Terrestrial Compensatory Mitigation Contracting Strategy
Draft for Industry Review

To:	Mitigation Industry Representatives
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From:	Ali Forsythe, Environmental Planning and Permitting Manager
Subject:	Contracting strategy for the Sites Reservoir Project's terrestrial biological mitigation, including wetlands, waters and agricultural lands

1.0 Introduction

The Sites Project Authority (Authority) and the Bureau of Reclamation (Reclamation) have secured or will soon secure certain key state and federal environmental authorizations (collectively, the Resource Agency Permits) required for construction of the Sites Reservoir Project (Project).

These authorizations cover construction-related impacts to wetlands and other waters of the State (WOTS) and waters of the United States (WOTUS); rivers and streams protected under Section 1602 of the California Fish and Game Code; terrestrial and certain aquatic or semi-aquatic sensitive species[1] protected by the California Endangered Species Act (CESA), the Federal Endangered Species Act (FESA), Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act (MBTA) and other state and federal wildlife protection statutes; the habitats in which the foregoing resources are found (e.g., agricultural lands and rangelands); and environmental resources addressed by the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) (collectively, the Protected Terrestrial Resources).

Specifically, the Resource Agency Permits that have been obtained[2] or will be obtained include:

- Construction Biological Opinion and incidental take statement (anticipated June, 2025) (Biological Opinion) issued to Reclamation by the U.S. Fish and Wildlife Service (the Service);
- Master Lake and Streambed Alteration Agreement (anticipated March, 2025) (LSAA) between the Authority and the California Department of Fish and Wildlife (CDFW);

[1] Certain aquatic and semi-aquatic species (e.g., vernal pool branchiopods) are categorized here as Protected Terrestrial Resources because they are found in wetland or water mosaics located in an otherwise terrestrial landscape (e.g., annual grasslands). This strategy does not address impacts to aquatic riverine and estuarine species (i.e., salmon, steelhead, smelt and other fish species) expected to be covered in other permits and/or authorizations. The Authority expects that aquatic riverine and estuarine species compensatory mitigation is likely to be addressed through a separate contracting process.

[2] The permits currently obtained by the Authority for the Project can be found here: https://sitesproject.org/permitting/. The Project's Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) can be found here: https://sitesproject.org/environmental-review/.

- Construction Incidental Take Permit issued by CDFW to the Authority under CESA (issued October 22, 2024) (ITP);
- Bald and Golden Eagle Take Permit issued by the Service to the Authority (issued April 7, 2023) and a second permit anticipated December, 2025; and,
- Section 404 and 401 Clean Water Act permits issued to the Authority by the U.S. Army Corps of Engineers (USACE) and California State Water Resources Control Board, respectively (anticipated December, 2025).

In addition to the Resource Agency Permits, the Authority is subject to measures identified in the Project's Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) to address impacts to Protected Terrestrial Resources.

The Resource Agency Permits, and the requirements of the Final EIR/EIS, include numerous measures requiring the avoidance and minimization of impacts to Protected Terrestrial Resources and, for those impacts which are unavoidable, the implementation of mitigation projects to compensate for the impacted resource values (compensatory mitigation). In fact, the Project's largest construction mitigation cost is expected to be compensatory mitigation for Protected Terrestrial Resources. Because implementing large-scale compensatory mitigation of any kind is a complex endeavor, let alone on the scale proposed for the Project, the Authority has developed this Terrestrial Mitigation Contracting Strategy (Mitigation Strategy) to assure that its mitigation effort is well-coordinated, timely, efficient, and effective. As described in Section 7.0 below, this draft Terrestrial Mitigation Contracting Strategy is now being provided for further industry feedback. Feedback on this draft strategy will be taken until June 11, 2025 and should be emailed to info@sitesproject.org.

2.0 Components of Terrestrial Compensatory Mitigation

In addition to being required by the Resource Agency Permits themselves, applicable requirements for compensatory mitigation are included in a variety of established regulatory policies. At the Federal level, these include the *2008 Mitigation Rule* adopted and implemented by USACE and the U.S. Environmental Protection Agency for impacts to WOTUS, as well as the Department of Interior's *Compensatory Mitigation Policy* (2024) and the Service's *Endangered Species Act Compensatory Mitigation Policy* (2024). At the State level these include the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (2019) adopted by the California State Water Resources Control Board, as well as the statutes, regulations and policies implemented by CDFW, including its policies on mitigation and conservation banking and the protection of Habitat Mitigation Lands (or HM Lands).

