



Sites Project Authority
Terrestrial Compensatory Mitigation Request for
Qualifications
RFQ No. 26-01

February 13, 2026

Submittal Deadline

April 17, 2026 at 4:00 pm (PST)

Form of Submittal: Electronic Submittal Only via Planet Bids

procurement@sitesproject.org

1.0 Introduction

1.1 General Overview

The Sites Project Authority (Sites Authority), via this Request for Qualifications (RFQ), invites interested and qualified Respondents to submit Statements of Qualifications (SOQs) for the Sites Reservoir Project (Sites Project) Terrestrial Compensatory Mitigation contract (Compensatory Mitigation Contract).

The Sites Project is a proposed off stream water storage facility located in the Sacramento Valley, designed to increase the reliability and flexibility of California's water system. The Project involves diverting water primarily from the Sacramento River during higher-flow periods via existing infrastructure and conveying it to the proposed reservoir site west of Maxwell, where it will be stored for later use. With a planned capacity of up to 1.5 million acre-feet, Sites Reservoir will enhance drought resilience, support ecosystem improvements, provide environmental water dedicated to fish and wildlife, and provide water for agricultural and municipal/industrial uses throughout the State of California.

The Sites Reservoir Project is led by the Sites Project Authority, a joint powers authority made up of irrigation agencies, water districts, cities, and counties in the Sacramento Valley. Since 2010, the Authority has led the planning and development of Sites Project in collaboration with the federal government, state government, and local public agencies. Participation in Sites Reservoir is broad and diverse including the Bureau of Reclamation, the State of California, public irrigation districts in the Sacramento and San Joaquin Valleys, as well as urban areas in Southern California and the Bay Area.

The Sites Authority has established a comprehensive Contracting Strategy for the overall construction of the Sites Project, organizing the required work into distinct construction packages and delivery methods.¹ The Reservoir and Roads construction package, which includes the Project's two main dams, all saddle dams and dikes, the Sites-Lodoga Road and bridge, and associated public road reconfigurations and construction access roads, and the Conveyance construction package which includes the two pumping and generation stations and conveyance pipelines between the existing canals and the reservoir will each be delivered through a Construction Manager at Risk (CMAR) contract. The Reservoir CMAR contract will be awarded by the Authority in early 2026 and the first construction package out of the Reservoir CMAR contract is expected in 2027. The Conveyance CMAR procurement will be initiated in early 2026 and will be awarded in fall 2026. The first construction package out of the Conveyance CMAR contract is expected in mid-2027. Geotechnical activities and development of office trailer areas resulting in permanent land disturbing effects are scheduled to commence in 2027.² Major construction involving, road reconfigurations and new construction road access, pumping and generating station construction, conveyance pipeline laying, development of borrow areas, and establishing equipment laydown and staging areas is anticipated to begin in 2028. Construction will continue ramping up in 2029, reaching peak activity under both CMARs in 2031, and continue into 2033 when operations are expected to be initiated. There will be other construction packages issued for major and minor project related work occurring in areas distant from the major construction going on in

¹ <https://sitesproject.org/meetings/wednesday-july-27/>; Agenda item 2-4.

² The Sites Authority has previously conducted a variety of geotechnical activities. These prior activities were covered under geotech-specific permits and approvals and were structured to avoid permanent impacts to resources. If future geotech activities result in the take of state or federally-listed species, the activity will be covered under the Project-wide permits and approvals and may result in permanent impacts requiring mitigation.

the Sites valley, e.g. construction of the Dunnigan Pipeline and diversion pumping plant improvements. The Authority has adopted a construction schedule and continues to refine this schedule.³

The Sites Authority and 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 Project. The Resource Agency Permits secured to date are generally posted on the Authority's website at www.sitesproject.org/permitting. The Sites Authority and Reclamation have also released a Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS)⁴ and the Authority has adopted a statement of overriding considerations and a Mitigation, Monitoring and Reporting Program, and has approved the Project.⁵ The Project's EIR/EIS includes measures requiring the avoidance and minimization of impacts to protected terrestrial biological resources along with implementation of mitigation to compensate for impacted resource values. The Project's largest construction mitigation cost is expected to be compensatory mitigation for terrestrial biological resources and this is the scope that is covered in this solicitation.

The Sites Authority views implementing this large-scale compensatory mitigation as a unique and challenging opportunity. The Authority desires this mitigation effort to be well-coordinated, timely to avoid construction schedule delays, and cost efficient. In preparing for this solicitation, the Sites Authority released a Terrestrial Mitigation Contracting Strategy⁶ (herein referred to as the Mitigation Contracting Strategy). The industry feedback the Sites Authority received on the Mitigation Contracting Strategy has been taken into consideration in development of this RFQ.

1.2 RFQ Organization

The RFQ is organized as follows:

- **Section 1: Introduction** includes introductory information on the Sites Project and the Mitigation Contracting Strategy and the Compensatory Mitigation procurement.
- **Section 2: Background Information** provides an overview of various efforts undertaken by the Sites Authority to support development of the Sites Project and is intended to provide Respondents with an overall understanding of the complex technical, contractual, public, environmental, and financial considerations involved in the Sites Project development.
- **Section 3: Description of Work for SOQ** provides a description of the Compensatory Mitigation Contract effort, including the pre-construction efforts (Compensatory Mitigation Strategy development) and mitigation delivery efforts.
- **Section 4: Procurement Process Overview** provides an overview of the entire procurement process for the Compensatory Mitigation Contract.
- **Section 5: SOQ Submittal Requirements and Evaluation Considerations** describe the information that Respondents must provide in their SOQs to be considered responsive to the RFQ and to be evaluated for short-listing.

³ <https://sitesproject.org/meetings/friday-january-16-reservoir-committee-authority-board-meeting/>. See Item 3-2.

⁴ <https://sitesproject.org/environmental-review/>

⁵ <https://sitesproject.org/meetings/friday-november-17/>. See Item 2-1.

⁶ <https://sitesproject.org/contractor-outreach/>

- **RFQ Attachments**

- **Attachment A:** Preliminary Draft Compensatory Mitigation Contract including form of Payment and Performance Bonds (Attachment 7 to the Preliminary Draft Compensatory Mitigation Contract)
- Attachment B: RFQ Forms

1.3 Definitions

Any capitalized terms in this RFQ shall have the meanings defined below. Any capitalized terms not defined in this RFQ shall have the meanings set forth in the General Conditions of the Preliminary Draft Compensatory Mitigation Contract.

