



**Sites Project Authority  
Request for Proposals  
Construction Legal Services  
Civil Works and Environmental Mitigation  
RFP No. 24-01**

**January 5, 2024**

**Proposal Submittal Deadline  
February 2, 2024  
Noon Pacific Standard Time (PST)**

**Form of Submission  
Electronic Submittal Only**  
[jtrapasso@sitesproject.org](mailto:jtrapasso@sitesproject.org)

**Contact Person**  
Joe Trapasso  
Program Operations Manager  
Sites Reservoir Project  
[jtrapasso@sitesproject.org](mailto:jtrapasso@sitesproject.org)

## **1.0 Overview/Background**

The Sites Project Authority (Sites Authority) is soliciting proposals from firms (each a Respondent) to provide legal counsel for procurement, contract development and negotiations, and construction/start-up phase activities related to the Sites Reservoir Project (Project). Due to the breadth of required Civil Works and Environmental Mitigation Legal Services, the complexity of the requested services, and the anticipated schedule, this Request for Proposals (RFP) includes two separate scopes of services. The detailed scope of legal services is provided in Section 2.0 - Anticipated Scope of Work. Qualified firms are requested to submit a proposal in response to this RFP. Respondents may choose to submit on one or both legal services.

The Sites Authority intends to award a contract to either a single firm or two different firms judged best-qualified that demonstrates extensive experience with providing legal support for procurement phase, contract development and negotiations, construction/start-up phase activities, and environmental mitigation services tailored to the Sites Authority's current and future needs, which is primarily focused on the development and operation of an off-stream surface water storage project. The Sites Authority further expects that the successful firm(s) will be a licensed, qualified, competent, knowledgeable, and experienced firm(s) that will provide the required services and administer the duties and responsibilities set forth in this RFP (including appendices) and in compliance with all applicable laws, regulations, policies, and procedures.

### **1.1 The Project**

The Project is located approximately 10 miles west of the Town of Maxwell in rural Glenn, Colusa, and Yolo counties. This project will be up to 1.5 million acre-foot off-stream surface water storage facility. It will divert stormwater flows from the Sacramento River, after all other water rights and regulatory requirements are met, for subsequent release for environmental use and use by California communities, farms and businesses when called upon, primarily planned for use in drier years. It will be the State's 7<sup>th</sup> largest reservoir when built and would increase surface water storage in the Sacramento Valley in the range of 15%. For additional Project location and other Project information please visit the Project website at [sitesproject.org](https://sitesproject.org).

### **1.1.1 Project Governing Structure and Support Services**

The Sites Authority is a joint exercise of powers authority formed on August 26, 2010, pursuant to Government Code Section 6500 et seq. The Sites Authority adopted its 2020 Strategic Plan identifying the vision, mission, values and goals (See Attachment A) which the Consultant is expected to uphold in performing the requested services.

The Sites Authority is governed by a 9-voting member Board of Directors that includes several local water agencies and both Colusa and Glenn counties. The Joint Powers Agreement is available online: <https://sitesproject.org/wp-content/uploads/2022/09/Sites-Joint-Powers-Agreement-1.pdf> . The Sites Authority receives advisory support from the 22 local water agencies located statewide (Reservoir Committee) who have entered into Project agreements to advance the Project. The Reservoir Committee's Bylaws are available online: <https://sitesproject.org/wp-content/uploads/2022/09/SPA-Phase-2-Bylaws2018Sep17Board-Approvedv2.pdf> . A listing of Authority Board and Reservoir Committee agencies is presented in Attachment B.

The legal services contract(s) will be between the firm(s) and the Sites Authority. The Sites Authority does not currently have employees and contracts for all services related to the development of the Project. The Sites Authority's Executive Director reports to the Authority Board and is responsible for the development of the Project. The construction procurement functions are the responsibility of the Sites Authority's Agent in charge of Engineering and Construction Management. An organization chart that illustrates the reporting structure and the responsibility among the Project team members is included as Attachment C.

### **1.1.2 Coordination with State and Federal Project Operations**

The Sites Authority is working in partnership with both the U.S. Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR). The Sites Reservoir is to be operated in a manner that does not harm their operations and achieves shared goals with mutual benefit.

When operated in a cooperative manner with other Northern California reservoirs such as Shasta, Oroville and Folsom – which function as the backbone to both the Central Valley Project and the State Water Project – Sites Reservoir will greatly increase the flexibility, reliability and resiliency of statewide water supplies in drier periods and improve management of water for ecosystem purposes.

With Sites Reservoir, California will have an asset that enhances statewide water supplies and provides a water management asset specifically dedicated for the environment. It provides federal and state resource agencies with a dedicated and reliable supply of water that can be managed to provide environmental benefits, especially during drier years. The Sites Authority is developing Contracts for Administration of Public Benefits with the State to secure the State's public benefits in the Project associated with the Proposition 1 Storage Program<sup>1</sup> funding. Reclamation is participating in the Project under the Water Infrastructure Improvements for the Nation (WIIN) Act through a Partnership Agreement.

### **1.1.3 Current Status**

The Sites Authority has spent the past couple of years receiving partner feedback and has made significant adjustments to arrive at an approved Project that is affordable, buildable, and permissible for all of California.

The Project recently received the Governor's certification for judicial streamlining under Senate Bill (SB) 149. The Sites Authority recently approved the Project and certified the Environmental Impact Report and related items. The environmental review was conducted jointly with Reclamation and their Record of Decision is expected by summer 2024. The Project is embarking on securing various agreements and permits over the next 12 to 18 months. This includes a new water right to be issued by the State Water Resources Control Board which is in process.

The Reservoir Committee has identified that a water right and critical permits are necessary to have in hand before they will go to their Boards and seek authorization to sign the Benefits and Obligations Contracts. The State and Federal governments have conditions that precede their respective actions. The current plan is to secure these permits and agreements by spring 2025 and after about a six month process for contracts execution, the Project would be ready to initiate construction in early 2026. The Sites Authority recently adopted an initial overall project schedule with a 7-year term which would put the first fill of the reservoir to be initiated in fall 2032.

In July 2022, the Sites Authority adopted its Contracting Strategy to define the Project construction packages and associated delivery methods. The adopted Contracting Strategy is included in Attachment D.

The adopted Contracting Strategy informed development of the Sites Authority's overall Program Baseline Schedule which is included in Attachment E.

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<sup>1</sup> The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Water Code § 79700-79798) known as Proposition 1, designated \$2.7 billion dollars for investment in public benefits associated with new water storage projects. The California Water Commission has oversight over the funding allocated in Proposition 1.

All services performed on the Project are through consultants and contractors. As part of the preparations for the construction period, the Sites Authority is evaluating organization structures and governance. The Authority Board will own and operate the Project and the Reservoir Committee will be delegated decision making authority for certain aspects of the Project.

Legal services for the Project are currently provided through five firms. Young Wooldridge LLP serves as General Counsel to the Sites Authority. Currently, each of the specialty legal services report to the Authority's Agent responsible for that portion of the project. However, the Sites Authority coordinated legal services and is contemplating transitioning to a model that brings all of the specialty legal services under the direction of the General Counsel.

## **1.2 Required Minimum Qualifications**

1. Licensed to practice in California. All attorneys in the firm who will provide services must be members in good standing of the State Bar of California.
2. Understanding of and experience with developing and implementing contracts for Construction Delivery methods (Design/Bid/Build, Construction Manager at Risk (CMAR), Design Build (conventional, progressive or target price), Design-Build-Operate) used on major water, wastewater, and environmental public works projects implemented in the State of California. Including familiarity with industry guides (e.g., Water Collaborative Delivery Association (WCDA) and Design Build Institute of America (DBIA).
3. Understanding of and experience with California public works contracting laws and specifically as those laws apply to the Sites Project Authority and implementation of the Sites Reservoir Project.
4. Experience in developing, negotiating, and implementing Project Labor Agreements (PLAs) for major water and/or wastewater projects.
5. Experience on development of environmental mitigation contracts.
6. Experience on defending construction claims
7. Experience with California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance on major public works projects in California.
8. Cultural and historic resource issues, including tribal consultation for CEQA pursuant to AB52.
9. Permitting and regulatory compliance under Endangered Species Act (ESA)/ California Endangered Species Act (CESA), Section 404/408, Section 106 and other natural resources laws and regulations.
10. Culture fit with the Sites Authority's December 2020 Strategic Plan (See Attachment A).
11. Understanding of legal issues and compliance requirements related to California and Federal funding programs such as The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1), Water Infrastructure Finance and Innovation Act (WIFIA), United States Department of Agriculture (USDA) Rural Development Loan, and Reclamation led programs.

## 2.0 Anticipated Scope of Work

The scope of work will be primarily focused on legal services providing advice and assistance related to the procurement and development of the Sites Reservoir and all associated infrastructure, which is anticipated to contract under delivery methods, including, but not limited to, CMAR, design build, and design bid build for delivery and construction of physical infrastructure. The scope of work will also include supporting the Sites Authority with development and implementation of a Project Labor Agreement. Additional legal services and opinions may also be requested as they relate to contractual coordination between the various Project components, CEQA compliance, requirements established as a condition to project financing and funding including but not limited to Proposition 1, WIFIA, and USDA Rural Development, and consistency with public works contracting and construction delivery laws in California. The legal support for procurement, contract development and negotiations and construction/start-up phase support will be required to work with the Sites Authority legal counsels as needed.