Compensatory mitigation for impacts to terrestrial resources almost always includes some form of land protection, which may consist of fee title land acquisitions and/or the recordation of conservation easements or other "site protection instruments" to preserve lands containing the types of land cover or habitat that are being impacted by a permitted development project. Although fee title acquisition alone (i.e., without a site protection instrument) does not usually constitute sufficient protection, it can occur when the fee title holder is a qualified conservation organization and certain other protections are in place. In most cases, the resource agencies will require a conservation easement to be granted to a qualified and approved non-profit, tribal organization or public agency.

When property is identified as potential compensatory mitigation, the suitability of that land must be demonstrated to the resource agencies. This includes an investigation of, among other things, land title

(including mineral rights) and environmental condition (e.g., presence of hazardous materials), preparation of a Boundary/Improvements/Encumbrances Map, and biological and other studies demonstrating that the land contains the resources sought for preservation. The approval process to acquire property as compensatory mitigation can be protracted and complicated, requiring review by multiple agencies, potentially at regional agency offices and, in the case of CDFW, headquarters in Sacramento. CDFW also implements a due diligence process for approval of conservation easement holders, the endowment holders and habitat land managers.

Critical to this approval process are (i) the development of compensatory mitigation plans and habitat management and monitoring plans to be implemented on the compensatory mitigation site following recordation of conservation easements and (ii) the review and approval of endowments to secure land management and conservation easement monitoring, as well as financial instruments (e.g., bonds, letters of credit, cash deposits) provided by the permittee to secure the costs of land acquisition and physical improvements to the land. Specifically, in addition to land preservation through fee title acquisition and/or the recordation of a site protection instrument, compensatory mitigation often includes requirements to improve the land to enhance, rehabilitate or restore existing or degraded environmental resources or create new ones (e.g., vernal pool creation).

Compensatory mitigation projects can be carried out by a permittee acting on its own (Permittee-Responsible Mitigation) or by contracting with a qualified mitigation company to identify, preserve, enhance/restore and manage a mitigation site satisfying the requirements of the permittee's state or federal permits (often referred to as Turnkey Mitigation). In either case, the approval process for any particular mitigation site is complex, time consuming, and expensive. Although a permittee may identify a third-party mitigation or conservation bank with credits available to address the permittee's mitigation requirements, typically bank credits are purchased in relatively low volumes and are not adequate to address all of the mitigation needs for a project of a scale like Sites Reservoir.

3.0 Mitigation Planning Principles

During the August 2023 Reservoir Committee and Authority Board meeting, the Reservoir Committee and Authority Board reviewed and concurred with the following planning principles for the Project's Terrestrial Mitigation Contracting Strategy (see Agenda Item 3-2 here: https://sitesproject.org/meetings/friday-august-18/):

- Planning Principle #1 – Mitigation acquisition will be sequenced and timed to avoid impacting progress of critical path construction.
- Planning Principle #2 – The Project remains open to different approaches to mitigation, whether owner-provided (Permittee-Responsible) or provided by third parties (e.g., Turnkey Mitigation, conservation or mitigation banks).
- Planning Principle #3 – The mitigation contracting strategy needs to align with the Contracting Strategy Development Summary Report adopted by the Sites Project Authority Board of Directors (Board) on July 27, 2022.

This Mitigation Strategy has been designed to implement these Planning Principles considering the complexity and large-scale nature of the Project's mitigation needs.

4.0 Industry Feedback

Following the Reservoir Committee's and Authority Board's concurrence of the principles described above, the Authority team developed a conceptual approach[3] to addressing the Project's terrestrial mitigation needs and "market-tested" that approach with representatives of the mitigation industry. Specifically, the Authority team hosted a workshop on October 25, 2023, in Maxwell, California and invited mitigation and contracting industry representatives to participate. At the workshop, the Authority presented the status of mitigation planning for the Project, gathered contact information from mitigation providers, and encouraged mitigation providers to review the conceptual approach and provide one-on-one feedback to the Authority team. The October 25, 2023, workshop presentation and attendee list can be found here: https://sitesproject.org/contractor-outreach/.

