



Meeting: **Joint Reservoir Committee & Authority Board**
Agenda Item 3.3

September 22, 2023

Subject: **Draft Benefits & Obligations (B&O) Contract**

Requested Action:

Reservoir Committee and Authority Board receive status update on the negotiation of the Benefits & Obligations Contract with Participants. Review and comment on the Participant B&O Contract comments that would constitute change to the Board adopted Guiding Principles and Preliminary Terms.

Detailed Description/Background:

Funding the Sites Reservoir Project (Project) beyond the planning phase and into detailed design, construction and operation (Phase 3/4/5) will require developing a "Sites Reservoir Benefits & Obligations Contract" (Contract) which will be the successor project agreement to the "2019 Phase 2 Reservoir Project Agreement" (currently on Amendment 3). The Contract will also serve as the long-term commitment of the Sites Authority to provide the Participant with its capacity interest in the Sites Reservoir water storage system. It will represent what each Participant will need to take to its Board of Directors to secure the necessary authority committing to its capacity interest in the Project. Executing this Contract will be expected following the receipt of a water right decision and securing critical permits. Staff is targeting to prepare a substantially final Contract, supporting document and policies, and substantially final WIFIA loan documents by mid-2024.

Staff received feedback from the Reservoir Committee (RC) and the Authority Board (AB) in June and August related to the Contract kickoff process and the Project's governance documents, respectively. Along with the Contract, updated versions of the Joint Powers Agreement and the Bylaws will be the means of codifying the governance structure for Phase 3/4/5. Staff has drafted Draft 2 of the Contract to include the updated Joint Powers Agreement and Bylaws.

During July and August, staff conducted small group meetings with Participants to discuss initial feedback on Draft 1 of the Contract and several comments were received from individual Participants. Staff met with the WIFIA Ad Hoc Subcommittee in August to discuss the approach for resolving the key business issues identified by Participant's comments. The language in Draft 2 reflects the Subcommittee's concurrence with the approach to resolving the business issues.

A few comments would require changes to the policy described in the Final Adopted Guiding Principles. Board feedback on whether Staff should commit effort to further explore these changes would be of assistance. These comments are as follows:

- How unused conveyance capacity will be allocated between Participants.
- Liability of other participants in the event of default by another participant.
- Obligations of self-funding participants with respect to the liquidity reserve.

Staff conducted follow-up meetings with Participants who provided comments on Draft 1 to confirm responses to comments. Additionally, staff will be holding a follow up workshop with Participants to discuss Draft 2.

Participant review of Draft 2 has been initiated. Staff requests that Participants focus review of Draft 2 on responses to comments received on Draft 1, identify any new areas of concern, as well as provide a review of the updated Bylaws and amended Joint Powers Agreement for consistency with your understanding of the governance approach that has been reviewed with the Board.

Staff is taking a “building blocks” approach to Contract development to avoid last-minute surprises or unaddressed needs in completing the Contract. This approach requires that each Participant is provided ample opportunity to provide input and requires active and constructive input from all Participants as progress is made.

Operations Plan:

The draft Contract includes general provisions related to Project operations that will be further described in the Operations Plan, Version 2.0 (refer to Agenda Item 03-04).

Prior Action:

August 2023 - Update of amendments to Joint Powers Agreement and updated Bylaws being prepared, which with the Benefits & Obligations Contract will codify the governance structure for Phase 3/4/5.

Fiscal Impact/Funding Source:

The Amendment 3 Work Plan includes sufficient budget to cover required resources and activities to develop the Sites Reservoir Benefits & Obligations Contract. The drafting of the Joint Powers Agreement and Bylaws was anticipated in General Counsel’s (Young Wooldridge) Amendment 3 scope with \$100,000 of the contract authority being allocated which is sufficient to cover the costs.

Staff Contact: JP Robinette (Contract); Jerry Brown/Alan Doud (Joint Powers Agreement/Bylaws); Ali Forsythe (Operations)

Primary Service Provider: Nossaman/Brown & Caldwell (Contract); Young Wooldridge (Joint Powers Agreement/Bylaws); MBK Engineers (Operations)

Attachments:

None.