Specific tasks and budgets will be developed, but are expected to include:

### **For Civil Works**

- Advise the Sites Authority on various considerations related to the procurement of contractors, including but not limited to interpretation of authorizing statute(s).
- Assist with procurement documents (RFQ and RFP).
- Assist with the development of forms of contract (Pre-construction and Construction).
- Develop a PLA and support the Sites Authority with implementation
- Assist with negotiation of Pre-construction contracts for the Reservoir Package, Maxwell-Sites Pumping and Generating Package and others.
- Assist with negotiations of Construction contracts for the Reservoir Package, Maxwell-Sites Generating Package, and others.
- Assist with negotiations of guaranteed maximum price (GMP) packages under the Construction contracts.
- Assist with contract interpretation, as requested, during Project implementation.
- At the request and sole discretion of the Sites Authority, assist with the evaluation and negotiation of claims and represent the Sites Authority in design and construction dispute resolution proceedings and litigation.

**For Environmental Mitigation**

- Assist with negotiation of Pre-construction contracts for the Environmental Mitigation Package(s).
- Assist with negotiations of Construction contracts for the Environmental Mitigation Package(s).
- Advise the Sites Authority on various considerations related to the procurement of contractors, including but not limited to interpretation of authorizing statute(s).
- Assist with the development of forms of contract (Pre-construction and Construction).
- Assist with negotiations of guaranteed maximum price (GMP) packages and/or lump sum bids under the Construction contracts.
- Assist with contract interpretation, as requested, during Project implementation.
- At the request and sole discretion of the Sites Authority, assist with the evaluation and negotiation of claims and represent the Sites Authority in design and construction dispute resolution proceedings and litigation related to environmental mitigation.



### 3.0 General Proposal Requirements

The RFP issue date is January 5, 2024. Prospective Respondents may **submit written questions about this RFP by Noon PST on January 15, 2024 via email to: [jtrapasso@sitesproject.org](mailto:jtrapasso@sitesproject.org)**. The Contact Person (refer to cover page), will officially respond to any questions and clarifications in an addendum which will be provided to all potential Respondents. Questions and responses will also be posted to the Sites Authority's website at: <https://www.sitesproject.org/>.

Once the RFP has been publicly released, any communications related to the preparation of a proposal by a prospective Respondent with any of the Authority Board's members; Reservoir Committee's members; Executive Director, Authority's Agents, advisors or staff, or consultants, other than the contact person, may result in any ensuing proposal that was submitted by the prospective Respondent as being deemed not accepted, which will result in the proposal not being further considered.

Proposals are a matter of public record and are open to inspection under the California Public Records Act. If any respondent claims any part of its proposal is exempt from disclosure and copying, they shall so indicate in the transmittal letter. The respondent shall clearly label and stamp the specific portions of the proposal that the respondent considers confidential, and identify those portions in the transmittal letter. By submitting a proposal, each respondent acknowledges that the Sites Authority may determine in its sole and absolute discretion whether information that a respondent considers confidential is subject to disclosure as a matter of law, including the Public Records Act, and respondent waives any challenge to the Sites Project Authority's decision in this regard.

**Notwithstanding the foregoing, respondents recognize that the Sites Authority will not be responsible or liable in any way for losses that the respondents may suffer from the disclosure of information or materials to third parties.**

### **3.1 Proposal Submittal**

Receipt of the following material is required by noon on February 2, 2024, for a Respondent to be considered:

- An electronic copy of the proposal and all its appendices in a single bookmarked PDF file must be addressed to: Joe Trapasso, Sites Authority Program Operations Manager  
[jtrapasso@sitesproject.org](mailto:jtrapasso@sitesproject.org)
- The proposal shall include the following Sections:

Entire proposals are limited to no more than 20 pages (page size of 8.5 by 11 and 11-point font minimum, not including cover page or table of contents, unless otherwise specified)

1. Transmittal Letter listing RFP No. 24-01
2. Firm Profile and Qualifications
3. Experience and Qualifications of Project Team
4. Ability to Integrate with the Existing Project Team
5. Understanding Project Challenges
6. Work Plan/Scope of Services
7. Disclosure of Real or Perceived Conflicts and Approach for Addressing

Appendices: Will not be counted within the page limit

- A. Proposed Respondent's Services Contract and Comments to Sites Authority's Required Addendum A
- B. Disclosure of Legal Actions, Conflicts of Interest, or other Potential Conflicts
- C. Key Staff Resumes
- D. Additional Information on Disclosure of Legal Actions and Conflict
- E. Proposed Billing Rates

### **3.2 Submittal Information and Specific Requirements**

1. **Transmittal Letter** The transmittal letter must not exceed two pages and must be signed by a representative of the Respondent who is authorized to negotiate on behalf of, and to contractually bind, the Respondent during the evaluation. The letter should summarize the key points contained in the proposals, as well as provide the name, title, address, email address, and telephone number of the key contact attorney. The letter should specifically identify which or both of the legal services are being proposed to be covered in the proposal.
2. **Firm Profile and Qualifications**
  - **Firm Overview**

Provide an overview of Respondent, including ownership, staff size, organizational structure. Identify how the solicited services align with the services typically provided by the firm. Identify how the firm's values align with the Sites Authority's Strategic Plan Values. Specify the office and its address that would serve as the "lead office" for this Project and its primary functions.
  - **Firm and Lead Attorney Experience**

Indicate Respondent's firm and proposed lead attorney's experience providing: procurement development support involving Construction Delivery Methods at the local, State and Federal levels while serving the interest of a Joint Powers Authority or individual water or wastewater agency in California. For each listing of experience, list the dates services were provided, client/project name, type, project budget, and size of project, and the name of Respondent's lead attorney on the project.
  - **Client References**

For each of the projects/clients listed above, provide the clients' references for which the Respondent has provided services similar to those sought by the Sites Authority. Provide the name, address, telephone number, email address, contact(s) and title(s) of an appropriate individual with each client. Briefly summarize the main services or initiatives the Respondent provided to the referenced client.

### **3. Experience and Qualifications of Project Team**

- Identify the attorneys who will be assigned to lead the various assignments and key staff. Provide a brief narrative highlighting their experience providing services similar to those sought by the Sites Authority (especially for California water projects or policy setting governance bodies). In addition, highlight relevant experience representing a Joint Powers Authority or joint venture.
- Provide a brief resume (no more than 2 pages) for the identified lead attorneys and key staff including California Bar Membership or other qualifications for each employee and the areas of expertise. The resumes shall be included in Appendix C of the proposal and will not be counted in the page limit for the submittal.

### **4. Ability to Integrate with Project Team**

- Describe prior engagements where the firm and the specific proposed team have experience with coming into a large project organization and integrating themselves effectively as a trusted, knowledgeable resource that can help the team be successful. Describe how your firm proposes to integrate your services with the work of the Sites Authority's counsel. Describe your experience collaborating with multiple counsel and technical staff including communicating in an effective manner.

### **5. Understanding Project Challenges**

- Provide a summary of the services and the work products that Respondent proposes to provide to the Sites Authority. What unique services or approaches would Respondent provide? What specific benefits does Respondent believe they will bring to the Project?
- Describe any other directly related or unique services Respondent may be able to provide to the Sites Authority involving design and construction of the project.

### **6. Work Plan/Scope of Services**

- Provide a description of the approach and methods to be used to meet the Sites Authority's Strategic Plan and Contracting Strategy objectives, and the sequence and schedule of activities. Include all assumptions and caveats.
- Provide approach to developing contractual documents and negotiations with construction firms.
- Provide plan for succession planning as the project could take 8 to 12 years to closeout all construction contracts.

## **7. Disclosure of Real or Perceived Conflicts and Approach for Addressing**

- Describe and evaluate your firm's existing engagements (formal or informal) that could present potential conflicts with the Sites Authority's interests or might interfere with your firm's ability to provide independent and unbiased advice to the Sites Authority. Does the team have experience or history with any of the technical consultants, Authority Board, or Reservoir Committee? Please specify an approach for addressing potential conflicts. (Refer to list of Authority Board & Reservoir Committee Agencies in Attachment B and Sites Authority Organization Chart in Attachment C)

## **8. Appendices**

- Appendix A: Proposed contract for the identified scope of work (refer to Section 2 Anticipated Scope of Work) and the Respondent's Comments to the Sites Authority's required Addendum A.
  - Provide a recommended form of contract for consideration by the Sites Authority. The Sites Authority will review the contract and reserves the right to request modifications, additions or deletions of any of the provisions of the contract prior to issuance.  
The Sites Authority will require that the proposed Sites Authority's Standard Legal Services Agreement Addendum A (included as Attachment F) be attached to the selected firm's contract. Before submitting a proposal, respondents are instructed to carefully review and comment as necessary on any of the articles set forth in the Addendum A. Respondents requesting to take exception to a provision in the proposed Addendum, shall propose alternative language and/or terms and conditions they deem appropriate. The Sites Authority will give all such proposed changes due consideration but shall be under no obligation to accept or adopt them. The Sites Authority reserves the right to modify, add or delete any of the provisions of the Addendum A prior to issuance.
- Appendix B: Disclosure of Legal Actions, Conflicts of Interest, or other Potential Conflicts.
  - Any pending investigations of the Respondent, and any enforcement, settlements, or disciplinary actions taken within the past five years by any regulatory body and any litigation challenging the manner in which the Respondent has provided services in the past five years.
  - Any actual or potential conflicts of interest between the Sites Authority, its Board members, its Reservoir Committee members, Project staff, and any other person or entity represented by Respondent to this proposal. Identify any Sites Authority or Reservoir Committee members that the Respondent has represented in the last five years.