Authority's Managers – the Executive Director, Environmental Planning and Permitting Manager, External Affairs Manager, Engineering & Construction Manager, and Finance Manager of the Sites Authority, or any of them, as the context requires.

Authority Board – the governing board of the Sites Project Authority inclusive of signatories to the *Fourth Amended and Restated Sites Project Authority Joint Exercise of Powers Agreement (JPA)* and as established in Article IV of the JPA.

Compensatory Mitigation Contract – The Mitigation Contract to be entered into by the Sites Authority and the Compensatory Mitigation Contractor.

Compensatory Mitigation Contractor – The entity that, if Respondent is selected, will act as the contracting entity for the Compensatory Mitigation Contract and that must meet certain requirements of this SOQ.

Compensatory Mitigation Contractor Team – Members of the Compensatory Mitigation Contractor Team including the Compensatory Mitigation Contractor and Key Subcontractors, along with Key Personnel.

Compensatory Mitigation Contracting Strategy – the Terrestrial Mitigation Contracting Strategy released by the Authority in May 2025.

Compensatory Mitigation Strategy – the comprehensive strategy to be developed and implemented by the Compensatory Mitigation Contractor for the entirety of the Sites Project's compensatory mitigation requirements as described in the Compensatory Mitigation Contract.

Construction Contractor – the firms and personnel that the Authority has or will contract with to build the project facilities.

Contact Person – the Sites Authority's sole point of contact for the purpose of this procurement as further described in Section 4.4.2 of this RFQ.

Contracting Strategy – the document describing the division of the Sites Project work into several construction packages, adopted by the Sites Authority in July 2022 as further described in Section 1.1 of this RFQ.

Construction Workforce Policy – The policy that establishes the Authority's expectations for the Project Labor Agreements, workforce utilization and other factors of importance to the local community.

Design Engineers – AECOM and Jacobs, or either of them, as the context requires.

Evaluation Committee – the individuals, selected by the Executive Director, responsible for evaluating and scoring SOQs and Proposals for the Compensatory Mitigation Contract procurement.

Facility Use Partners – GCID, TCCA and RD 108 are providing operating services to the Authority for the purposes of operating the existing pumping and conveyance facilities that are necessary to divert and release water into and out of the reservoir.

Guiding Principals – The Guiding Principles and Preliminary Terms document establishes the foundation for how the Sites Reservoir Project will be managed.

Interested Parties – Individuals, organizations, agencies, and communities that are not formal Project Partners but have an interest in, or may be affected by, the project's planning, development, and outcomes. They represent a broader circle of engagement beyond direct governance and funding roles. Examples of Interested Parties include local communities, environmental and conservation groups, agricultural organizations, recreational users, regulatory agencies, and Tribal Nations.

Key Personnel – the individuals fulfilling the roles identified in Section 4 of this RFQ and that must be identified in Respondent's SOQ and committed to work on the Project if Respondent is selected as the Compensatory Mitigation Contractor.

Key Subcontractors – Firms fulfilling the key roles identified in Section 4 of this RFQ and that must be identified in Respondent's SOQ and committed to work on the Project if Respondent is selected as the Compensatory Mitigation Contractor.

Local Area – Colusa, Glenn, Yolo, Butte, Placer, Sacramento, Shasta, Sutter, Tehama, and Yuba counties.

Local Community Working Group – the individuals and organizations consulted by the Sites Authority on issues related to local impacts of the Sites Project, as further described in Section 2.5.3 of this RFQ.

Participants – 22 local water agencies located statewide that have entered into project agreements with the Sites Authority to advance the Sites Project.

Permittee – The individual, organization, or governmental entity to whom a regulatory agency issues a permit authorizing specified activities. The Permittee is responsible for complying with all terms, conditions, and obligations of the permit, including any required avoidance, minimization, mitigation, monitoring, or reporting measures. The Permittee is legally accountable for ensuring that all authorized activities are conducted in accordance with applicable laws, regulations, and permit requirements.

Preliminary Draft Compensatory Mitigation Contract – The version of the Compensatory Mitigation Contract issued with the RFQ (Attachment A).

Project Area – Colusa, Glenn, and Yolo counties.

Project Integration and Project Controls – HDR and Brown and Caldwell, respectively, or either of them, as the context requires.

Project Partners – Refers to the network of entities working together under the Sites Project Authority. These partners include local water agencies, regional districts, state and federal agencies, and community interests who share responsibility for advancing the project. Their role is to provide financial

participation, technical expertise, regulatory support, and/or operational coordination to ensure the reservoir meets its goals of water reliability, drought resilience, and ecosystem benefits.

Proposer – Respondent that has been short-listed and that has submitted a Proposal in response to the Sites Authority’s RFP for the Compensatory Mitigation Contract.

Reclamation – The Department of Interior, Bureau of Reclamation.

Reservoir Package CMAR Contractor – The construction contractor hired by the Authority for the Reservoir Package CMAR Contract.

Respondent – Entity responding to this RFQ by submitting an SOQ.

Respondent’s Point of Contact – the Respondent’s sole point of contact for the purpose of this procurement as further described in Section 4.4.1 of this RFQ.

Sites Authority or Sites Project Authority – an independent Joint Powers Authority established to exercise powers common to the members to, among other things, effectively study, promote, develop, design, finance, acquire, construct, manage, and operate Sites Reservoir and related facilities such as recreation and power generation.

Sites Project Environmental Compliance Manual –The manual being developed by the Sites Authority to set forth environmental compliance requirements affecting the Sites Project. All construction contractors working on various aspects of the Sites Project shall comply with this manual. (See Section 2.4.3 of this RFQ).

Sites Project Environmental Compliance Program – The overall program developed and implemented by the Sites Authority to implement various environmental requirements and commitments for the Sites Project. (See Section 2.5.6 of this RFQ).

Sites Reservoir Project (Sites Project) – Dams, reservoirs, certain associated diversion and conveyance facilities, and other associated facilities, mitigation lands, and water rights.

Tribal Nations – Sovereign governments composed of Indigenous peoples, recognized either by the United States federal government or by individual states.

