2025
Effective start date of the contract.	~ September 1, 2025



2. Under Section 3.0 of the RFP, as the second Paragraph, **ADD** the following:

“The Sites Authority expects that the successful firm will be able to provide one or multiple firm-employed leads that can manage various accounting functions at a strategic level. The firms may contract with subconsultants or subcontractors, as long as the leads are directing the Services.”

3. **Replace** the Exhibit B – Site Authority’s Standard Consulting Addendum A with the Exhibit B – Sites Authority’s Standard Consulting Addendum A attached here as Attachment 1.

INDEPENDENT ACCOUNTING SERVICES RFP 25-05

ADDENDUM NO. 2

ATTACHMENT 1

This page is intentionally left blank.



Sites Project Authority Financial Accounting Services Agreement - Addendum A

This Addendum A (the “**Addendum**”) serves as an addendum to the agreement (the “**Agreement**”) entered into by and between the SITES PROJECT AUTHORITY and _____, a firm providing Financial Accounting Services, effective on _____ (the “**Effective Date**”), and contains terms and conditions that are integral to the Agreement. In the event of a conflict between the terms and conditions of the Agreement and the terms and conditions of this Addendum, the latter shall control. SITES PROJECT AUTHORITY shall sometimes be referred to herein as “**Authority**”, and _____ shall sometimes be referred to herein as “**Consultant**”. Authority and Consultant may be individually referred to as a “**Party**” or collectively as the “**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; and
- C. Consultant desires to perform 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 Consultant agree as follows:

ARTICLE 1: SERVICES

- a. **Services.** The services to be provided for pursuant to the Agreement include Financial Accounting Services (“**Services**”). The “Services” shall mean all work to be performed by Consultant hereunder, as the same may be supplemented, expanded, reduced or otherwise modified from time to time pursuant to an Amendment described below. The Services shall be provided on a not-to-exceed basis. Statement of Standard Services which includes tasks, deliverables and assumptions is attached hereto as **Exhibit A** and incorporated herein.
- b. **Amendment.** From time to time, the Parties may make changes to or authorize certain work set forth in the Agreement, including, without limitation, issuing additional instructions,

requiring additional work, deleting work previously ordered, or increasing or decreasing the budget or time for performance, by executing one or more Amendments (each a “**Amendment**”). The provisions of this Agreement shall apply to all such Amendments. Authority shall be solely responsible for bearing the costs associated with preparing an Amendment.

c. **Project Management.**

- i. **Consultant’s Representative.** _____ (“**Consultant’s Representative**”) is hereby designated as the principal and representative of Consultant authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection herewith. Consultant shall not substitute Consultant’s Representative without first notifying Authority in writing of Consultant’s intent to do so.
- ii. **Authority’s Manager.** Shayleen O’Connell, Finance Manager (“**Authority’s Manager**”) is hereby designated to represent Authority and except as otherwise provided herein authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection therewith. Authority may substitute Authority’s Manager at any time upon written notice to Consultant.

ARTICLE 2: TERM OF AGREEMENT

- a. This Agreement shall become effective on the Effective Date, and shall remain in full force or effect until June 30, 2026, or until the earlier termination of this Agreement in the manner provided for herein (the “**Term**”).
- b. The Term of the Agreement 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) days prior to the expiration of the initial Term or any extended Term.
- c. Either Party may terminate the 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 the Agreement at any time prior to expiration of the Term without notice if the Consultant commits any material act of dishonesty, discloses confidential information, is guilty of gross carelessness or misconduct, or unjustifiably neglects their duties under the Agreement, commits any material breach of the terms of the 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 Consultant’s material breach of the Agreement, Authority shall only be liable to compensate Consultant for Services provided up to the date of Consultant’s receipt of the Authority’s notice of termination. Termination of the Agreement by Authority shall not affect Consultant’s obligations or liabilities to Authority other than Consultant’s obligation to continue to render the Services, which shall terminate.
- e. **Suspension of Services.** Authority may order Consultant in writing to suspend, delay or

interrupt performance of all or any part of the Services under the Agreement for the convenience of Authority, or for work stoppage beyond the control of Authority (“**Suspension Notice**”). If the performance of the Services is so suspended, delayed or interrupted, Authority shall pay Consultant for Services rendered prior to receipt of the Suspension Notice, and for reasonable charges for documenting the status of such Services as of the date of suspension, but no further payment shall be due unless and until Authority gives written notice that performance of such Services shall be resumed.