- Appendix C: Key Staff Resumes
  - Resume (no more than 2 pages) for the identified lead attorneys and key staff.
- Appendix D: Proposed Billing Rates
  - The Sites Authority intends to contract for legal services as follows: The legal services scope of services outlined in this proposal on a negotiated time and materials contract with a not to exceed amount through the end of 2025 of \$227,000 for the civil work. Work after 2025 will be covered under subsequent contract amendments.
  - The Respondent shall include its proposed labor hourly billing rates for each category of employees and all expenses they proposed to bill in addition to legal fees and the basis for such expenses. Indicate increment of billing time associated with billing by hourly rate.

#### 4.0 Evaluation and Selection Procedure

An evaluation team comprised of Sites Authority staff will evaluate each submitted proposal relative to the completeness of the submitted proposal and the criteria listed below. They will provide the information to a Sites Authority selection panel that may consist of Authority Board, Reservoir Committee members, Authority Executive Director and Authority's Agent(s). The firms judged to be best qualified by the selection panel will be invited to participate in an interview and make a presentation to the interview panel. The Sites Authority anticipates interviewing 3-5 firms for the scope of work.

After the interview(s), the selection panel will identify the firm judged best qualified and negotiations of a contract will be initiated. If acceptable terms and conditions with the selected firm cannot be reached in a timely manner, the Respondent next ranked will be contacted to begin negotiations. The selection panel will then proceed to make a recommendation to the Reservoir Committee and Authority Board to approve and execute the negotiated contract. However, the Sites Authority is not bound to accept the recommendation or award the contract to the recommended Respondent. The Sites Authority reserves the right to select the Respondent which in its sole judgment best meets the needs of the Sites Authority. The Sites Authority will evaluate proposals and interviews based on the following criteria, with the maximum scores indicated.

Criteria	Maximum Score
Transmittal Letter listing RFP No. 24-01	5 points
Firm Profile and Qualifications	10 points
Experience and Qualifications of Project Team	20 points
Ability to Integrate with the Existing Project Team	20 points
Understanding Project Challenges	20 points
Work Plan/Scope of Services	20 points
Disclosure of Real or Perceived Conflicts and Approach for Addressing	5 points
Interview of Respondent Firm	20 points
<b>TOTAL</b>	<b>120 points</b>

## 5.0 Tentative Proposal Schedule

Proposals are due on February 2, 2024 at Noon, PST. Proposals received after this time will not be accepted. In addition, after receipt of a respondent's proposal, no additional version of the Respondent's proposal will be accepted.

### RFP Contact Person

Joe Trapasso  
Program Operations Manager  
Sites Project  
[jtrapasso@sitesproject.org](mailto:jtrapasso@sitesproject.org)

### 5.1 Tentative Solicitation Schedule (subject to change)

Activity	Date (2024)
Release of RFP and posting to Sites website	January 5
Submission of written RFP questions	January 15 (noon PST)
Response to written questions emailed to Respondents and posted to Sites website	No later than January 19
Proposals due to Sites Authority	February 2 (Noon PST)
Sites Authority Review of Proposals/Firms Selected for Interview	February 9
Notification of Interviews	February 9
Interviews	February 15-16
Reservoir Committee and Authority Board approves contract award	March 22
Execution of contract completed	March 26

## 6.0 Solicitation Disclaimer

The Sites Authority reserves the right to reject any and/or all proposals, negotiate with any Respondent that submits a proposal, or waive any informality or irregularity. All responses to this proposal become the property of the Sites Authority upon submission. The costs of preparing proposals and participating in an interview are at the sole expense of the Respondent.

There is no express or implied obligation for the Sites Authority to reimburse responding firms for any expenses incurred in preparing the proposal. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250), unless specifically exempt.

## 7.0 Additional Information

For more information on the Sites Authority, please visit: [www.sitesproject.org/](http://www.sitesproject.org/).



## Sites Project Authority: Mission, Vision, Values, & Goals

### OUR VISION

Affordable water sustainably managed for California's farms, cities, and environment for generations to come.

### OUR MISSION

The Sites Project Authority will build and operate a climate-resilient, 21st Century water storage system to responsibly manage and deliver water, improve the environment, and provide flood control and recreational benefits.

### OUR VALUES

To fulfill its mission, the partners and staff of the Authority uphold these central values:

- **Safety.** Design, construction, and operation of the reservoir will satisfy all federal, state, and local requirements and exceed standards for public safety and security.
- **Trust and Integrity.** The Authority is committed to operating with integrity, thoughtful information and analysis, and open and transparent communications and decision-making.
- **Respect for Local Communities.** The Authority recognizes the significant contributions of local Sacramento Valley landowners and communities and will be a respectful, supportive partner and be a good neighbor throughout the project.
- **Environmental Stewardship.** The Authority views itself as a partner with the environment with a firm duty to act as a responsible steward of natural resources.
- **Shared Responsibility for Shared Benefits.** Decisions and actions will rely on a collaborative, inclusive approach that honors, balances, and leverages the active roles and contributions of partners, stakeholders, and ratepayers.
- **Accountability and Transparency.** Efficiency, fiscal responsibility, equitable cost allocation, and transparency will guide the decisions, expenditures, communications, and activities of the Authority.
- **Proactive Innovation.** A nimble, responsive culture will be cultivated to provide innovative solutions in delivering the reservoir's multiple benefits over the next century and beyond.
- **Diversity and Inclusivity.** In carrying out its mission, the Authority will foster inclusion, respect, and appreciation for the state's diverse demographics and geographies to create a project serving all of California.

## OUR GOALS





### **Authority Board Members**

City of Sacramento/Sacramento County Water Agency	Colusa County
Colusa County Water District	Glenn County
Glenn-Colusa Irrigation District	Placer County Water Agency & City of Roseville
Reclamation District 108	Tehama-Colusa Canal Authority
Westside Water District	

### **Reservoir Committee Participants**

Antelope Valley/East Kern Water Agency	City of American Canyon
Coachella Valley Water District	Colusa County
Colusa County Water District	Cortina Water District
Davis Water District	Desert Water Agency
Dunnigan Water District	Glenn-Colusa Irrigation District
Irvine Ranch Water District	LaGrande Water District
Metropolitan Water District of Southern California	Reclamation District 108
Rosedale-Rio Bravo Water Storage District	San Bernardino Valley Municipal Water District
San Geronio Pass Water Agency	Santa Clara Valley Water District
Santa Clarita Valley Water District	Westside Water District
Wheeler Ridge- Maricopa Water Storage District	Zone 7 Water Agency

### **Other Project Agencies (Associate, Cost-Share, and Ex-Officio)**

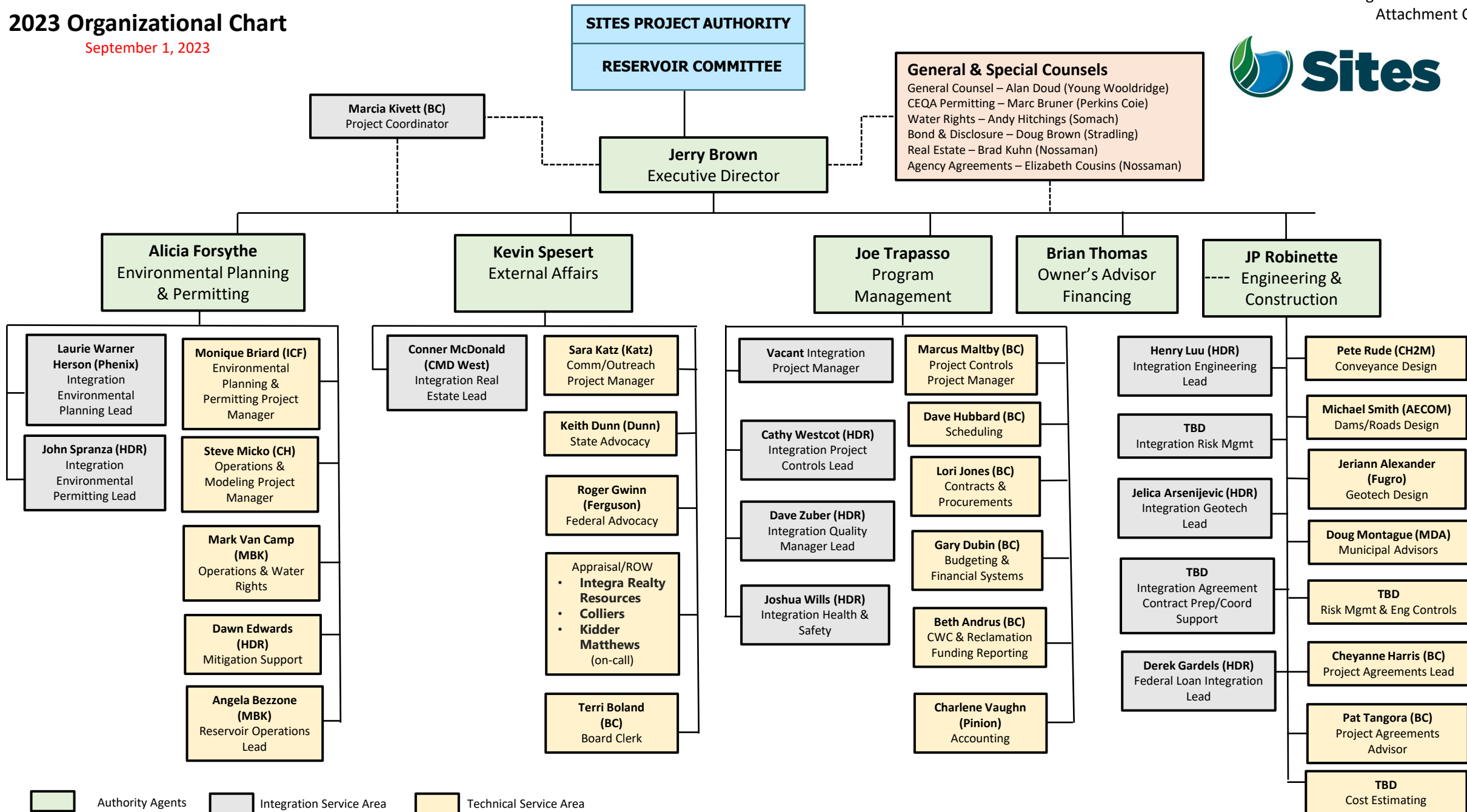
Western Canal Water District – Associate Member