Tribal Working Group – Tribal Nations consulted by the Sites Authority on issues related to local impacts of the Sites Project, as further described in Section 2.5.2 of this RFQ.

1.4 Acronyms and Abbreviations

CEQA – California Environmental Quality Act

CDFW – California Department of Fish and Wildlife

CMAR – Construction Manager at Risk

DWR – Department of Water Resources

EIR – Environmental Impact Report

EIS – Environmental Impact Statement

GMP – Guaranteed Maximum Price

ITP – Incidental Take Permit

JV – Joint Venture

LCWG – Local Community Working Group

LF – linear feet

NEPA – National Environmental Policy Act

NOD – Notice of Determination

NMFS - National Marines Fisheries Service

PCC – Public Contract Code

Reclamation – Department of the Interior, Bureau of Reclamation

RFP – Request for Proposals

RFQ – Request for Qualifications

SOQ – Statement of Qualifications

SHPO – State Historic Preservation Officer

SWRCB – State Water Resources Control Board

USACE – United States Army Corps of Engineers

USFWS – United States Fish and Wildlife Service

1.5 Reference Documents

Interested Respondents may access publicly available documents via the Sites Authority’s website located via the following link: www.sitesproject.org.

2.0 Background Information

2.1 Governance and Staffing

2.1.1 Sites Project Authority and Governance

The Sites Project is a locally led project. The Sites Authority is currently made up of 9 members, 2 associate members and DWR serves in an exofficio role. The governing body of the Sites Authority conducts business consistent with the Joint Powers Agreement (JPA).⁷ The Sites Authority currently receives advisory recommendations from the Sites Project Reservoir Committee, composed of members appointed by each of the 22 local water agencies located statewide that have entered into project agreements with the Sites Authority to advance the Sites Project. This Reservoir Committee is envisioned to transition into the Reservoir Management Board in the future and will have independent decision-making authority over certain aspects of the project implementation. The Reservoir Management Board will be a decision-making board composed of representatives of Participants and would function to largely oversee design, construction, operation and maintenance of the Project, with infrequent engagement of the Authority Board in certain areas of shared decision making. The Sites Authority's vision, mission, values and goals are reflected in its adopted 2020 Strategic Plan.⁸ A strategic plan update is envisioned to occur in 2026.

The Authority Board is in the process of developing the Benefits & Obligations (B&O) Contract between the Sites Authority and each Participant. The B&O Contract establishes the contractual commitments between the Sites Authority and Participants for the Sites Project throughout the life of the Project. The participation of the State and Federal government will be contracted under agreements with the Authority that conform to the statutory requirements under which the funding and participation of the State and Federal governments were authorized by voters in the case of State Proposition 1 Water Storage Investment Program and authorized by Congress in the case of the Water Infrastructure and Improvements Act and the Infrastructure Investment and Jobs Act. Reclamation is the lead agency for the Federal Government. DWR and CDFW are responsible for ensuring public benefits under Prop 1 and the California Water Commission authorizes funding. The state and federal agencies do not currently have a voting role in the Sites Authority decision making. Sites Storage Partners is the term used to describe the Participants plus the State of California (State) and Federal Government (Reclamation).

The governance structure of the Sites Project Authority is described in the Joint Powers Agreement, Bylaws, and B&O Contract.

2.1.2 Sites Working Groups and Committees

Effective, inclusive and cost-efficient decision-making requires that the Authority Board and Reservoir Committee organization include workgroups and committees that review and consider items within topic areas prior to their consideration by the Authority Board and Reservoir Committee. The workgroups/committees are advisory to the Authority Board and Reservoir Committee and are

⁷ November 21, 2016. Fourth Amended and Restated Sites Project Authority Joint Exercise of Powers Agreement. Version 4. File No. 12.210-010.04. <https://sitesproject.org/wp-content/uploads/2022/09/Sites-Joint-Powers-Agreement-1.pdf>

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

responsible for developing recommendations for the Authority Board and Reservoir Committee's consideration.

The Environmental Planning and Permitting Workgroup advises the Authority Board and Reservoir Committee on all environmental planning and permitting aspects of the development and implementation of pre-construction, construction, environmental commitments and mitigation actions for the Sites Project. The Environmental Planning and Permitting Manager provides staff support to the Environmental Planning and Permitting Workgroup. The Environmental Planning and Permitting Workgroup is open to the public and meeting agendas and materials can be found on the Sites Project website at: <https://sitesproject.org/committee-workgroup-meetings/>. Compensatory mitigation topics may also occasionally be addressed in the following additional Sites Project Workgroups and Committees: Budget and Finance; Land Management; and Operations and Engineering.

2.1.3 Sites Project Staffing

All services performed on the Sites Project are currently provided through independent contractors who act as the Authority Executive Director and Service Area Managers and purchasing and administrative office leads. As part of the preparations for construction, the Sites Authority is evaluating future organization structures.

2.2 Sites Project Funding

2.2.1 Initial Planning Activities

To date, planning for the Sites Project has been funded by cash contributions from the 22 Participants, dues from the Authority Board members, and reimbursements from state and federal funding agreements.

2.2.2 Long-Term Funding

Future, long-term funding to design and construct the Sites Project will consist of (1) reimbursements from State and Federal funding agreements, (2) loans taken out by the Authority through such programs as the Environmental Protection Agency's Water Infrastructure Finance & Innovation Act program, United States Department of Agriculture Rural Development Loan Program, along with short and interim financing and long term revenue bonds backed by Participants through the B&O Contracts, and (3) contributed funds of Participants choosing to pay as they go.

Credit Rating of the Sites Project Authority

In 2023, the Authority Board adopted a Plan of Finance describing in detail the approach to obtaining long-term Sites Project financing. In 2023, the Sites Authority obtained a confidential indicative credit rating from Standard and Poor's. The Sites Authority plans to obtain a final credit rating in 2026 prior to initiating short and interim term financing to cover project expenses.

State and Federal Agreements

State and federal funding sources may include certain contractual requirements that the selected Compensatory Mitigation Contractor must follow when providing services for the Compensatory Mitigation Contract.

The Sites Authority and Reclamation are in the process of developing a Partnership Agreement reflecting Reclamation’s participation in the Sites Project. The Partnership Agreement will define funding from Reclamation in exchange for Reclamation’s receipt of approximately 9 percent to up to 25 percent of the storage in Sites Reservoir.