- f. **Agreement Closeout Memo.** Regardless of the grounds of termination, or whenever requested by Authority, Consultant shall immediately turn over to Authority’s Manager a completed closeout memorandum in a form that Authority shall furnish to Consultant (the “**Agreement Closeout Memo**”), and all of Authority’s property.
- g. **Assumption of Subconsultant Agreement.** In connection with the termination of the Agreement by either Party, the Authority shall have the right but not the obligation to either (i) assume a contract entered into by and between Consultant and any of its subconsultants and subcontractors in connection with the Agreement, or (ii) enter into a new contract directly with any such subconsultant or subcontractor. If Authority exercises its rights under this **Article 2.g**, Consultant shall, if and as applicable, assign such contracts with such subconsultants as the Authority specifies. Any contract between Consultant and any of its subconsultants and subcontractors entered into in connection with the Agreement shall make express reference to and allocation for Authority’s rights under this **Article 2.g**.

ARTICLE 3: RESPONSIBILITIES OF THE PARTIES

- a. Consultant shall determine the method, details, and means of performing the Services and otherwise upholding its obligations under this Agreement within the Schedule specified in **Article 2.a**.
- b. Consultant shall provide supplies necessary to perform the Services.
- c. Consultant’s performance of the Services shall be at the direction of the Authority’s Executive Director; however, all terms and conditions of this Agreement and any amendment hereto may be subject to approval of the Authority Board.
- d. Nothing contained in this Agreement shall limit the ability of Consultant 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 Consultant 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 Consultant’s performance of the Services to Authority as required under this Agreement or create a conflict of interest for Consultant. Consistent with the foregoing, Consultant 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.

- e. **Conflict of Interest Code Compliance.** In providing Services the Consultant shall act consistent with any determination made by the Authority's Executive Director or designated representative that the Agreement requires or permits Consultant to make a governmental decision as specified in 2 CCR 18700.3(a)(1), or serve in a staff capacity as specified in 2 CCR 18700.3(a)(2), and therefore confers on Consultant and select employees of Consultant the status of a "designated employee" or "Consultant" of the Authority for the purposes of Authority's Conflict of Interest Code and the California Political Reform Act. Consultant acknowledges that if the Authority through its Executive Director determines that some of the Consultant's key personnel are a "designated employee" or "Consultant", Consultant shall (i) acknowledge and accept said determination, (ii) become familiar with the terms of the Political Reform Act, the Authority's Conflict of Interest Code, and the obligations and limitations said laws impose upon Consultant, and (iii) not commence any Services provided for herein until Consultant and each of its designated employees has filed a Form 700 Statement of Economic Interest with the Authority. Authority reserves the right to reevaluate the determination under this **Article 3.a** from time to time, and Consultant acknowledges that said determination is subject to change if and as the Parties amend the Agreement and the nature of the Services. Consultant shall be solely responsible for bearing the costs associated with compliance with Authority's Conflict of Interest Code and the California Political Reform Act.
- f. **Disqualification.** Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a direct or indirect financial interest other than the compensation promised by this Agreement. Consultant will immediately advise Authority if Consultant learns of a financial interest of Consultant's during the term of this Agreement. Without limiting the foregoing, if Consultant's participation in another Authority project or a project being implemented by one of its members or a member to a Project Agreement Committee would create an actual or potential conflict of interest, in the opinion of the Authority, the Authority may disqualify Consultant from participation in such other project during the Term hereof.
- g. **Subject Matter Conflicts.** Consultant covenants and agrees that in the event Consultant is providing services to other clients whose interests are not aligned with those of the Authority, Consultant shall not advocate for such other clients in a manner that would result in the communication of such contradictory positions in any public forum.
- h. **Compliance with Laws.** Consultant's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions. Consultant shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, orders and Authority's rules, regulations and policies relating to the Services ("**Applicable Laws**"). Consultant certifies that its work in furtherance of the Services conforms to the requirements of this Agreement and all Applicable Laws. If Consultant is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Consultant shall maintain that license, certification, registration or other similar requirement throughout the term of this

contract. Without limiting the foregoing, Applicable Laws shall include, without limitation, those that are specifically incorporated into any agreement between Authority and a state or federal agency pertaining to the Services, which agency agreement and any amendments thereto the Authority will provide to Consultant following their execution.