California Department of Water Resources (Ex-Officio, Non-Voting)

US Bureau of Reclamation (Cost Share Partner, Non-Voting)

# 2023 Organizational Chart

September 1, 2023





Meeting: **Reservoir Committee Agenda Item 2.4**

**July 22, 2022**

Subject: **Adopt a Contracting Strategy for Construction Scheduling**

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**Requested Action:**

Approve the Contracting Strategy for the purpose of developing an overall project construction schedule which will establish a baseline to efficiently advance final design, coordinate with agencies, and establish a procurement approach. Authorize staff to:

1. Evaluate adjustments to the Amendment 3 work plan and current task orders to reflect the packaging, delivery method, and overall schedule criticality.
2. Make changes to the initial Contracting Strategy as needed throughout the Amendment 3 work period while maintaining consistency with the evaluation considerations (**Attachment A**).

**Detailed Description/Background:**

Development and construction of the Sites Reservoir Project ("Project") is a significant undertaking that requires significant planning and a strategized approach to meet the adopted 2020 Strategic Plan. The proposed Contracting Strategy kicks off the process for defining the Project construction packages and delivery methods. The full range of approaches have been evaluated and this work builds off of the evaluations done in 2018 on this subject. This proposal has been determined to maximize benefits and reduce risks for the Authority. It is a vital component in establishing and/or validating the overall project construction schedule and is the initial step in setting a baseline to efficiently track and progress agency coordination, prioritize design/construction activities, and procure design and construction services.

Staff, in conjunction with the Operations and Engineering Workgroup and ad-hoc Sub-Workgroup, has developed a strategy for the packaging of work and delivery methods (the "Contracting Strategy") for the Project based on the below evaluation considerations:

- The values of the Authority as it relates to delivering the Project.
- The available delivery methods established under legislation (California Assembly Bill No. 2551, Chapter 760).
- Market outreach to construction and mitigation contractors.

The recommended Contracting Strategy focuses on:

- Keeping the number of contracts at a reasonable level for the anticipated staffing and capacity envisioned longer term, while ensuring quality and cost control are high priorities. The number of contracts for the Authority to manage is envisioned currently to be 9 and would rely on various delivery methods to manage the Authority's risk.
- Manages the Authority's major development risks and provides improved cost certainty through early contractor engagement.
- Provides staff with a high level work breakdown structure to develop an initial overall project construction schedule, and initiate efforts to define the Project's procurement strategy and execution plan.

There are two main packages envisioned in the recommended Contracting Strategy, both of which are proposed to be delivered utilizing Construction Manager At-Risk (CMAR) contracts. CMAR contracting allows for early selection of the contractor considering qualifications for construction work, provides earlier cost certainty and reduces the Authority's interface risk by combining operational elements under a single designer/construction contractor team. It is possible that these two packages could be further sub-divided as information about contractor capacity and market conditions is continuously evaluated. The two packages currently envisioned are:

1. Reservoir, estimated at \$2B in 2021 dollars, includes all dams, the Sites-Lodoga road and bridge, and the Construction Access and O&M roads. The CMAR method will allow for early contractor input on key risks including site logistics, material management, sequencing of schedule-critical components, and community impacts and opportunities related to the largest labor components of the Project.
2. Maxwell-Sites Pumping and Generating, estimated at \$1.15B in 2021 dollars, includes all infrastructure required for the conveyance of water into and out of the Sites Reservoir (Inlet/Outlet tower, tunnel, pipelines, pumping and generating plants, power facilities, and forebays). The CMAR method will focus on managing risks related to the project's hydraulic performance, electrical infrastructure, controls, and operations and maintenance.

Three standalone packages are proposed to be delivered utilizing Design-Bid-Build (DBB) contracts given the relatively straightforward nature of the work, suitability for competitive bidding and provides the Authority with the most flexibility:

1. Reservoir Clearing and Demolition, estimated at \$35M in 2021 dollars, includes clearing and demolition activities within the proposed reservoir footprint. The DBB method will provide pricing benefits based on the contract's competitive nature, as well as opportunities for community input throughout the design process.
2. Huffmaster Road, estimated at \$50M in 2021 dollars, includes construction of a local access road. The DBB method will provide pricing benefits and opportunities for community engagement.
3. Dunnigan Pipeline, estimated at \$100M in 2021 dollars, includes construction of a turnout near the southern terminus of the Tehama Colusa Canal, pipeline, and release structure at the Colusa Basin Drain. The DBB method will provide pricing benefits and flexibility for refinement as operational needs continue to be evaluated.

Two partner facility packages are proposed to be delivered utilizing Owner Agreement contracts:

1. Tehama Colusa Canal Authority, estimated at \$5M in 2021 dollars, will improve existing facilities to accommodate Project needs. The Owner Agreements delivery method will ensure continued ownership of the Bureau of Reclamation facilities and TCCA operation responsibilities.
2. Glenn Colusa Irrigation District, estimated at \$7M in 2021 dollars, will improve existing facilities to accommodate Project needs. The Owner Agreements delivery method will ensure continued ownership and operation responsibilities of GCID infrastructure.

Two specialty packages are proposed to be delivered utilizing various contracting methods:

1. Recreation, estimated at \$35M in 2021 dollars, includes construction of three new recreational areas. Two delivery methods are proposed to be considered for this package, which will allow the Authority flexibility in determining the recreation operator role as a future item.
2. Mitigation, estimated at \$600M in 2021 dollars, includes implementation of environmental mitigation commitments. This is a specialized activity involving different mitigation approaches that are key to initiating project construction activities. Having one contract to manage will streamline oversight efforts and mitigate the Authority's schedule related risk.

The recommended contract packages and delivery methods are further described in Attachment A.

The recommended Contracting Strategy will be used to develop a high level baseline overall project construction schedule for the program and schedules for each package, targeted for initial release in October 2022. Any changes that result to the Amendment 3 work plan will be brought back to the Reservoir Committee and the Authority Board as part of the annual budget process.

Staff presented the recommended Contracting Strategy to the Operations & Engineering Workgroup on July 12, 2022, and the Workgroup unanimously concurred with the recommendation to proceed with implementing the Contracting Strategy as discussed above and described within Attachment A.

**Prior Action:**

None.

**Fiscal Impact/Funding Source:**

The Amendment 3 Work Plan includes sufficient budget to cover required resources and activities in support of the Contracting Strategy. Any required adjustments to reflect the packaging, delivery method, and overall schedule criticality activities will be considered within the fiscal year budget development process.

**Staff Contact:**

JP Robinette/Henry Luu

**Primary Service Provider:**

Brown & Caldwell/HDR with support from AECOM/Jacobs

**Attachments:**

Attachment A – Sites Project Contracting Strategy



## Sites Project Contracting Strategy

The Sites Project Authority (the “Authority”) is developing the Sites Reservoir Project (the “Project”). If approved, the Authority will construct infrastructure including a new off-stream reservoir and a water conveyance system consisting of new pumping and generating facilities and pipelines. In addition to the new infrastructure, the Project makes use of improved existing infrastructure through various agreements with agencies. The Project is currently under environmental review and feasibility design has been completed to support environmental planning, permitting, affordability studies, and to secure funding sources.

A team of consultants from the Project Integration and Project Controls service areas, led by the Authority’s Engineering and Construction Manager (together, the “Staff”), have developed a strategy for the packaging of work and delivery methods (the “Contracting Strategy”). The Contracting Strategy is based on the below evaluation considerations:

- The values of the Authority as it relates to delivering the project.
- The available delivery methods established under legislation (California Assembly Bill No. 2551 Chapter 760).
- Market outreach to construction and mitigation contractors.