The Sites Authority is also in the process of developing two public benefits agreements: one with DWR for flood control and recreation benefits, and another with CDFW for ecosystem benefits. Current plans are to have these agreements executed following execution of the B&O Contract by the Participants in approximately mid-2026.

2.3 Mitigation Contracting Strategy and Draft Contract

2.3.1 Mitigation Contracting Strategy

Following the Reservoir Committee’s and Authority Board’s concurrence of Mitigation Planning Principles (as described in the Mitigation Contracting Strategy), the Sites Authority team⁹ developed a conceptual approach to addressing the Sites Project’s terrestrial mitigation needs and “market-tested” that approach with representatives of the mitigation industry. Specifically, the Sites 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 Sites 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 Sites 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 Sites Authority held one-on-one meetings with the fourteen providers that requested meetings following the October 2023 workshop. 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 and sought feedback from the Environmental Planning and Permitting Workgroup members and from permitting and mitigation experts. The Sites Authority Team used industry feedback and its own research to further develop the conceptual approach into the Mitigation Contracting Strategy. In May of 2025, the Sites Authority released the Mitigation Contracting Strategy for which they received industry feedback and has been taken into consideration in development of this RFQ.

2.3.2 Preliminary Draft Compensatory Mitigation Contract

Attachment A to this RFQ is the Preliminary Draft Compensatory Mitigation Contract. As described in **Table 5-1. SOQ Submittal Requirements, SOQ Appendix G – Comments on Preliminary Draft Compensatory Mitigation Contract**, respondents may provide comments on the Preliminary Draft Compensatory Mitigation Contract, using Form J in RFQ Attachment B, provided they include explanations of the rationale for the proposed change. By failing to comment, the Respondent waives its

⁹ The Sites Authority Team includes Sites Authority Managers and Sites Team Members, its designees, and its environmental counsel, consultants and contractor(s).

right to request such changes to future drafts of the Compensatory Mitigation Contract. The nature and number of comments provided will be considered in the SOQ evaluation.

2.4 Permits, Approvals and Environmental Commitments

2.4.1 Water Right

The Sites Project will require a new water right permit to be issued by the State Water Resources Control Board (SWRCB). The Sites Authority applied for the water right in May 2022. The SWRCB accepted the application in August 2022 and requested that the Sites Authority submit supplemental information for further processing. Following the receipt of supplemental information in January 2023, the SWRCB deemed the application complete in May 2023. In June 2023, the SWRCB issued a public notice of the Sites Authority's water right application which allowed for members of the public to file a protest to the water right application. The protest period ended in August 2023 – fifteen protests were received. Two of the protests have been resolved. Public hearings under the authority of the Administrative Hearing Officer were initiated on August 19, 2024 and completed in summer 2025. A final determination on the water right order and permit is expected in late 2025 or early 2026.

2.4.2 Environmental Review

The Sites Authority acting as the lead agency under CEQA, and Reclamation acting as the lead agency under the National Environmental Policy Act (NEPA) prepared a Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) for the Sites Project. The Final EIR/EIS can be found here: <https://sitesproject.org/environmental-review/>. The Final EIR/EIS describes the Sites Project and its history, including the alternatives considered, and identifies the environmental effects resulting from the Sites Project implementation and the mitigation required to reduce those effects, where applicable.

On November 17, 2023, the Authority Board certified the Final EIR, adopted CEQA Findings and Statement of Overriding Considerations, adopted the Mitigation Monitoring and Reporting Program for the Sites Project and, approved the Sites Project via a Board Resolution. A CEQA Notice of Determination was filed on November 21, 2023, with the relevant county clerks. This also included concluding the AB52 consultation for the Project, however the Authority's commitment to engaging and coordinating with locally affected Tribes continues.

The Sites Authority has successfully defended the Final EIR in CEQA litigation (*Friends of the River, et al., v Sites Project Authority, et al*), aided through the efforts undertaken to comply with California State Senate Bill 149 and its provisions for streamlining judicial review. On May 31, 2024, the Yolo Superior Court found in favor of the Sites Authority on all counts. On June 14, 2024, *Friends of the River, et al.*, appealed the case. On September 20, 2024, the Third District Court of Appeals found in favor of the Sites Authority on all counts, finding that the Sites Project's environmental review fully complied with CEQA.

The Record of Decision by Reclamation is expected in late 2025 or early 2026.

2.4.3 Environmental Permitting

The Final EIR/EIS summarizes the federal, state, and local permits, approvals, and consultation processes that are potentially applicable to the Sites Project in Chapter 4. Appendix 4A, *Regulatory Requirements*, of the Final EIR/EIS provides a more detailed overview of those permits and approvals.

The Sites Authority has submitted permit applications and consultation documents with various agencies, including CDFW, U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), SWRCB, U.S. Army Corps of Engineers (USACE), and State Historic Preservation Officer (SHPO).

The Sites Authority has received or anticipates issuance of:

- Incidental Take Permit (ITP) for construction (completed, issued October 2024 by CDFW).
- Incidental Take Permit (ITP) for operations (completed, issued October 2024 by CDFW).
- Section 7 Project level Construction Biological Opinion (completed, issued July 2025 from USFWS). Reclamation, as NEPA lead, is the lead federal agency for this effort.
- Section 7 Programmatic coverage of the Sites Project operations within the Biological Opinions issued for the Reconsultation of the Long-Term Operations of the State and Federal Projects (completed), issued November 2024 by USFWS and December 2024 by NMFS.
- Section 7 Project level Operations Biological Opinions (expected in early 2026 from USFWS and NMFS).
- Master Streambed Alteration Agreement (completed, issued July 2025 by CDFW).
- Clean Water Act Section 404/401 permits (expected in Spring 2026 from the USACE and SWRCB, respectively). Applications have been deemed complete. The ACOE is expected to issue a ROD in mid-2026.
- Bald and Golden Eagle Take Permit issued by USFWS (issued April 7, 2023) for geotechnical investigations through end of 2026; and a second permit anticipated in March 2026 from the USFWS for Project construction actions.
- Section 106 Programmatic Agreement (completed, issued February 2026). Reclamation, as NEPA lead, is the lead federal agency for this effort.