- i. **Safety.** Without limiting any term or condition of **Article 3.h**, Consultant warrants that all work done under the Agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including, but not limited to, Cal/OSHA regulations. Consultant shall be solely and exclusively responsible for its compliance, and compliance by its agents, employees, and subcontractors, with all safety requirements. The Authority reserves the right to require Consultant to develop and submit to the Authority a fieldwork safety plan; provided, however, that Authority will not review such plan for quality, sufficiency, legal compliance or any other matters.
- j. **Books and Records.** During the term of the Agreement, Consultant shall keep and preserve accurate and detailed records of all work product, ledgers, books of account, invoices, vouchers, cancelled checks, and other documents or records evidencing or relating to the Services and disbursements charged to Authority under the Agreement (collectively, “**Books and Records**”) in the manner required under the Authority’s Records Keeping Policy. Further, Consultant shall keep and shall preserve accurate and detailed records of all Books and Records for no less than seven (7) years after final payment for all Services under the Agreement. Any and all Books and Records must be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the Services provided by Consultant under the Agreement. During the retention period, Consultant shall give Authority and its agents, during normal business hours, access to such Books and Records. Authority and its agents shall have the right to make copies of any of the said Books and Records.
- k. The Consultant may contract with a subconsultant or subcontractor in performing Services of this Agreement. In no event shall any subconsultant or subcontractor perform the Services of key staff or personnel, as described and defined herein. Subconsultants and subcontractors shall be directed and overseen by the Consultant’s lead for purposes of performing under the Agreement. Any subconsultant or subcontractor that will provide Services shall be listed in **Exhibit B** with a corresponding Hourly Rate Schedule. For purposes of the Agreement, a subconsultant or subcontractor shall mean, without exception, any party retained by Consultant to perform any portion of the Services, and such retention by Consultant shall in all cases be subject to the terms and conditions of this **Article 3.k**. Consultant shall not commission the services of any new or additional subconsultant or subcontractor, or any key staff or personnel (as identified in the Statement of Qualifications (SOQ) or Proposal submitted in connection with the associated Request for Qualifications (RFQ) or Request for Proposal (RFP)) without the approval of the Authority, which approval the Authority may withhold or condition in its reasonable discretion to ensure adherence to the terms and conditions of the Agreement, and which approval shall, if granted, be memorialized in writing in the form of an email response. Consultant, any subconsultants and subcontractors, and each of their employees performing the Services shall undergo the process provided for in the Authority’s New Consultant Staff

Addition Procedure. Consultant shall determine the method, details, and means of performing the Services and may at its own cost, employ such employees, subconsultants or subcontractors as it deems necessary to perform the Services. Authority may not control, direct or supervise Consultant's employees, subconsultants or subcontractors in the performance of the Services, and Authority shall not be liable for any expenses or costs relating to Consultant's employees, subconsultants or subcontractors unless Authority has agreed in writing, prior to the time such expenses or costs are incurred, to reimburse Consultant for such expenses. Consultant shall ensure that any contract entered into with any subconsultant or subcontractor is expressly subject to all applicable terms and conditions of the Agreement, which applicable terms and conditions include, without limitation and whether or not otherwise specified herein, those governing insurance, applicable laws, indemnification, ownership of work product, confidentiality and conflicts of interest.