Staff has also considered the technical input of the Engineering service areas and evaluated key risk areas for the Authority, categorized by package. These activities are ongoing and may result in future modifications to the Contracting Strategy, which will be made consistent with the evaluation considerations.

The below table is a summary of the Contracting Strategy:

No.	Package	Estimated Value (2021\$)	Major Facilities	Recommended Delivery Method	Key Risk Areas
1	Reservoir	\$2.0 B	2 Main Dams 7 Saddle Dams 2 Saddle Dikes Sites-Lodoga Road & Bridge Construction/Access/O&M Roads	Construction Manager at Risk (CMAR)	Logistics Material Balance Schedule Community
2	Maxwell-Sites Pumping and Generating	\$1.15 B	Inlet/Outlet Tower Inlet/Outlet Tunnel Pipelines and Manifold 2 Pumping and Generating Plants 2 Power Interconnection Facilities Instrumentation and Controls Forebay/afterbay Improvements	CMAR	Hydraulics Power System Controls Operation & Maintenance
3	Reservoir Clearing and Demolition	\$35 M	Clearing and Demolition within Reservoir Footprint	Design-Bid-Build (DBB)	Community
4	Huffmaster Road	\$50 M	Local Access Road	DBB	Community
5	Dunnigan Pipeline	\$100 M	Canal Turnout Pipeline Colusa Basin Drain Release	DBB	Operational Flexibility
6	Tehama Colusa Canal Authority	\$5 M	Existing Facility Improvements	Owner Agreements	Ownership & Operation
7	Glenn Colusa Irrigation District	\$7 M	Existing Facility Improvements	Owner Agreements	Ownership & Operation
8	Recreation	\$35 M	Peninsula Hills Stone Corral Creek Day-use Boat Ramp	DBB with concessions or Design-Build-Operate	Specialty
9	Mitigation	\$600 M	Implement Environmental Mitigation Commitments	Various	Schedule

### Reservoir Committee and Authority Board Actions

Staff is requesting approval of the Contracting Strategy for the purpose of:

1. Developing schedules by package for the overall program and establish a baseline to efficiently advance design, coordinate with agencies, and begin considerations for establishing a procurement strategy (targeting approval by October 2022)
2. Adjusting the Project's work plan and current task orders to reflect packaging, delivery method, and overall schedule criticality (targeting approval by December 2022)

Staff is also requesting authorization to make changes to the Contracting Strategy consistent with the evaluation considerations identified below if future conditions under Amendment 3 work warrant a change in packages or delivery method.

## Evaluation Considerations

### Values

The Authority's Contracting Strategy values were established by members from the Budget and Finance Committee and Reservoir Operations and Engineering Workgroup, which reflects the high-level vision and preference for packaging of work and delivery methods:

- Oversight – to remain streamlined and efficient, the Authority will engage in an oversight role during design and construction.
- Construction Contracts – the number and size of construction contracts must prioritize qualified contractors and management of cost & risk.
- Project Cost – cost certainty must be established as soon as possible.
- Project Schedule – look for opportunities to expedite schedule to reduce Project Cost.
- Project Risks – balance risks with values.

Evaluation criteria were formulated based on the above values and presented as follows:

- Does the recommended strategy reduce the number of contracts for the Authority to manage while retaining flexibility to issue multiple construction packages?
- Does the recommended strategy allow for consideration of contractor qualifications and experience where it is most critical?
- Does the recommended strategy provide early cost certainty for elements that “move the needle” on overall affordability?
- Does the recommended strategy reduce potential interface risk between contractors and help the Authority manage other risks?
- Does the recommended strategy facilitate system-wide testing, commissioning, and logistical planning?
- Does the recommended strategy facilitate early engagement of operator and community perspectives?
- Does the recommended strategy provide opportunities for local contractors?

Project packaging and delivery method must meet the above criteria.

## Available Delivery Methods

Pursuant to existing laws and California Assembly Bill No. 2551 Chapter 760, the project may use any of the following project delivery methods:

- Design-Bid-Build (DBB)
- Construction Manager At-Risk (CMAR)
- Design-Build, including conventional, progressive, and target price (DB)
- Design-Build-Operate (DBO)

## Market Outreach

The Authority hosted a Sites Reservoir Construction Contractor Open House on June 9, 2022 to seek input from the contracting community on project delivery. Afterward, staff continued one-on-one conversations with contractors to validate interest and leverage construction expertise and insight. Key takeaways from discussions with the contractors are:

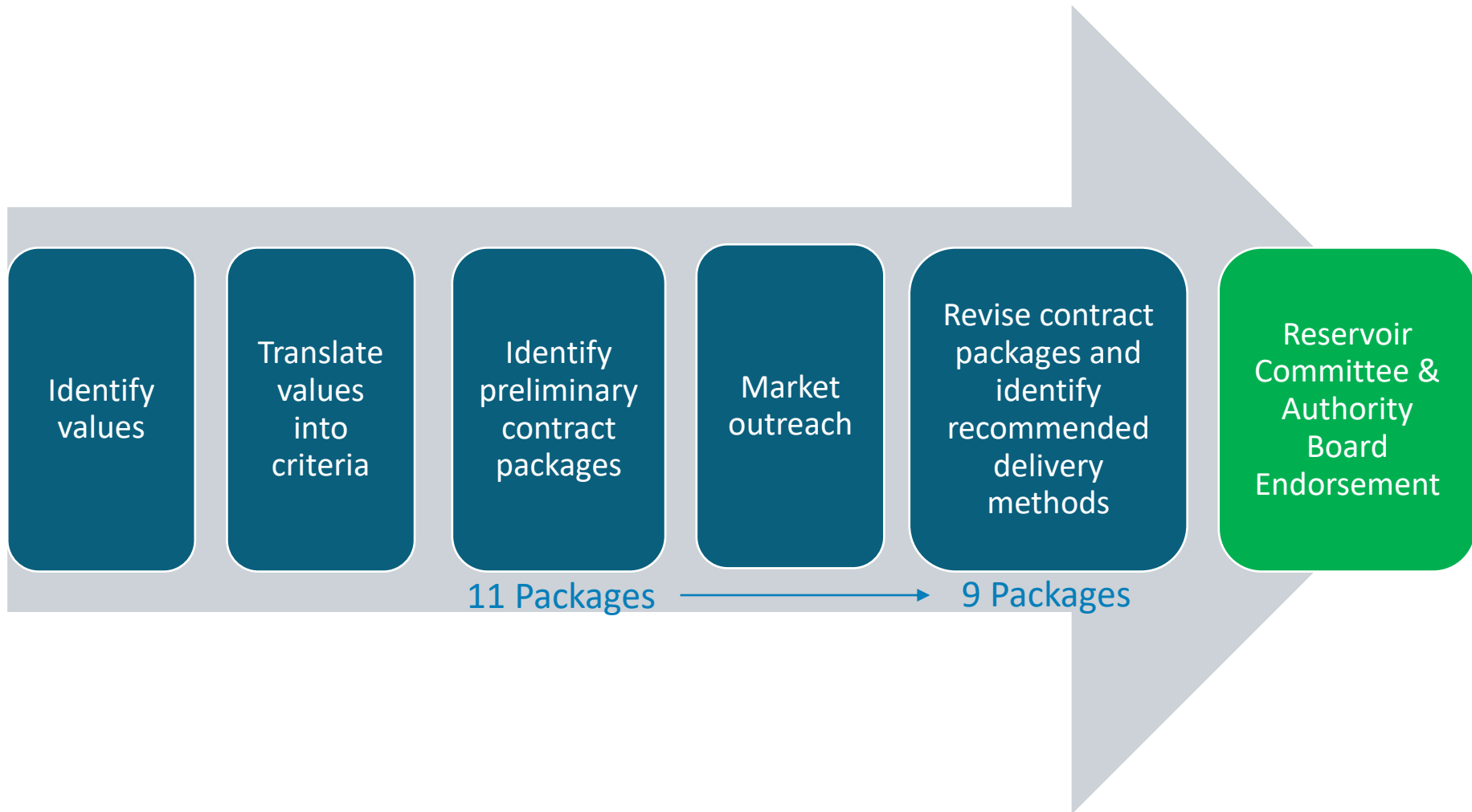
- There is substantial local, regional, national, and international market interest.
- There is multiple qualified and interested contractors for all recommended packages, including local constructors.
- Early contractor involvement/collaborative delivery is preferred where risk mitigation, logistical planning, innovation, cost, and schedule are most significant.
- Geotechnical investigation and access to properties for environmental surveys are top priorities.
- The 2030 milestone is aggressive.

# Agenda Item 2.4

## Contracting Strategy

JP Robinette

# Process for Developing the Contract Strategy Recommendation



# Contract Strategy Values



**Oversight:** Given the Authority's size and desire to remain streamline, it will need to take an oversight role during design and construction. Recommend bringing an operations perspective for design input.



**Construction Contracts:** The number and size of construction contracts should prioritize qualified contractors and management of cost & risk.



**Project Costs:** Cost certainty must be established as soon as possible.

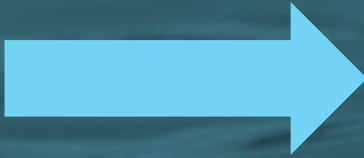


**Project Schedule:** Look for opportunities to expedite schedule in order to reduce Project costs.




**Project Risks:** Balance risks with values – *share* risks with partners.

# Values



# Evaluation Considerations (1 of 2)



Does the recommended strategy reduce number of contracts for the Authority to manage while retaining flexibility to issue multiple construction packages?