Various other permits and approvals for the Project are in process and are expected to be issued in 2025 and into 2026. In addition, while the Sites Authority is obtaining Sites Project-wide permits and approvals, the selected Compensatory Mitigation Contractor will be required to provide information to support the Sites Authority in obtaining some of these permits and approvals, obtain some permits and approvals specific to individual construction of compensatory mitigation activities; become familiar with the conditions of these permits and approvals once issued; and ensure that all work conducted under the Compensatory Mitigation Contract (including work by subcontractors) complies with those conditions.

2.5 Engagement Framework: Partners, Working Groups, and Strategic Policies and Programs

The Sites Authority is deeply committed to environmental stewardship and respectful engagement. This commitment guides its collaboration with Tribal Nations, Project Partners, Interested Parties, and community members throughout the planning, design, construction, operation, and maintenance of the Sites Project.

Structured forums such as the Tribal Government Working Group and Local Community Working Group serve as key platforms for dialogue, transparency, and shared decision-making. These groups help shape policies and agreements related to real estate, right-of-way, and land management, ensuring that perspectives are integrated into project implementation. The guiding principle to “respect local communities” informs the Mitigation Contracting Strategy, and the selected Compensatory Mitigation Contractor will be expected to uphold this value. The Compensatory Mitigation Contractor may also support efforts to incorporate Tribal Nation and community input into mitigation planning.

Environmental stewardship is reflected in the Authority’s approach to compensatory mitigation and compliance with governmental and regulatory approvals and permits. As part of this effort, the Authority is developing an Environmental Compliance Program to ensure adherence to environmental requirements while advancing its mission and Strategic Plan values. The selected Compensatory Mitigation Contractor will play a role in operationalizing components of the Environmental Compliance Program.

The Authority adopted the Construction Workforce Policy¹⁰ to ensure labor practices meet statutory requirements and reflect local workforce priorities. As further described in Section 2.5.5, all contractors and subcontractors engaged by the Sites Authority are required to comply with the Sites Authority Construction Workforce Policy, including any applicable Project Labor Agreement requirements, when undertaking construction actions.

The Compensatory Mitigation Contractor must ensure these policies, agreements, and collaborative programs are integrated into the compensatory mitigation implementation.

2.5.1 Environmental Planning and Permitting Work Group

As described in Section 2.0, the Environmental Planning and Permitting Workgroup advises the Authority Board and Reservoir Committee on all environmental planning and permitting aspects of the development and implementation of pre-construction, construction, environmental commitments and mitigation actions for the Sites Project. The Compensatory Mitigation Contractor may be asked to support the Environmental Planning and Permitting Workgroup efforts in cases where decisions regarding compensatory mitigation strategy development, planning and implementation should be considered.

2.5.2 Tribal Government Working Group

The Sites Authority acknowledges the ongoing interests and concerns of California Native American Tribes with traditional and cultural affiliations to the geographic area of the Project. Recognizing the

¹⁰ <https://sitesproject.org/wp-content/uploads/2025/04/02-01-Construction-Workforce-Policy.pdf>

value of Tribal perspectives and Indigenous knowledge, the Authority initiated the Tribal Government Working Group in 2024 to foster meaningful collaboration with Tribes throughout the Sites Project’s design, development, and implementation.

The Tribal Government Working Group serves as a forum for dialogue and partnership, enabling the Sites Authority to incorporate tribal values, traditional ecological knowledge, and cultural insights into Sites Project decision-making.

To support this collaborative approach, the Compensatory Mitigation Contractor will be called upon by the Sites Authority to assist in Tribal Government Working Group efforts, particularly when compensatory mitigation planning involves the integration of traditional ecological and cultural knowledge. The Compensatory Mitigation Contractor will proactively identify and incorporate opportunities for tribal collaboration during the development of the Compensatory Mitigation Strategy. This support may include:

- Participating in Tribal Government Working Group meetings as appropriate
- Aligning terrestrial mitigation site planning with the Sites Authority’s Mitigation Planning Principles set forth in Section 3.0 of the Terrestrial Mitigation Strategy¹¹
- Upholding the Authority’s commitments to tribal engagement and inclusion

Through this partnership, the Sites Authority and the Compensatory Mitigation Contractor will work to ensure that compensatory mitigation strategies reflect both ecological goals and the cultural values of tribes connected to the Project area.

2.5.3 Local Community Working Group

The Sites Authority holds a fundamental value to “respect local communities”, and the Compensatory Mitigation Contractor will be required to uphold this value as its own. The Sites Authority established a Local Community Working Group for the purpose of coordinating with community members. To date, this Working Group has made a number of policy-level recommendations related to the use of, and support for, Local Area labor resources, management of traffic through the Local Area, and other issues affecting the local communities in the vicinity of the Sites Project. This Working Group is expected to serve in some capacity throughout the entire design and construction of the Sites Project.

The current Local Community Working Group policy recommendations were adopted by the Sites Authority in January 2024 and can be found at <https://sitesproject.org/meetings/friday-january-19/>, Agenda Item 2-2.

The Compensatory Mitigation Contractor may be asked to support Local Community Working Group efforts in cases where compensatory mitigation planning should consider or integrate the needs of the local community. Support may take the form of participation in working group discussions, considering secondary impacts (e.g., effects on cattle ranching, coordination with agricultural production), and aligning with adopted policies and recommendations.

¹¹ 20250520_Terrestrial-Mitigation-Contracting-Strategy-For-Industry-Review.pdf

2.5.4 Land Management Committee

The Sites Authority's Land Management Committee advises the Authority Board and Reservoir Committee on land acquisition and land management activities. The Compensatory Mitigation Contractor may be asked to support the Land Management Committee in cases where decisions regarding compensatory mitigation strategy development, planning and implementation should be considered.

2.5.5 Construction Workforce Policy

All contractors and subcontractors engaged by the Sites Authority are required to comply with Public Contract Code section 20928 et seq. and the Sites Authority Construction Workforce Policy, including any applicable Project Labor Agreement requirements, when undertaking construction actions. This Policy outlines the Authority's expectations regarding workforce utilization and other key considerations that reflect the priorities of the local community. Accordingly, and in compliance with section 20928 et seq. Statements of Qualifications (SOQs) must include a detailed description of the proposed approach for ensuring alignment with the adopted Policy and compliance with Public Contract Code section 20928 et seq. This approach will be evaluated and scored as part of the RFQ selection criteria (Table 5-1, Section 1.2).