1. The Authority established the 2020 Strategic Plan to reflect the vision, mission, values, and goals of the organization and to serve as a guide for development of the project. In performing the Services, the Consultant agrees to adhere to the following as provide in the 2020 Strategic Plan:
 - i. Abide by and serve to represent the values of the Authority in the performance of the Services and in any representation of the Project by the Consultant outside of the direct performance of the Services.
 - ii. Proactively support the Authority in meeting its Strategic Plan goals and objectives in a manner that contributes to the full and complete achievement of the expected outcomes for the strategic goal areas of affordability, permissibility, buildability and organization effectiveness as described in the 2020 Strategic Plan. The extent to which the Consultant is expected to make such contribution is limited to be within the scope of the Services being performed but not limited by the specifications of this Agreement. For example, the Authority expects in supporting the development of the Project, Consultant shall continuously seek out and identify approaches to improve affordability, permissibility, and buildability of the project to ensure the Authority's performance objectives for the constructed facilities are completely satisfied.
 - iii. Manage Consultant's delivery of Services in a manner that ensures a successful coordination and most efficient delivery of project deliverables across all service areas and consultants performing Services on the Project. The intent is for all consultants performing work on the Project to operate as one team of professionals all aiming together to achieve the Authority's Strategic Plan goals and objectives.

ARTICLE 4: INDEPENDENT CONTRACTOR STATUS

- a. **Status as Independent Contractor.** Consultant will act as an independent contractor of the Authority in the performance of the Services under the Agreement. Consultant will be responsible for the payment of all applicable federal, state, and local taxes arising out of or related to Consultant's Services for the Authority. Consultant 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 for which Consultant is responsible. Nothing contained in the Agreement shall constitute or be deemed to create between the Authority and Consultant the relationship of employer/employee, it being expressly understood and agreed that the only relationship between Consultant and Authority created herein shall be that of an independent contractor. Without limiting the foregoing, Consultant 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.** Consultant shall not employ or retain independent consultants, associates, or subcontractors to assist in the performance of Consultant's duties hereunder without the prior written consent of the Authority. As to any such subcontract to which Authority has not granted its express prior written consent, Authority shall not have any obligation to recognize, accept, compensate for, or otherwise assume any responsibility for it or for any work performed pursuant to it.

ARTICLE 5: INDEMNITY

- a. **Consultant Indemnification.** Consultant shall indemnify and hold the Authority and its members, and each of their officers, directors, employees, managers, agents, officials, representatives, affiliates, subsidiaries, predecessors, successors, and assigns (collectively, "**Indemnitees**"), from and against any and all claims, demands, liabilities, damages, losses, liens, obligations, costs and expenses, including without limitation reasonable attorneys' fees and expenses ("**Claims**") to the extent arising out of or related to acts or omissions of the Consultant, its employees, subconsultants, subcontractors, managers, agents or representatives in performing the Services. Consultant's liability under this **Article 5** is limited to the amounts recovered from the insurance that is provided for in **Article 6**.
- b. **Authority Indemnification.** Authority shall indemnify and hold Consultant and its officers, directors, employees, managers, and agents harmless from and against any Claims to the extent arising out of related to acts or omissions of the Authority in performing its obligations as provided under the Agreement.
- c. **Limitation on Damages.** In no event shall either Party be liable to the other Party for the payment of any consequential (including lost profits), punitive or exemplary damages.

ARTICLE 6: INSURANCE

- a. All insurance shall be maintained with insurance carriers licensed and approved to do business in California, having a general policyholders rating of not less than an A and financial rating of not less than VII in the most current A.M. Best's Key Rating Guide.
- b. Consultant shall maintain the following insurance:
 - i. **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 \$2,000,000 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 Consultant, Commercial General Liability policy shall be primary to similar insurance of the Authority and shall waive subrogation against Authority.