Between December 2023 and January 2024, the Authority held one-on-one meetings with the fourteen providers that requested meetings following the October 2023 meeting. The goal of the meetings was to gather industry feedback on the conceptual terrestrial mitigation contracting approach. The Authority team also researched mitigation contracting strategies for similar large-scale public works projects being implemented in California and elsewhere[4] and sought feedback from the Environmental Planning and Permitting Work Group permitting and mitigation experts. The Authority team used the industry feedback and its own research to further develop the conceptual approach into this Mitigation Contracting Strategy.

5.0 Framework for Terrestrial Compensatory Mitigation Compliance

It is the Authority's value to commit to environmental stewardship and respect for local communities by following sound environmental protection practices and meaningful community engagement in the planning, design, construction, operation, and maintenance of the Project. The Authority is developing an Environmental Compliance Program (Program) to verify and document that the Project is in compliance with all environmental requirements[5] while upholding the Authority's mission and Strategic Plan[6] values. To operationalize this Program, the Authority is developing an Environmental Compliance Manual (Manual).

The Manual provides guidance to the Authority, or its designees[7], on managing and overseeing contractor compliance with the environmental requirements. It outlines the Program's framework and

[3] The conceptual approach is described in the presentation provided at the October 2023 Mitigation Providers and Construction Contractors Workshop, available here: https://sitesproject.org/contractor-outreach/.
[4] This includes the Bois D'Arc Project in Texas, the Klamath River Restoration Project in California and Oregon, the California High Speed Rail Project, and generally to the California Department of Water Resources and the California Department of Transportation.
[5] Environmental requirements includes all terms, conditions, and requirements of the contract documents related to implementation of, and compliance with, all applicable environmental laws, the Final environmental documents, governmental approvals, supplemental or amended governmental approvals, any subsequent or supplemental environmental documents, and any other regulatory protections for the regulated resources. This includes all terms, conditions, requirements, and minimization measures, avoidance, mitigation measures, project design features, and conservation and mitigation plans specified therein.
[6] https://sitesproject.org/wp-content/uploads/2019/11/02-02-Final-Strategic-Plan.pdf
[7] The Authority's designees may include environmental consultants and mitigation contractors (the contractor responsible for developing, implementing and fulfilling compensatory mitigation plans for the Project).

sets the requirements contractors will follow in developing implementation plans among which include creating beneficial dialogue between Authority teams. The Manual includes, but is not limited to, protocols established under the Program for communications, geospatial data management and specifications, and the use of an environmental commitment tracking system.

The mitigation contractor will be an integral part of the operationalization of the Environmental Compliance Program. As such, the mitigation contractor will be expected to understand and implement the Program and protocols described in the Manual thereby integrating proactively and efficiently with the Authority's team. The mitigation contractor will be expected to interface with the Authority, its Agents, its designees, and other contractors to ensure environmental commitments related to compensatory mitigation are implemented as required per environmental requirements and in support of construction schedules. The mitigation contractor will assist the Authority in developing strategies to fulfill compensatory mitigation requirements that account for the phasing (as each construction contract is developed), cost efficiencies, evolving resource mapping, and regulatory agency collaboration.

6.0 Terrestrial Compensatory Mitigation Contracting Strategy

Based on the foregoing, the Authority team proposes the following structure for contracting for terrestrial compensatory mitigation for the Project:

- **Single Prime Contractor** – The Authority team recommends the selection of a single prime or joint venture contractor to provide all terrestrial compensatory mitigation required for the Project rather than allocating responsibility for different types or categories of compensatory mitigation to different contractors. For example, compensatory mitigation requirements could *theoretically* be divided by resource type (e.g., land cover, species, wetlands), mitigation type (e.g., mitigation bank credits, turnkey mitigation deals), or construction phase, and allocating those "subsets" of mitigation to different contractors. Although such an approach would reduce the risk of reliance on a single contractor, the Authority team believes the complexities of successfully coordinating the Project's mitigation needs among multiple contractors would make it untenable.