2.5.6 Environmental Compliance Program

The Sites Authority has or will develop an Environmental Compliance Program ("Environmental Compliance Program") for the Sites Reservoir Project (including the mitigation Project that is the subject of this Contract) to provide a framework for ensuring that the Sites Authority's environmental compliance commitments and obligations are realized and to provide a common platform for reporting that will enhance coordination among the various construction packages. To operationalize this Program, the Authority is developing an Environmental Compliance Manual ("Environmental Compliance Manual"). The Manual provides guidance to the Authority, or its designees,¹² on managing and overseeing contractor compliance with the environmental requirements described in the Authority's permits and approvals. The Compensatory Mitigation Contractor will (1) need to comply with the Environmental Compliance Program for its activities (this is expected to primarily be related to any construction related activities) and (2) assist the Sites Authority in meeting the compensatory mitigation requirements in its permits and approvals, and thus, reflected in the Manual. As such, the Compensatory Mitigation Contractor will be expected to understand and implement the Environmental Compliance Program and protocols described in the Environmental Compliance Manual, including the requirement to use the Sites Authority's software program, thereby integrating proactively and efficiently with the Sites Authority's team.

¹² The Authority's designees may include, without limitation, environmental consultants and the CMAR Contractor and the Compensatory Mitigation Contractor.

2.6 Coordination with Authority Managers, Project Controls, Design Engineers, and Other Contractors

The selected Compensatory Mitigation Contractor will be expected to work collaboratively with the following entities to advance the interests of the Sites Authority and support the development of the Project:

- Sites Authority's Managers and Team
- Sites Planning, Permitting and Design Consultants
- Sites Integration and Project Controls
- Sites Legal Team
- Sites Design Engineers
- Sites CMARs, Construction and Technical Services Contractors

Other future contractors as retained by the Sites Authority

3.0 Description of Work for SOQ

This section provides the necessary context for the development of the specific Statement of Qualifications (SOQ) requirements. It outlines the Authority's objectives, procurement approach, and expectations for Respondents, ensuring that prospective contractors understand the framework within which their qualifications will be evaluated. By establishing this context, the Authority ensures that the SOQ submissions are directly aligned with the overarching goals of the Sites Project and the comprehensive Compensatory Mitigation Strategy.

The Respondent shall submit a SOQ that showcases their technical expertise, experience, and resources to deliver a strategy to meet the biological terrestrial compensatory mitigation requirements for the Project. Sites Authority seeks to procure a single contract with a single prime contractor in a two-step procurement process for the provision of compensatory mitigation services to develop and implement a comprehensive Compensatory Mitigation Strategy for the entirety of the Sites Project's compensatory mitigation requirements. This SOQ is the first step in selecting contractors.

The Compensatory Mitigation Strategy must align with construction phasing of the Sites Project such that all construction activities proceed unimpeded by mitigation conditions, provide cost efficiencies to the Authority, be adaptable to actual, on-the-ground resource mapping, and involve regulatory agency collaboration and their expeditious decision making. The Compensatory Mitigation Strategy must include the following:

3.1 Coordinated Planning, Development and Implementation

The Compensatory Mitigation Contractor will be responsible for all phases of mitigation, including the planning, development and implementation, in consultation with the Sites Authority and the applicable regulatory agencies, of that suite of mitigation actions that is best suited to the Sites Authority's needs (e.g., mitigation on Sites 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 Compensatory Mitigation Contractor will be required to 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 as set forth in the Compensatory Mitigation Contract.
- 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.

3.2 Compensatory Mitigation Agreement Terms, Permit Condition Compliance, Fee Title Land Ownership, Pricing Framework, Selection Methodology, and Guaranteed Maximum Price

The Compensatory Mitigation Strategy will be for the entirety of the Sites Project's terrestrial compensatory mitigation needs. As access to the Sites Project site is currently limited, the Sites Authority has been permitted to date relying upon mostly aerial and dated survey information. Current information for on-the-ground land cover or protocol-level species surveys for almost the entirety of the Sites Project footprint is being obtained now and will continue to be obtained as land is acquired or access is granted. In addition, Sites Project design is at 30 percent and facility locations may be adjusted but are largely set. There is some uncertainty as to the actual compensatory mitigation needs (acres and habitat types) of the Sites Project, mostly related to the actual land cover and survey results. To address this uncertainty, the Compensatory Mitigation Strategy and the Compensatory Mitigation Contract will include the following:

- A description of the different types of terrestrial compensatory mitigation that the Compensatory Mitigation Contractor anticipates are or may be required for the Project (and approximate acreages of each such type of compensatory mitigation, to the extent available);
- A description of how the mitigation to satisfy all the terrestrial compensatory mitigation requirements of the Project is anticipated to be provided, recognizing that those requirements may be updated (increased or decreased) based on Project design and permitting requirements during the term of the Compensatory Mitigation Contract;
- A description of how the "stacking" of mitigation lands will be maximized to the greatest extent possible (i.e., having the same land provide compensatory mitigation for multiple different types of terrestrial compensatory mitigation), thereby providing the compensatory mitigation package to the Sites Authority in the most cost-effective manner that minimizes the amount of purchased acres or credits;
- For mitigation provided by the Compensatory Mitigation Contractor through a "permittee-responsible mitigation/turn-key project, an "all in" price per mitigation acre ("Price Per Mitigation Acre") for delivery of each different type/category of compensatory mitigation that the Sites 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). The Compensatory Mitigation Contractor will need to propose: (a) adjustments to the Price Per Mitigation Acre for Permittee Responsible Mitigation (i.e., "turn-key mitigation") provided on lands that are owned by the Sites Authority; and (b) any annual adjustments to the Price Per Mitigation Acre during the life of the Compensatory Mitigation Contract;