- ii. **Professional Liability Insurance.** If Authority determines in its reasonable discretion and consistent with industry standards that Consultant should obtain and maintain professional liability insurance, then Consultant shall so obtain and maintain a \$1,000,000 per occurrence or claim and \$2,000,000 annual aggregate limit professional liability insurance policy, with prior acts coverage sufficient to cover the services performed under the Agreement.
- iii. **Commercial Automobile Liability Insurance.** Consultant shall maintain Business Automobile liability insurance 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 together with an equivalent rider to the Commercial General Liability Insurance required in **Article 6.b.i** above for hired and non-owned automobiles.
- iv. **Workers Compensation Insurance.** When applicable, Consultant shall maintain Workers Compensation Insurance, including Employer's Liability, at a minimum limit acceptable to the Parties for all persons whom Consultant may employ in performing the Services. Such insurance shall be in strict accordance with the requirements of the most current and applicable Workers Compensation Insurance Laws in effect from time to time. Consultant shall furnish to Authority confirmation of Consultant's experience modification rate, which the Authority may request from time to time.
- v. **Specialty Insurance.** Authority may from time to time require additional coverage not specifically identified herein as the Authority determines is necessary or appropriate based on the nature of the Services. Such coverage could include, for example, aircraft liability coverage, pollution liability coverage, and marine liability coverage, in such amounts as the Authority may require in its reasonable discretion.
- vi. **Subconsultant and Subcontractor Insurance.** Consultant shall not allow any subconsultants or subcontractors to commence or perform any Services until Consultant obtains from such subconsultant or subcontractor the same insurance required to be carried by Consultant under this **Article 6**, or such additional coverage that the

Authority may require of the subconsultant or subcontractor, or in such other amounts as Authority might agree to or require in Authority's discretion. Any such modification to a subconsultant's or subcontractor's insurance requirements shall be reflected in a written instrument signed by Authority's Manager. Consultant shall also obtain from any subconsultant or subcontractor an indemnification in form and substance identical to the indemnification set forth in **Article 5** for the benefit of Consultant and the Authority. Upon request, Consultant shall deliver to Authority certificates and endorsements issued by each subconsultant's or subcontractor's insurance carrier applicable to Authority showing such policies in force for the specified period, but Authority has the right to require subcontractors or subconsultants to submit for Authority's review certified policies.

- c. **Evidence of Insurance.** As evidence of specified insurance coverage, Consultant shall deliver to Authority's Manager insurance industry standard ACORD form or equivalent certificates and endorsements issued by Consultant's insurance carrier applicable to Authority showing such policies in force for the specified period. Such evidence shall be delivered to Authority on or before the Effective Date. Each policy and certificate shall be subject to reasonable approval by Authority and shall provide that such policy shall not be subject to cancellation without 30 days notice in writing to be delivered by certified mail to Authority at the address set forth in **Article 11.j**. Should any policy expire or be canceled before the expiration of the Term, or such later date as necessary pursuant to a Contractor's post-Term obligations to Authority, and Consultant fails immediately to procure other insurance as specified, Authority reserves the right, but shall have no obligation, to procure such insurance and to deduct the cost thereof from any sum due Consultant under the Agreement.
- d. All such policies specified in the **Article 6** 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.
- e. Consultant may request in writing to Authority that Authority waive insurance requirements or liability amounts set forth herein. Authority may grant or deny any such requests in its sole discretion.
- f. Authority, and its directors, officers, agents and authorized managers 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 Coverages specified in **Articles 6.b.i, 6.b.iii, 6.b.v and 6.b.vi**.

ARTICLE 7: CONFIDENTIALITY AND PROPRIETARY INFORMATION

- a. Consultant and its subconsultants and subcontractors acknowledge that notwithstanding Authority's status as a governmental entity, Authority may nevertheless be authorized from time to time under Applicable Laws to assert privilege and/or claims of confidentiality to select information exchanged between the Parties or produced in connection with or as a result of this Agreement ("**Confidential Information**"). Therefore, Consultant shall, and shall require that

its subconsultants and subcontractors, treat all information exchanged between the Parties or produced in connection with or as a result of this Agreement as Confidential Information, shall prepare, handle, store and transmit all such information in accordance with Authority's labeling and distribution policies, shall take all reasonably appropriate steps to safeguard Confidential Information and to protect it against disclosure, misuse, loss and theft, and shall not directly or indirectly, use, reveal, publish or disclose any such information without Authority's prior written consent. Consultant agrees to abide by the confidentiality terms of this Agreement and acknowledges that they are designed to protect Authority's and the public's vital interests. Consultant further acknowledges that Authority will treat any violation of the confidentiality terms of this Agreement as a matter of the highest importance, and will vigorously pursue any and all legal and equitable rights and remedies to protect its interest hereunder. This could include a civil action leading to money damages and/or criminal prosecution against Consultant. Consultant's confidentiality obligations shall survive expiration or earlier termination of this Agreement.