  The benefits of retaining a single prime contractor include:

  - More efficient and effective coordination of all of the Authority's complex terrestrial compensatory mitigation needs rather than the Authority having to monitor and coordinate multiple contractors for different mitigation types or categories.

  - Clearer lines of communication with the Authority, facilities design teams, and facilities construction contractors, regulatory agencies, easement-holders, local and regional interests, and the owners of land that may be sought for fee title acquisition or conservation easement.

  - Adaptability to the Project's changing needs as the Authority gains access to the impacted lands, or commences construction, and refines its assumptions of number of impacted species, types and size of habitats, and the resulting phasing and level of mitigation needs.

- Cost efficiencies and improved ability to stack multiple mitigation requirements into mitigation actions.

- Single point of responsibility for the life of each mitigation action, including due diligence investigations, land acquisition, mitigation and management planning, CDFW and other agency mitigation approvals, land improvements, financial security, interim and long-term management, and assumption of compliance and other regulatory risks.

A single prime contractor approach will allow for either self-performance by the prime contractor or subcontracting to other firms (with the Authority having approval rights over any substantial subcontracts/subcontractors). The prime contractor would have the ultimate responsibility to ensure all work is performed in accordance with the agreement between the Authority and the prime contractor, including all scheduling and pricing requirements, thereby passing the risks associated with mitigation success criteria to the single prime contractor.

With one prime contractor, fit and approach; continuity of individuals; succession planning; and measured, sustained performance would be among the critical factors to be considered during the selection process. The mitigation contractor will be required to uphold the Authority's mission and Strategic Plan[8] values.

With one prime contactor, timely contractor performance will be important to the Sites Project's construction schedule and there may be a more unified and streamlined ability to track performance. The Authority anticipates discussions with the selected contractor regarding schedule and to allocate performance risk, financial securities, and incentives and remedies. The Authority intends to delegate permit mitigation requirements to the Contractor through the Contract and in so doing, the Contractor will be responsible and will be held accountable for ensuring the mitigation implementation is performed in the most cost and schedule efficient means possible. This includes achieving state and federal agency concurrence that maximizes the "stacking" of resources within the minimum amount of purchased acres or bank credits. The Authority's budget for mitigation assumes maximized stacking of resources on mitigation lands. The Authority also seeks a Contractor that has the capability to present and deliver a mitigation package for the Project that represents a "marquee" conservation element – meaning a project of this scale comes along infrequently and it is the intention of the Sites Authority that the mitigation for the Project has significance and adds value to the same level and degree that the water element of the Project contributes to California water management.

The Authority team has previously confirmed that multiple firms are interested, available, and capable of serving in the capacity described above, thus providing strong competition for the selection.

- **Coordinated Planning, Development and Implementation.** The single prime contractor would be responsible for all phases of mitigation, including the planning, development and

[8] https://sitesproject.org/wp-content/uploads/2019/11/02-02-Final-Strategic-Plan.pdf

implementation, in consultation with the Authority and the applicable regulatory agencies, of that suite of mitigation actions that is best suited to the Authority's needs (e.g., mitigation on Authority lands, bank credits, easement purchases, and turnkey or other permittee responsible mitigation arrangements) and policy priorities (e.g., involvement of local land trusts, Native American tribes and other interests). Among other things, the contractor would be required develop:

- An overall framework for planning, fulfilling and implementing mitigation actions, including the completion of a regional opportunities assessment to assess the ability to accomplish the goals.
- A strategy for the development and implementation of mitigation relative to land access, permit approvals and construction contract components, such as timelines, payment schedules, timing for developing pricing and offramps, how to avoid over-mitigation, and similar tasks.
- A plan and approach to collectively define team objectives and working policies, identify and describe team lines of communication, establish working roles and authority, define high-level technical milestones for the team, and describe other team collaboration means and methods. The plan should be consistent and integrate with the Authority's Environmental Compliance Program as described in Section 5.0.