- For mitigation that the Compensatory Mitigation Contractor and the Sites Authority agree should be provided through the purchase of mitigation credits from third-party owned mitigation banks, the Compensatory Mitigation Contractor will serve as the Sites Authority's representative in acquiring such mitigation credits, and the Compensatory Mitigation Contractor will be compensated for such services to be set forth in the Mitigation Contract.
- A total not to exceed Guaranteed Maximum Price (GMP) for the Compensatory Mitigation Contract, which cannot be exceeded without the prior written approval of the Authority;
- The Compensatory Mitigation Contractors will be allowed to bond at the task order level. Specific bonding requirements will be addressed in the RFP stage.
- The Compensatory Mitigation Contractor and its subcontractors will be required to comply with the requirements of the Sites Authority's Construction Workforce Policy, including any applicable Project Labor Agreement requirements, and use a skilled and trained workforce to perform all work that falls within an apprenticeable occupation in the building and construction trades in conformance with the requirements of Public Contract Code Section 20928, et seq.
- Issuance of 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 and not impeding the GMP activity sequence and equipment usage of the construction contractor;
- Milestone and progress payments based upon the percentage of completion, with appropriate retainers, and applied toward the applicable Price Per Mitigation Acre; and
- The Compensatory Mitigation Contract will provide that, to the extent the mitigation lands that are used to provide the compensatory mitigation purchased by the Sites Authority also include additional mitigation values in excess of those required to satisfy the permit requirements of the Sites Project, all such excess mitigation values will be owned by the Sites Authority and the Sites Authority will have the right to retain, allocate, sell, transfer or assign such excess mitigation values as may be determined by the Sites Authority, subject to any necessary regulatory agency approvals. (Note that the use of these unused credits or mitigation values by the Sites Authority in the future is not part of this Compensatory Mitigation Contract unless such credits or mitigation values are later used for the Project's initial construction actions.)

3.3 Responsibility for Satisfaction of Permit Conditions

The Compensatory Mitigation Contractor will have contractual responsibility for the satisfaction of the compensatory mitigation requirements of the Sites Project's permits (relative to permanent Sites Project impacts). 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 Compensatory Mitigation Contractor would have life-cycle responsibilities beyond initial mitigation acquisition activities and into management of mitigation lands for the Sites Authority.

3.4 Authority Ownership of Fee Title to Mitigation Land

The Sites Authority recognizes that the Compensatory Mitigation Contractor may obtain different land protection rights to the mitigation lands, potentially including fee title land acquisitions and/or recordation of conservation easements or other “site protection instruments” to preserve the mitigation lands. In circumstances where new fee title purchases are required for mitigation (whether in lieu of or in addition to conservation easement(s)), the Sites Authority should be given the option of being the long-term fee title landowner. One criteria the Sites Authority may consider in determining its ownership of mitigation lands is whether such ownership 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 potential 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.

3.5 Preparation of Any Necessary Follow on CEQA/NEPA and Permits

Although the Sites Authority (and Reclamation as needed) would retain their environmental review and permitting responsibilities under law, the Compensatory Mitigation Contractor will be responsible for preparing and obtaining any necessary follow-on planning and permitting approvals needed for implementing terrestrial biological mitigation actions. In general, compensatory mitigation actions are addressed at a programmatic level in the Sites Authority’s permits and may require additional permits and approvals prior to implementation.

4.0 Procurement Process Overview

4.1 General

This RFQ initiates the first of a two-step procurement process the Sites Authority is conducting in accordance with Public Contract Code section 20928 et seq. to select a Compensatory Mitigation Contractor.

Step 1: RFQ/SOQs/Short-listing. The issuance of this RFQ initiates the first step of the procurement process. The appointed Evaluation Committee will evaluate and score submitted SOQs, considering additional information obtained through reference checking, to determine which Respondents are the most highly qualified to deliver required compensatory mitigation and to advance to the second step in the procurement. All Respondents submitting SOQs will be notified of the short-listed Respondents.

Step 2: RFPs/Proposals/Selection. During the second step, the Sites Authority will issue an RFP to the short-listed Respondents; only the short-listed Respondents will be eligible to submit Proposals. The Sites Authority, via its Evaluation Committee, will review Proposals, conduct interviews, and, at its sole discretion, may undertake additional reference checking, to support the evaluation of Proposals. Based on its evaluation, the Evaluation Committee will recommend a Proposer to the Sites Authority for initiation of negotiations of the Compensatory Mitigation Contract.

4.1.1 Key Dates

The Sites Authority’s currently anticipated procurement schedule is included in Table 4-1. This schedule is subject to change without notice.

Table 4-1. Anticipated Procurement Schedule

Activity or Milestone	Anticipated Date
RFQ issued including Preliminary Draft Compensatory Mitigation Contract	February 13, 2026
Deadline for Questions on the RFQ	March 4, 2026 at 12 pm PST
Date for Final Addendum	March 11, 2026
SOQ Submittal Date	April 17, 2026 at 4 pm PDT
Sites Authority approves short-list	May 22, 2026
RFP issued	July 24, 2026
Proposal Submittal Date	September 24, 2026
Interviews	October 2026
Sites Authority approves Compensatory Mitigation Contractor	November 2026

4.1.2 Evaluation Committee

The Sites Authority's Executive Director has established an Evaluation Committee responsible for reviewing SOQs and Proposals, evaluating them relative to the criteria and weightings established in this RFQ and in the RFP, establishing a short-list of Respondents, and ranking the Proposers, and identifying the proposer to begin negotiations for the Compensatory Mitigation Contract. The Authority Board will authorize that the Executive Director execute the Compensatory Mitigation Contract with the selected proposer upon completion of a negotiated contract.

4.2 Eligibility / Disallowed Firms and Individuals

4.2.1 Disallowed Firms and Individuals

The Sites Authority has retained the following Authority's Managers and Office Leads, legal Team, and consulting firms to provide guidance in preparing this RFQ, the RFP, and advice on related financial, contractual, and technical matters for the Sites Project. The following firms are prohibited from joining any Respondent's team or otherwise assisting any Respondent with the procurement process for the Compensatory Mitigation Contract.

Sites Authority Managers and Office Leads

- Jerry Brown, Waterology Consulting, Executive Director
- Alicia Forsythe, Forsythe Group LLC, Environmental Planning & Permitting Manager
- Kyle Hughes, Hughes Consulting LLC, Construction Office Lead
- Mario Manzo, MM Water Resources LLC, Deputy Environmental Planning & Permitting Manager
- Robert Natoli, Acqua Consulting, Deputy Engineering & Construction Manager
- Shayleen O'Connell, O'Connell CPAs, Finance Manager
- JP Robinette, Robinette Consulting LLC, Engineering & Construction Manager
- Kevin Spesert, Spesert Consulting, External Affairs Manager

Legal Team

- Best, Best and Krieger LLP
- Cox Castle & Nicholson LLP
- Perkins Coie LLP

Consultants

- Brown and Caldwell
- CMD West
- CreativEnvironment Group

- HDR Engineering, Inc.
- JEM Land Consulting

Law firms, lobbyists, and other policy advisors under contract with the Sites Authority are prohibited from joining any Respondent's team or otherwise assisting any Respondent with the procurement process for the Compensatory Mitigation Contract.