- b. The product of all Services performed under this Agreement (for purposes of this **Article 7**, the "**Work**"), including without limitation all notes, reports, documentation, work-in-progress and deliverables and other documents prepared by Consultant or any of its managers, agents, employees, representatives in the performance of the Services or otherwise prepared for Authority under this Agreement shall be a "work made for hire" and from its inception shall irrevocably become and remain the sole property of the Authority. If any Work is deemed for any reason not to be a work made for hire, Consultant hereby assigns all right, title and interest in the copyright or other ownership claim in the Work, and all extensions and renewals thereof, to Authority, and agrees to provide all assistance reasonably requested by Authority in the establishment, preservation and enforcement of its copyright or other ownership claim in the Work. Consultant retains no right to use the Work and agrees not to challenge the validity of the Authority's ownership in the Work. All Work and any Confidential Information shall be conspicuously marked "DRAFT" or "PRIVILEGED AND CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION AND/OR ATTORNEY WORK PRODUCT", or "INTERNAL DELIBERATIVE PROCESS DOCUMENTS", as applicable, unless requested to do otherwise by Authority. In addition to the rights granted under this **Article 7.b**, the Consultant shall maintain all rights, title and interest in Consultant Property. The term "Consultant Property" shall mean all pre-existing material, including, but not limited to, any products, software, materials and methodologies proprietary to Consultant or provided by Consultant or its suppliers and any derivative works, trade secrets, know-how, methodologies and processes related to Consultant's products or services, all of which shall remain the sole and exclusive property of Consultant or its suppliers. Subject to the terms of the Agreement, Consultant grants to Authority a non-exclusive, non-transferable, irrevocable license to use the Consultant Property contained in the deliverables provided hereunder for the purposes of the Agreement.
- c. Consultant agrees that, upon termination of the Agreement with Authority, voluntary or otherwise, Consultant shall return all Authority property, including all Confidential Information, including all copies thereof, then in its or its employees' possession or control; provided, however, that Consultant may retain one electronic copy of information the Consultant relied



upon to perform the Services, which copy shall remain subject to the terms and conditions of **Article 7.a.**

- d. The foregoing notwithstanding, neither party shall be liable for disclosure or use of Confidential Information which: (1) is disclosed with the prior written approval of the disclosing party; or (2) is required by applicable law or court or regulatory order to be disclosed.

ARTICLE 8: FORCE MAJEURE

- a. 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 9: COMPENSATION

- a. **Compensation.** Authority shall pay Consultant compensation for the Services as follows:
 - i. **Services Per Budget.** Consultant's total compensation for the Services of this Agreement ("**Budget**") is provided in **Exhibit B**.
 - ii. **Services Exceeding Budget.** Consultant shall not perform the Services in excess of the Budget or the amount allocated for each individual task identified in this Agreement without the prior written approval of the Authority's Manager, as reflected in an Amendment. Consultant shall not be entitled to compensation in excess of the Budget, as might be amended from time to time in the Authority's reasonable discretion.
- i. **Fees Paid by Authority.** Except as specifically provided in this Agreement, Authority shall pay the cost of charges not specifically covered by the terms of the Agreement which are required to use or apply, but not perform or produce, the Services or work product.
- ii. **Rates.** The hourly rates ("**Rates**") shall remain in effect for twelve months from the Effective Date, or until such later date as the Services are completed ("**Rate Change Date**"). After the Rate Change Date, Consultant shall not increase the Rates without at least 30 days written notice from Consultant to Authority, and there must be at least twelve months between increases in the Rates. If the Authority approves the Rates increase, the new Rates shall apply only to that portion of Services remaining to be completed after the Rate Change Date.

b. Application for Payments.