- **Design-Build Mitigation Agreement; Price Per Mitigation Acre with Selection Process; Guaranteed Maximum Price** – Consistent with the project delivery authorization provided by the AB 2551 legislation (i.e., adding Public Contract Code sections 20928, et seq.), the Authority anticipates that the Authority and the prime mitigation contractor will enter into a Design-Build Mitigation Agreement. As such, the selection process for the prime contractor will follow the processes and requirements set forth in the AB 2551 legislation, including but not limited to a two-step request for qualifications, shortlisting and subsequent request for proposal process to the shortlisted firms.

  The competition among potential contractors for this work has already led to some land speculation within the region. Such developments have the potential to generate significant concerns from landowners, cause confusion, land pricing concerns, and damage the Authority's relationships. To this end, the Authority team is currently considering awarding the initial mitigation contract to the prime contractor to undertake an initial suite of task order(s), and with subsequent task orders that could be issued to the prime contractor for each of the subsequent mitigation tasks with contracting off-ramps to ensure performance of the prime contractor.

  As access to the Project site is currently limited, the Authority has not been able to conduct on-the-ground land cover or protocol-level species surveys for almost the entirety of the Project footprint[9]. In addition, Project design is at 30 percent and facility locations may

[9] Between 2023 and 2024, the Authority surveyed nearly 1,000 acres through temporary rights of entry. Surveys included: 1) aquatic resources delineations; 2) protocol-level botanical surveys; 3) reconnaissance-level habitat and

change. Therefore, there is some uncertainty as to the actual mitigation needs (acres and habitat types) of the Project. To address this uncertainty, and to ensure price competition, the Authority is currently envisioning an RFP process and a mitigation contract for the entirety of the Project's terrestrial compensatory mitigation needs that includes the following terms:

- The RFP and the mitigation contract will include a description of the different types of terrestrial compensatory mitigation that the Authority anticipates are or may be required for the Project (and approximate acreages of each such type of compensatory mitigation, to the extent available);

- The mitigation provider will be required to provide mitigation to satisfy all the terrestrial compensatory mitigation requirements of the Project, recognizing that those requirements may be updated (increased or decreased) based on Project design and permitting requirements during the term of the mitigation contract;

- The RFP and the mitigation contract will require the mitigation provider to maximize the "stacking" of mitigation lands to the greatest extent possible (i.e., having the same land provide compensatory mitigation for multiple different types of terrestrial compensatory mitigation), and thereby provide the compensatory mitigation package to the Authority in the most cost effect manner that minimizes the amount of purchased acres or credits;

- The RFP responses will be required to provide an "all in" price per mitigation acre ("Price Per Mitigation Acre") for delivery of each different type/category of compensatory mitigation that the Authority anticipates is or may be required, broken down as follows: (a) there will be one Price Per Mitigation Acre for each mitigation type assuming no "stacking" is available for such mitigation; and (b) there will be a separate Price Per Mitigation Acre that includes only the additional incremental cost, if any, for providing each mitigation type on a "stacked" basis on land already used to provide other type(s) of compensatory mitigation. For example, if a particular mitigation type requires only preservation (and not restoration), there may be no additional incremental cost of providing such mitigation on a "stacked" basis, whereas if the mitigation type requires restoration activities, there may be an additional incremental cost of providing such restoration even if such restoration is "stacked" on land otherwise also being used to provide other mitigation);

- Where stacking is not available, the total price paid by the Authority to the mitigation contractor will be based on the number of compensatory mitigation acres delivered by the mitigation contractor that meet the terrestrial compensatory mitigation requirements of the Project, multiplied by the applicable "unstacked" Price Per Mitigation Acre;

wildlife assessments; and 4) aquatic studies on Stone Corral Creek. The Authority has also completed surveys of the Project site and adjacent areas for Bald Eagle and Golden Eagle.