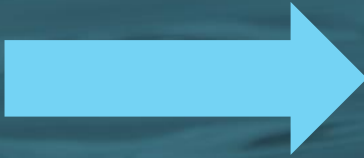
Does the recommended strategy allow for consideration of contractor qualifications and experience where it is most critical?

Does the recommended contract strategy enhance early cost certainty for elements that “move the needle” on overall affordability?

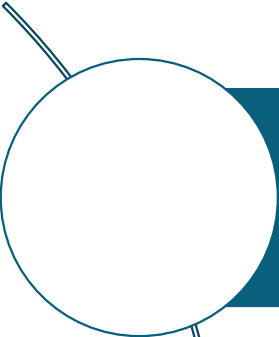
Does the recommended contract strategy reduce potential interface risk between contractors and help the Authority manage other risks?



# Values



# Evaluation Considerations (2 of 2)



Does the recommended contract strategy facilitate system-wide testing and commissioning, and logistical planning?



Does the recommended contract strategy facilitate early engagement of operator and community perspectives?



Does the recommended contract strategy provide opportunities for local contractors?

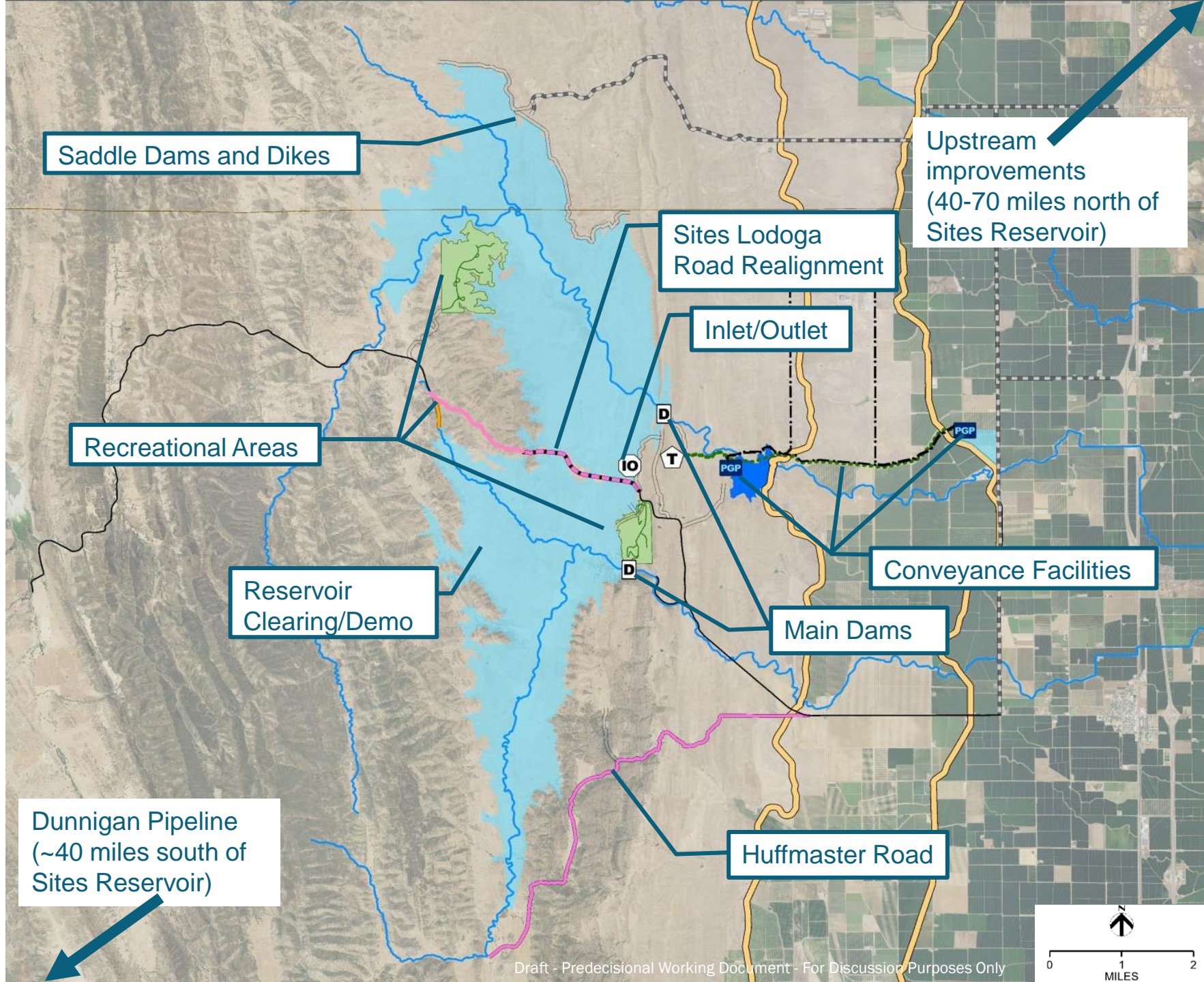
# Market Outreach Takeaways



# Contract Procurement: Surface Storage Projects receiving State funding

- Traditionally, Design-Bid-Build (DBB) has been the general approach for surface storage projects.
- **AB 2551** Chapter 760 authorizes the Sites Project to implement alternative delivery:
  - Construction manager at-risk (CMAR)
  - Design-build (DB: conventional, progressive, or target price)
  - Design-build-operate

# Project Map





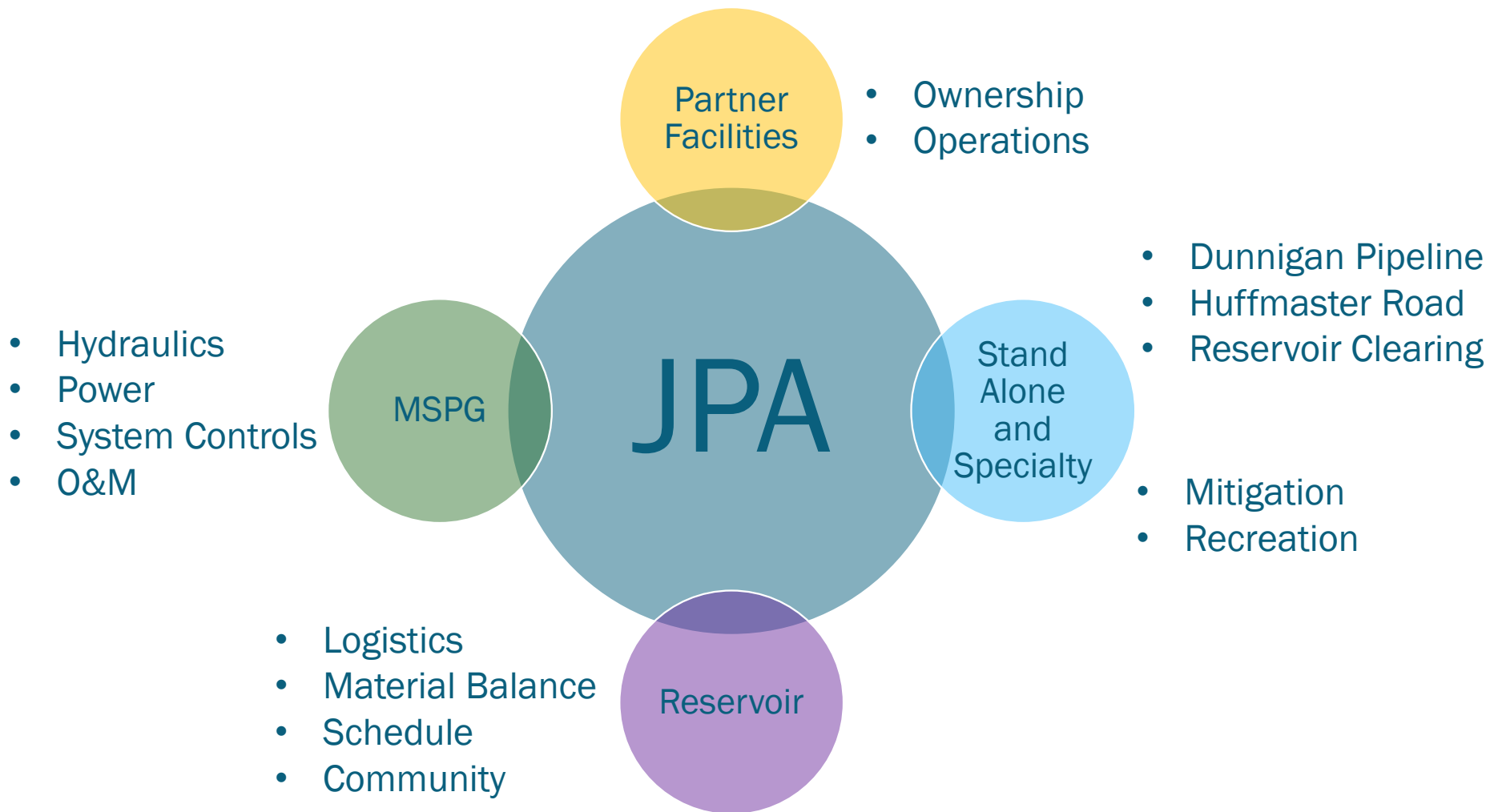
# Recommended Packages and Delivery Methods (1 of 2)