- i. **Progress Payments.** Consultant shall submit progress payments to the Authority by the 15th day of each month that include an invoice for the previous month's expenses the contains a brief description of the firm's activities during the invoiced month, the actual hours worked per task along with the names and rate(s) of the person(s) performing the Services, supporting documentation, and a list of personnel with a billing rate equal to or greater than \$200 per hour and a description of each of their monthly accomplishments. The reasonable cost to prepare the invoice and Invoice Cover Letter shall be reimbursable to Consultant. Each invoice and Invoice Cover Letter shall be submitted electronically to invoices@sitesproject.org. Authority shall pay the amount requested and not disputed by Authority no later than thirty (30) days following Authority's receipt of the Application for Payment. An Application for Payment without proper supporting documentation is subject to delays or non-payment until the Authority receives proper supporting documentation.

Reimbursable expenses include both in-house and outside third-party expenses associated with printing, photography, production, mailing, delivery services, travel and mileage. Such expenses shall be billed at actual cost, with no overhead or profit factor. For all reimbursable expenses, invoices must include supporting documentation with descriptive information so that such expenses are separately identified.

Consultant's Project Manager shall sign and date the standard monthly Invoice Cover Letter to certify that the invoice has been reviewed and that (i) the labor, service and materials, if any, covered by the invoice have actually been furnished and performed, (ii) any liens which arise as a result of applicable law have been released or waived to the extent of the invoice and (iii) all subconsultants, subcontractors, suppliers or other persons performing work for Consultant have been paid in full for any labor, materials or services included in the invoice.

- ii. **Progress Reporting.** If requested by the Authority, Consultant may be required to provide task and subtask level details of the principle accomplishments, including, without limitation, task progress figures and descriptions, cost and staff hour forecasts, scheduled activity status updates, and an explanation of future work. Preliminary cost data may be provided by Consultant with an update made at the time of invoicing. The reasonable cost to prepare said descriptions shall be a reimbursable to Consultant.
- iii. **Final Payment.** In addition to the Agreement Closeout Memo and other deliverables due in connection with termination or expiration of the Agreement pursuant to **Article 2**, Consultant shall deliver and assign to Authority, prior to receiving final payment for the performance of the Services, originals or, if not available, copies of any and all data, reports and other work product relating to the Services, all such work product being a "work made for hire" or its alternative as provided in **Article 7**. The acceptance by Consultant of final payment shall constitute a full and complete release of Authority from any and all claims, demands and causes of action whatsoever which Consultant,

including Consultant's successors or assigns, has or may have against Authority under the Agreement. However, except for Consultant's obligation to continue to render the Services, the making of such final payment shall not be deemed to be a release of Consultant from Consultant's obligations or liabilities under the Agreement. Consultant's other obligations and liabilities, including without limitation, the obligations set forth in **Articles 5 and 7**, shall survive final payment as well as the expiration or earlier termination of the Agreement.

ARTICLE 10: DISPUTE RESOLUTION

- a. **Meet and Confer.** The Parties agree to undertake good faith efforts to resolve any dispute arising under or in connection with the 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 the Agreement, Consultant's principal and the Authority's board chair or his/her authorized representative (who shall be the Executive Director of the Authority or a member of the Authority Board) shall meet and confer in an effort to resolve any such dispute. If such efforts between Consultant'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 the Agreement or as otherwise exist at law or in equity. No other means of dispute resolution, including arbitration and litigation, shall be available to the Parties unless they have exhausted the process provided for in this **Article 10.a.**
- b. **Mediation.** After efforts in **Article 10.a** are exhausted, the Parties may agree 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. The arbitrator's decision shall be final and binding on both Parties. Costs of arbitration, including attorney fees, will be allocated by the arbitrator.

ARTICLE 11: MISCELLANEOUS

- a. **Governing Law.** The Agreement shall be governed by the laws of the State of California. Any action instituted under the Agreement shall be brought only in the Colusa County, California, Superior Court.
- b. **Amendment.** The Agreement shall not be amended except by written agreement signed by both Parties.
- c. **Successor and Assigns.** The 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, managers, agents and heirs of each

Party hereto.