- Where stacking is available, the total price paid by the Authority to the mitigation contractor will be based on the number of compensatory mitigation acres delivered by the mitigation contractor that meet the terrestrial compensatory mitigation requirements of the Project, multiplied by the lowest applicable combination of (a) the "unstacked" Price Per Mitigation Acre for one of the mitigation types provided as part of the stacked mitigation acreage, plus (b) the additional incremental Price Per Mitigation Acre, if any, for providing any additional mitigation type(s) on a "stacked" basis;

- For example:

  Assuming the following table reflects the agreed upon Price Per Mitigation Acre (stacked and unstacked) for the following mitigation types (which are generic for purposes of this example):

Mitigation Type	Mitigation Price Per Acre (with no stacking)	Additional Incremental Price Per Mitigation Acre if can be provided on a "stacked" basis
Land Cover Mitigation[10] Type A	$10,000	$0 (e.g., preservation only, so no additional incremental cost)
Land Cover Mitigation Type B	$10,000	$0 (e.g., preservation only, so no additional incremental cost)
Land Cover Mitigation Type C	$8,000	$0 (e.g., preservation only, so no additional incremental cost)
Species Mitigation[11] Type A	$20,000	$0 (e.g., preservation only, so no additional incremental cost)
Species Mitigation Type B	$30,000	$19,000 (e.g., restoration/improvements needed in addition to preservation of land, resulting in additional incremental cost even if stacking)
Terrestrial Aquatic Mitigation[12] Type A	$15,000	$0 (e.g., preservation only, so no additional incremental cost)
Terrestrial Aquatic Mitigation Type B	$25,000	$16,000 (e.g., restoration/improvements needed in addition to preservation of land, resulting in additional incremental cost even if stacking)

[10] Examples of "Land Cover Mitigation" types include Annual Grasslands and Blue Oak Woodland.
[11] Examples of "Species Mitigation" types include Burrowing Owl and Western Spadefoot.
[12] Examples of "Terrestrial Aquatic Mitigation" types include Wetlands and Intermittent Stream.

Example 1: One acre of mitigation land can provide "stacked" mitigation for all the following three types of mitigation: Land Cover Mitigation Type A; Land Cover Mitigation Type B and Land Cover Mitigation Type C. The total applicable price for said one mitigation acre paid by the Authority would be $8,000 (i.e., this is the lowest applicable single "unstacked" Price Per Mitigation Acre for these three types of mitigation, and there is no additional incremental cost for stacking with respect to the other two types of mitigation).

Example 2: One acre of mitigation land can provide "stacked" mitigation for the following three types of mitigation: Land Cover Mitigation Type A; Species Mitigation Type A and Terrestrial Aquatic Mitigation Type B. The total applicable price for said one mitigation acre paid by the Authority would be $25,000 (i.e., the "unstacked" Price Per Mitigation Acre for Terrestrial Aquatic Mitigation Type B ($25,000), and there is no additional incremental cost for stacking with respect to the other two types of mitigation. [NOTE: This would be the applicable price because it is lower than taking the lowest "unstacked" Price Per Mitigation Acre (i.e., for Land Cover Mitigation Type A at $10,000) plus the incremental cost for stacking with respect to Terrestrial Aquatic Mitigation Type B ($16,000), which would result in the higher total of $26,000.]

Example 3: One acre of mitigation land can provide "stacked" mitigation for the following two types of mitigation: Species Mitigation Type B and Terrestrial Aquatic Mitigation Type B. The total applicable price for said one mitigation acre paid by the Authority would be $44,000 (i.e., the "unstacked" Price Per Mitigation Acre for Terrestrial Aquatic Mitigation Type B ($25,000), plus the additional incremental cost for stacking with respect to Species Mitigation Type B ($19,000). [NOTE: This would be the applicable price because it is lower than taking the "unstacked" Price Per Mitigation Acre for Species Mitigation Type B ($30,000) plus the incremental cost for stacking with respect to Terrestrial Aquatic Mitigation Type B ($16,000), which would result in the higher total of $46,000.]