No.	Package	Estimated Value (2021\$)	Major Facilities	Recommended Delivery Method	Key Risk Areas
1	Reservoir	\$2.0 B	2 Main Dams 7 Saddle Dams 2 Saddle Dikes Sites-Lodoga Road & Bridge Construction/Access/O&M Roads	Construction Manager at Risk (CMAR)	Logistics Material Balance Schedule Community
2	Maxwell-Sites Pumping and Generating (MSPG)	\$1.15 B	Inlet/Outlet Tower Inlet/Outlet Tunnel Pipelines and Manifold 2 Pumping and Generating Plants 2 Power Interconnection Facilities Instrumentation and Controls Forebay/afterbay Improvements	CMAR	Hydraulics Power System Controls Operation & Maintenance
3	Reservoir Clearing and Demolition	\$35 M	Clearing and Demolition within Reservoir Footprint	Design-Bid-Build (DBB)	Community
4	Huffmaster Road	\$50 M	Local Access Road	DBB	Community
5	Dunnigan Pipeline	\$100 M	Canal Turnout Pipeline Colusa Basin Drain Release	DBB	Operational Flexibility

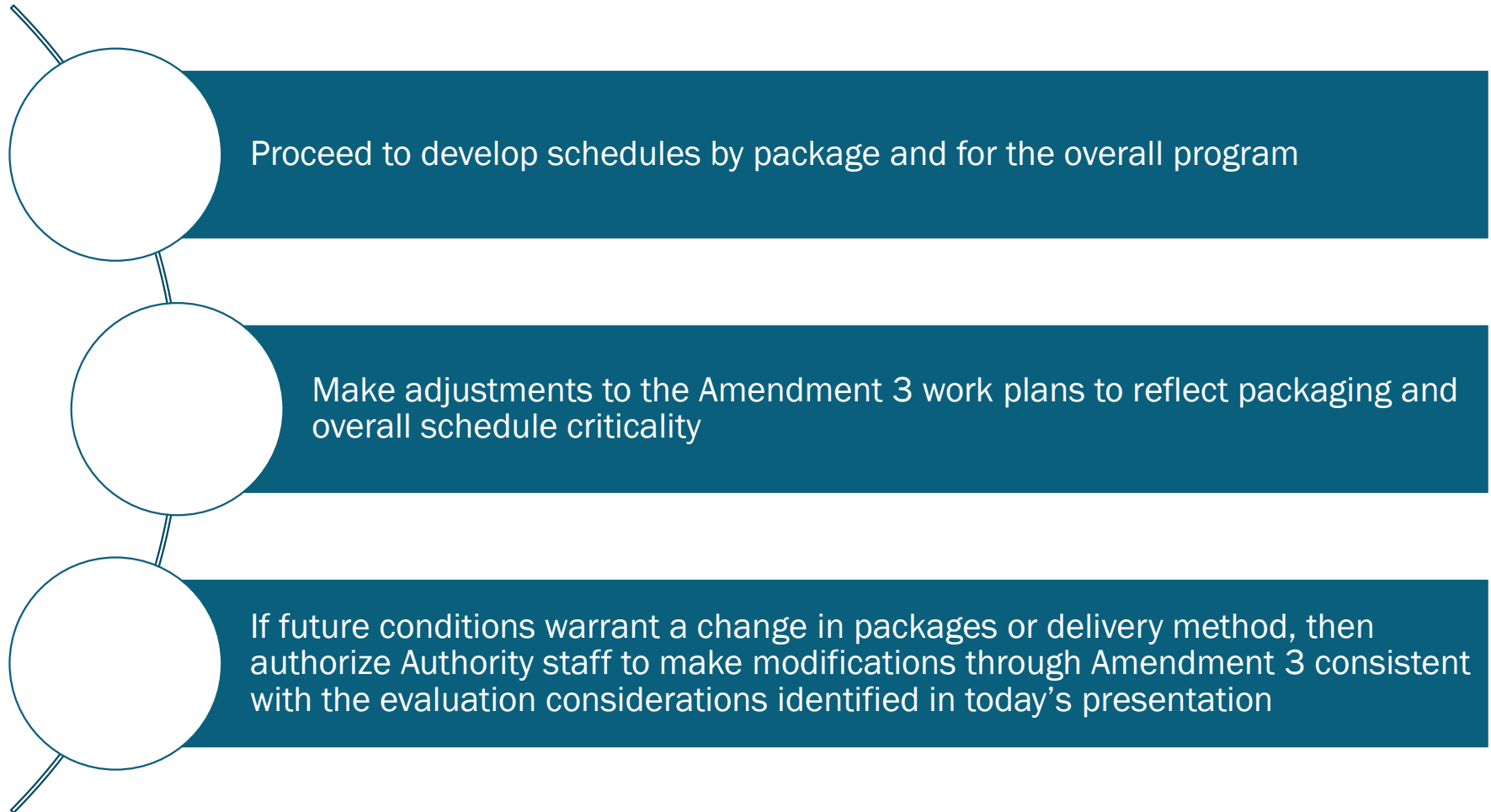
# Recommended Packages and Delivery Methods (2 of 2)

No.	Package	Estimated Value (2021\$)	Major Facilities	Recommended Delivery Method	Key Risk Areas
6	Tehama Colusa Canal Authority	\$5 M	Existing Facility Improvements	Owner Agreements	Ownership & Operation
7	Glenn Colusa Irrigation District	\$7 M	Existing Facility Improvements	Owner Agreements	Ownership & Operation
8	Recreation	\$35 M	Peninsula Hills Stone Corral Creek Day-use Boat Ramp	DBB with concessions or Design-Build-Operate	Specialty
9	Mitigation	\$600 M	Implement Environmental Mitigation Commitments	Various	Schedule

# Contract Strategy Risk Summary



# Contract Strategy Recommendation





# Procurement Strategy Considerations (next step)

- **Values** - what are the most important values to consider in selecting a contractor?
- **Timing** - are there required assurances (ROD/NOD, Water Right, financial commitments) before initiating procurement based on the Contract Strategy recommendations?
- **Guidelines** - what is the Authority's preferred target/guideline for the following criteria, and what is required by state and federal funding partners?
  - Self performance vs. subcontracting
  - Local contractor involvement
  - Workforce development and local office requirements (i.e. sales tax)
  - DBE, MBE, WBE, etc.
- **Market outreach** - what is the policy for market outreach and communication with contractors after initiation of the procurement process?
- **Authority representation** - what representation is needed on procurement evaluation committees and/or selection panels?

# Questions?





Schedule

#	Activity Name	2024				2025				2026				2027				2028				2029				2030				2031				2032				2033				2034				2035				2036			
		Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4							
1	Sites Reservoir Project: October 2023																																																				
2																																																					
3	Final EIR CEQA Adoption	◆ Final EIR CEQA Adoption																																																			
4	30% Design	◆ 30% Design																																																			
5	Final EIS NEPA ROD	◆ Final EIS NEPA ROD																																																			
6	Water Right Permit Issued	◆ Water Right Permit Issued																																																			
7	Investor Commitment	◆ Investor Commitment																																																			
8	Land Acquisition	Land Acquisition																																																			
9	Permitting (Biological/Cultural/Mitigation)	Permitting (Biological/Cultural/Mitigation)																																																			
10	60% Design	60% Design																																																			
11	Final Design	Final Design																																																			
12	DSOD Final Approval	◆ DSOD Final Approval																																																			
13	Golden Gate Dam Construction	Golden Gate Dam Construction																																																			
14	Sites & Saddle Dams Construction	Sites & Saddle Dams Construction																																																			
15	Conveyance (Transmission, TRR, I/O)	Conveyance (Transmission, TRR, I/O)																																																			
16	Sites Lodoga Road & Bridge Construction	Sites Lodoga Road & Bridge Construction																																																			
17	Dunnigan Pipeline Construction	Dunnigan Pipeline Construction																																																			
18	Recreation Areas Construction	Recreation Areas Construction																																																			
19	Substantial Completion	◆ Substantial Completion																																																			
20	Commissioning Project	Commissioning Project																																																			



## Sites Project Authority Legal 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 legal services, effective on or about \_\_\_\_\_ (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**.”

### **ARTICLE 1: SERVICES**

- a. **Task Orders.** The scope of Services, the particular tasks that comprise the Services, and the time and budget for performance thereof, shall be set forth in a task order(s) using the form attached hereto and incorporated herein as **Exhibit A** (each, a “**Task Order**”). Each Task Order, as may be amended from time to time by a Task Order Amendment using the form attached hereto as **Exhibit B** (each, a “**Task Order Amendment**”) shall be integral to the Agreement and is incorporated herein by reference. Consultant shall be solely responsible for bearing the costs associated with preparing a Task Order.
- b. **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 Agent.** \_\_\_\_\_ (“**Authority’s Agent**”) 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 Agent at any time upon written notice to Consultant.

## **ARTICLE 2: TERM OF AGREEMENT**

- a. The Agreement shall remain in full force or effect until the conclusion of the term provided for therein, or until the earlier termination of the Agreement in the manner provided for in this Addendum (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 any Task Order 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 Contract Administrator 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. **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.
- b. **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 the Agreement and all Applicable Laws.
- c. **Safety.** Without limiting any term or condition of **Article 3.b**, 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.
- d. **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 four (4) 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.