- d. **Assignments.** The Agreement is not assignable by Consultant without the consent of the Authority, which consent the Authority may grant or withhold for any or no reason in its sole discretion. Any such purported assignment without prior written consent by the Authority 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 the Agreement.
- e. **No Third-Party Beneficiaries.** Except for rights of indemnitees specifically referenced in the Agreement, no provision of the Agreement is intended to create or grant claims or rights of action against Authority for the benefit of any third parties.
- f. **Integration.** The Agreement is intended to be the final, complete, and exclusive statement of the terms of Consultant's terms of service to the Authority. The 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 Consultant 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 Consultant and are inconsistent with the terms of the Agreement, the provisions of the Agreement shall control.
- g. **Waiver.** A waiver by either the Authority or Consultant of any breach of the 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 the Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby and shall be and remain valid, binding and enforceable to the fullest extent permitted by law.
- i. **Counterparts.** The Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.
- j. **Notices.** All notices, requests, demands and other communications under the Agreement shall be in writing and shall be deemed duly given **(i)** if delivered by hand and actually received by the Party addressee, on the date of such receipt, or **(ii)** if mailed by domestic certified or registered mail, postage prepaid, on the third business day after the date postmarked or **(iii)** if sent by overnight courier of recognized standing, on the date of such receipt. The foregoing notwithstanding, the Parties agree that day-to-day communications concerning routine matters under the Agreement should be communicated electronically using such e-mail addresses as the Parties may provide to one another from time to time. Addresses for notice to the Parties are as shown below, or as subsequently modified by written notice given pursuant to this **Article 11.j.**



Sites Authority:

Sites Project Authority
Attn: Contract Administrator
P.O. Box 517 (if by USPS)
122 Old Hwy 99W (if by courier)
Maxwell, CA 95955
Telephone: 530-438-2309
Email: boardclerk@sitesproject.org

Consultant's Representative:

Attn: _____

Telephone: _____
Email: _____

- 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 the Agreement.
- l. **Attorney's Fees.** In the event of litigation for breach of the Agreement, or arising out of or related to the 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 the Agreement.
- n. **Electronic Communications.** During the course of the Agreement, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Contractor and the Authority acknowledge that the Internet is routinely victimized by the creation and dissemination of so-called viruses, or similar destructive electronic programs. Contractor and Authority view the issues raised by these viruses seriously and each has invested in commercially available document and e-mail scanning software that identifies and rejects files containing known viruses. Contractor agrees to update its system with its software vendor's most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the Parties may occasionally reject a communication. The Parties acknowledge that this occurrence is to be expected as part of the ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither Party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to



system. Although each Party will use commercially reasonable efforts to assure that its communications are virus free, neither Party warrants that its documents will be virus free. Each Party agrees to advise the other if it discovers a virus in its system that may have been communicated to the other Party.

- o. **No Partnership.** The provisions of the Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any other similar arrangement between the parties to the Agreement. Consultant's only relationship with Authority is that of an independent contractor.
- p. **Further Assurances.** The Parties shall execute such further documents and take such further actions as may be necessary to fully perform under the Agreement.
- q. **Remedies.** Any remedies reserved to the Parties in the Agreement shall not be exclusive remedies.
- r. **Covenant Against Contingent Fees.** Consultant agrees that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure the Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of the Agreement. In the event of a breach or violation of this covenant, Authority shall have the right to terminate the Agreement pursuant to **Article 2**, or, in its discretion, to deduct from Consultant's compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.
- s. **Entire Agreement.** The Agreement, including this Addendum, together with any Exhibits, SOQ or RFQ, RFP or Proposal, represents and contains the entire agreement and understanding between the Parties relating to the Services, and all previous statements or understandings, whether express or implied, oral or written, relating to those subject matters are fully and completely extinguished and superseded by the Agreement.
- t. **Authority to Enter.** The Parties each warrant and represent that they each have the authority to execute this Addendum, and that the signatories below are authorized to sign this Addendum on behalf of the Parties.

CONSULTANT

By: _____

Title: _____

Date: _____

AUTHORITY

By: _____

Title: _____

Date: _____