- The RFP responses and the mitigation contract will also include a total not to exceed Guaranteed Maximum Price (GMP) for the mitigation contract, which cannot be exceeded without the prior written approval of the Authority;

- the Authority would issue separate task orders to authorize the different components of the work, on a phased basis so that the mitigation acquisition and delivery will be sequenced and timed to avoid impacting progress of critical path construction;

- The Authority anticipates that mitigation contract will provide for progress payments to the mitigation contractor as defined milestones under the issued task orders are successfully completed by the mitigation contractor, and that the progress payments will be based upon the percentage of completion, with appropriate retainers, and will apply toward the applicable Price Per Mitigation Acre. This "pay for success" structure will provide for progress payments at certain stages (as specified in each task order) based on success. For example, a progress

payment upon acquisition of lands, a progress payment upon completion of any restoration actions (such as plantings), etc. These would be specified in each task order and specific to that task order; and

- The mitigation contract will provide that, to the extent the mitigation lands that are used to provide the compensatory mitigation purchased by the Authority also include additional mitigation values in excess of those required to satisfy the permit requirements of the Project, all such excess mitigation values will be owned by the Authority and the Authority will have the right to retain, allocate, sell, transfer or assign such excess mitigation values a may be determined by the Authority.

The Authority welcomes industry feedback on the foregoing proposal for satisfying the terrestrial compensatory mitigation requirements of the Project on a timely, efficient and cost effective basis, while also acknowledging and addressing the fact that the ultimate compensatory requirements applicable to the Project may evolve during the term of the mitigation contract.

- **Responsibility for Satisfaction of Permit Conditions** – The prime contractor would accept contractual responsibility for the satisfaction of the terrestrial compensatory mitigation requirements of the Project's permits. These responsibilities might include, in addition to acquiring mitigation lands or conservation easements, the funding of endowments, the provision of financial security in the form of bonds or letters of credits, responsibility for achieving state and federal agency concurrence with "stacking" to minimize mitigation acres, and the satisfaction of performance criteria for any creation/restoration activities and any necessary corrective actions or adaptive management. This functionally means that the mitigation prime contractor would have life-cycle responsibilities past initial mitigation acquisition activities and into management of mitigation lands for the Authority. Having the prime contractor be responsible for performance criteria set by the agencies incentivizes thoughtful design and effective implementation of these actions. Because the Authority would still be the holder (whether directly or through Reclamation) of any regulatory permits needed for the Project, contractual and financial assurances from the prime contractor will be needed to minimize any exposure still held by the Authority.

- **Authority Ownership of Fee Title to Mitigation Lands** – If new fee title purchases are required for mitigation (whether in lieu of or in addition to conservation easement(s)), the Authority should generally be the long-term fee title landowner. The Authority's ownership of mitigation lands would allow the Authority to accomplish more secondary goals on these lands now or in the future. This could include (to the extent allowed by the Authority's permits) granting access to Native American tribes, partnerships with schools and universities for study activities, achieving additional future mitigation requirements on the same lands, stacking with greenhouse gas emissions requirements, and considering other future uses for any excess lands. It is recognized that ownership of fee title also comes with long-term management costs and risks (such as staffing needs, natural risks of fire or drought, and liability risk such as injuries), so each case should be considered on its own merits.

- **Mitigation Prime Contractor Responsible for Preparing Any Necessary Follow on CEQA/NEPA and Permits** – The Authority (and Reclamation as needed) would retain their environmental review and permitting responsibilities under law, but it would be most efficient to have the prime contractor be responsible for preparing and obtaining any necessary follow-on planning and permitting for implementing terrestrial biological mitigation actions. In general, mitigation actions are addressed at a programmatic level in the Authority's permits and may require additional permits and approvals prior to implementation.

7.0 Next Steps

This draft Terrestrial Mitigation Contracting Strategy is now being provided for further industry feedback. Feedback on this draft strategy will be taken until June 11, 2025 and should be emailed to info@sitesproject.org. After this date, the Authority team will revise the contracting strategy in consideration of this feedback and prepare a final strategy for the Authority Board and Reservoir Committee consideration for adoption. The Authority team is particularly interested in industry feedback on the proposal for satisfying the terrestrial compensatory mitigation requirements of the Project on a timely, efficient and cost effective basis, while also acknowledging and addressing the fact that the ultimate compensatory requirements applicable to the Project may evolve during the term of the mitigation contract.

For the purpose of continuing to maintain fair and equitable competition as the Authority prepares to solicit a contractor for these services, the Authority requests that the mitigation industry not have verbal communications with the Authority or the Authority's team working on this strategy. Any and all communications should be in writing to the email address above. Please be aware that any written communications may be shared with all of the mitigation industry and/or posted to the Authority's website.