- e. **Access to Provide Services.** Consultant shall use commercially reasonable efforts to provide Authority with an anticipated schedule of necessary access to Authority's premises and property or any other such premises or property that have been dedicated to the Authority or made available for the Authority's use. Consultant shall perform the Services in a manner that is consistent with Authority's requirements and conditions applicable to the Authority's use of premises or property, and will minimize any interference with the operations of the Authority and its related entities and its agents and other consultants.
- f. Any subconsultant or subcontractor that will provide services shall be listed in the Task Order 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.f**. 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 the form of a Task Order Amendment. 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 and 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, those governing insurance, applicable laws, indemnification, ownership of work product, confidentiality and conflicts of interest.

#### **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, 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, 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 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 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. **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.
- ii. **Automobile Liability Insurance.** Consultant shall maintain, as applicable, owned, and/or hired and non-owned Automobile Liability Insurance covering all use of all automobiles, trucks and other motor vehicles utilized by Consultant in connection with the Agreement with a combined single limit for bodily injury and property damage of \$1,000,000, or limit carried, whichever is greater.
- iii. **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.
- iv. **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.
- v. **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 Contract Administrator. 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 Contract Administrator 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, 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 Coverages specified in **Articles 6.b.ii, 6.b.iv and 6.b.v**.

## **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 the Agreement ("**Confidential Information**"). Consultant shall require that its subconsultants and subcontractors shall therefore treat all information exchanged between the Parties or produced in connection with or as a result of the 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 the 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 the 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 the Agreement.

- b. The product of any portion of the Services performed under the Agreement by any non-legal subconsultant or subcontractor of Consultant, including without limitation all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, work-in-progress and deliverables and other documents or otherwise prepared for Authority under the Agreement (for purposes of this **Article 7**, the “**Work**”) 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 agrees to assign or cause the assignment of 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. Neither Consultant nor its subconsultants or subcontractors shall retain any right to use the Work and agrees not to challenge the validity of the Authority's ownership in the Work. Notwithstanding any other provision to the contrary herein, Authority acknowledges and agrees that the legal services and deliverables provided under the Agreement may include intellectual property or data owned by third party legal services vendors including without limitation legal research vendors, information bureaus and e-discovery solutions (collectively “**Third Party Services**”). The Consultant will provide notice to Authority of any use restrictions or license limitations of such Third Party Services data or intellectual property, unless such notice is obvious by the relevant deliverable, and Authority will comply with such use restrictions or license limitations. 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 Section 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: [RESERVED]**

## **ARTICLE 9: COMPENSATION**

- a. **Compensation.** For each Task Order, Authority shall pay Consultant compensation for the Services as follows:
- i. **Services Per Budget.** Consultant's total compensation for the Services is budgeted at the amount identified in each Task Order ("**Budget**").
  - ii. **Services Exceeding Budget.** At such time as Consultant is within 90% of the Task Order Budget for the Services as identified in each Task Order, Consultant shall notify Authority's Contract Administrator in writing, and the Parties shall in good faith assess the scope of Services and discuss completion of and compensation for completion of the Services. Consultant shall not continue to perform the Services in excess of the Budget or the amount allocated for each individual task identified in each Task Order without the prior written approval of the Authority's Contract Administrator, as reflected in a Task Order 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.
  - iii. **Fees Paid by Authority.** Except as specifically provided in a Task Order, Authority shall pay the cost of plan checking and inspection fees, zoning and annexation application fees, assessment fees, and other fees, permits, bonds, premiums, title company charges, and all other 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.
  - iv. **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 to Authority by the 15<sup>th</sup> day of each month, an invoice for the previous month's expenses that 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 Key Personnel (defined as staff 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, along with the Invoice Cover Letter, shall be submitted electronically as directed by the Authority. 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 tests, investigations, data, reports and other work product relating to the Services by any non-legal subconsultant or subcontractor of Consultant, 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. Costs of arbitration, including attorney fees, will be allocated by the arbitrator. 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, 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.**



Authority's Contract Administrator:

Sites Project Authority  
Attn: Joe Trapasso  
Program Operations Manager  
P.O. Box 517 (if by USPS)  
122 Old Hwy 99W (if by courier)  
Maxwell, CA 95955  
Telephone: 530-387-1102  
Email: jtrapasso@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: \_\_\_\_\_

**EXHIBIT A**  
**TASK ORDER TEMPLATE**

[Attached]



**Sites Project Authority**  
**[Service Description]**  
**Task Order No. \_\_**

**Consultant: [Consultant Firm Name] referred to as “CONSULTANT”**

**Task Order No. \_\_**

Task Order No. \_\_ specifies work activities comprising the Services to be performed by CONSULTANT for the period of performance from [Date] through [Date] pursuant to the Consulting Services Agreement (Agreement) for [Description] effective on [Date].

**Overarching Objectives of Consultant Work on Task Order**

The Sites Project 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 reflected in this task order, the CONSULTANT shall:

1. Abide by and serve to represent the values of the Sites Authority in the performance of all work under this task order and in any representation of the Sites project made by the CONSULTANT outside of the direct performance of the work.
2. Proactively support the Sites 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 service area being performed but not limited by the specifications of this task order. For example, the Authority expects in supporting the development of the project, the 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 100% met.
3. Manage the CONSULTANT's delivery of services to ensure a successful coordination and most efficient delivery of project deliverables across all service areas and CONSULTANT's performing services on the project. The intent is for all CONSULTANT's 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.

**Scope of Services**

CONSULTANT's scope of Services which includes tasks, deliverables, assumptions, and schedule is provided in Attachment 1 to this Task Order.



### **Budget**

CONSULTANT's Budget summary table is provided in Attachment 2 to this Task Order, which outlines amounts allocated by task, subtask and year. The total not-to-exceed Budget amount for this Task Order is \$\_\_\_\_\_. The authorized not-to-exceed Budget for the execution of Services to be completed under this Task Order in 202\_ is \$\_\_\_\_\_.

### **Period of Performance**

The scope of Services and Budget provided in this Task Order is for a period of performance of *[Date]* through *[Date]*. However, the Authority is authorizing with this Task Order Services to be performed only between *[Date]* and *[Date]*. CONSULTANT shall not perform work on the Services after *[Date]* prior to receiving Authority's written authorization. In the fourth quarter of 202\_ and 202\_, the Authority will reassess the work plan for the Sites Project in effect on the date of commencement of the Services provided for in this Task Order, potentially resulting in a Task Order Amendment.

This Task Order is hereby executed by duly authorized representatives of the parties.

#### **CONSULTANT**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

#### **AUTHORITY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**TASK ORDER AMENDMENT TEMPLATE**

[Attached]



**Sites Project Authority**  
**[Service Area/Description of Work]**  
**Task Order Amendment No. \_ To**  
**Task Order No. \_**

**Consultant:** [Firm Name] referred to as “CONSULTANT”

Task Order Amendment No. \_\_ to Task Order No. \_\_, effective on [Date] (“**Effective Date**”), is agreed to by the Authority and the CONSULTANT to amend Task Order No. \_\_, as amended from time to time, as follows:

**Scope of Services**

The CONSULTANT’s scope of Services in Task Order No. \_\_, including tasks, deliverables, and assumptions is amended as provided in Attachment 1 hereto.

**Schedule**

CONSULTANT is authorized to proceed with any modification set forth in this Task Order Amendment as of the Effective Date of this executed Task Order Amendment.

If Agreement Schedule is amended, the schedule for Task Order No. \_\_ Amendment No. \_\_ activities is as follows:

**Budget**

The Compensation for the Services of this Task Order Amendment shall be calculated on the same basis as in the Task Order No. \_\_, as amended. The basis of fee for completing the Services defined in this Task Order Amendment is shown in Attachment 2 hereto. The estimated compensation for the Services performed under this Task Order Amendment is \$\_\_\_\_\_. The total not-to-exceed Budget amount for this Task Order, pursuant to this Task Order Amendment is \$\_\_\_\_\_. The authorized not-to-exceed Budget for the execution of Services to be completed under this Task Order in 202\_, pursuant to this Task Order Amendment is \$\_\_\_\_\_.

The following adjustments have been made to the 202\_ Budget pursuant to this Task Order Amendment:

**Changes to Tasks and Subtasks**

Subject Area	Task and Subtask			Subtask Budget		
	New	ID	Subtask Name	Previous	Change	Revised
[Subject Area]	<input type="checkbox"/>	[X##.##]	XXXXX	[\$##,###]	[\$##,###]	[\$##,###]
[Subject Area]	<input type="checkbox"/>	[X##.##]	XXXXX	[\$##,###]	[\$##,###]	[\$##,###]

**Task Order Amendment Total**

**\$##,###**



Except as expressly provided for in this Task Order Amendment, all terms and conditions of the Agreement and any other Task Order associated therewith, and any amendments thereto remain unchanged.

This Task Order No. \_\_, Amendment No. \_\_ is hereby executed by duly authorized representatives of the parties.

**CONSULTANT**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**AUTHORITY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**AUTHORITY (Executive Director\*)**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

*\*Executive Director authorization required as needed, in accordance with the Budget Policy and Delegation of Authority.*