Other firms, currently or previously engaged on the Sites Project and not listed above, may be excluded from the Compensatory Mitigation procurement at the sole discretion of the Sites Authority.

Respondents are responsible for compliance with California Government Code section 1090, Code of Federal Regulations 200.319(b), and all other applicable competitive advantage and conflict of interest rules and regulations.

4.3 Obligations to Keep Team In Place

As part of their SOQs, Respondents are asked to identify Key Subcontractors and Key Personnel that they are including on their teams (See Table 5-1). Respondents are advised that all firms and Key Personnel identified in the SOQ shall remain on the Compensatory Mitigation Contract Team for the duration of the procurement process and throughout execution of the Compensatory Mitigation Contract. If extraordinary circumstances require a change, it must be submitted in writing via email to the Sites Authority's Contact Person. The Sites Authority, at its sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the Respondent's control. Unauthorized changes to the Compensatory Mitigation Contract Team at any time during the procurement process may result in elimination of the Respondent from further consideration. Respondents should note that improper substitution of Key Subcontractors or Key Personnel is prohibited in the Contract Documents.

4.4 Designated Contacts and Communication Protocols

4.4.1 RFQ Acknowledgement and Respondent's Point of Contact

Each Respondent must register at the following website and shall provide the name, phone number, and email address of its point of contact: [PlanetBids](https://www.planetbids.com)

Registered Respondents will receive notices of addenda, questions and answers, and related updates to the original RFQ solicitation.

4.4.2 Sites Authority Designated Point-of-Contact Email

The following is the Designated Point-of-Contact Email for the Compensatory Mitigation procurement:

procurement@sitesproject.org

All communications regarding this RFQ shall be directed to the Designated Point-of-Contact Email listed above. Communication regarding this procurement with any Sites Authority members, Authority's Managers, Authority's Team, consultants, or contractors is strictly prohibited and may result in disqualification from this procurement at the sole discretion of the Sites Authority.

Prospective Respondents may submit written questions about this RFQ by the published deadline in Table 4-1, Anticipated Procurement Schedule, via email to Designated Point-of-Contact Email listed above. The Designated Point-of-Contact will officially respond, on behalf of the Sites Authority, 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://sitesproject.org/procurement/>.

4.4.3 Communications Protocols

Any communications related to this procurement process and the preparation of SOQ documents by a prospective Respondent with any of the Sites Authority members; Authority's Managers, advisors or staff, or consultants, other than the Contact Person, may result in any ensuing SOQ that was submitted by the prospective Respondent as being deemed not accepted, which will result in the SOQ not being further considered.

Any communications with landowners, other mitigation providers (such as banking entities), or other mitigation-related entities and organizations, including Resource Agency staff, as through the prospective Respondent represents the Sites Authority may result in any ensuing SOQ that was submitted by the prospective Respondent as being deemed not accepted, which will result in the SOQ not being further considered.

4.4.4 Public Disclosure

SOQs are a matter of public record and are open to inspection under the California Public Records Act. All SOQs received in response to the procurement documents will become the property of the Sites Authority and will not be returned. It is the Sites Authority's intent, to the extent permitted by law, to keep all SOQs confidential until execution of the Compensatory Mitigation Contract.

If any Respondent claims any part of its SOQ is exempt from disclosure under the California Public Records Act, they shall so indicate in the transmittal letter. The Respondent shall clearly label and stamp the specific portions of the SOQ that the Respondent considers confidential, identify those portions in the transmittal letter, and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a Respondent submits trade secret information, Respondent must plainly mark the information as "Trade Secret" and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.

By submitting an SOQ, a Respondent acknowledges that the Sites Authority may determine in its sole and absolute discretion whether information that the Respondent considers confidential is subject to disclosure as a matter of law, including the California Public Records Act, and Respondent waives any challenge to the Sites Project Authority's decision in this regard. Respondent shall indemnify, defend and hold harmless Sites Authority, and its officers, directors, employees, and Managers from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of information submitted by a Respondent.

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

4.5 Additional Information Related to this RFQ

4.5.1 Reference Checking

As part of the short-listing process, the Sites Authority reserves the right to conduct initial reference checking (by phone and/or email) for the proposed Compensatory Mitigation Contract Team. Reference checking will be used to verify information included in SOQs and will be considered as part of the Scored Evaluation Criteria (Table 4-3). Non-responsive listed references, references that fail to support applicable SOQ information, or poor references will be considered by the Evaluation Committee in scoring SOQs. The Sites Authority reserves the right to check references not included in a Respondent’s SOQ.

4.5.2 Required Minimum Qualifications (Pass/Fail Evaluation)

To be considered for short-listing, Respondents must demonstrate that they meet the required minimum qualifications shown in Table 4-2. However, Respondents are allowed to provide mitigating information for certain Pass/Provisional Pass/Fail criteria that will be considered by the Evaluation Committee as identified in Table 4-2. In addition, the Sites Authority is requesting specific input on some of the Pass/Fail criteria that may result in those criteria being modified and reconsidered during Step 2 of the procurement process. Based on mitigating information provided by a Respondent and input requested from Respondents with respect to certain criteria, the Evaluation Committee may assign a provisional pass and continue to score the SOQ.

Table 4-2. Minimum Qualification Criteria

Criterion	Rating
Experience: Successful completion of compensatory mitigation projects of similar size, scope, and complexity with recent, relevant experience in California	Pass/Fail
Ability to Provide Required Licenses and Certifications	Pass /Fail
Safety Statistics	Pass/Provisional Pass/Fail
Ability to Provide Required Payment and Performance Bonds	Pass/Fail
Insurance	Provisional Pass/Fail
Financial Stability: Ability to handle costs and cash flow	Provisional Pass/Fail

Respondents must demonstrate meeting minimum qualifications to be evaluated under Section 4.5.4 below.

4.5.3 Requests for Input on Preliminary Draft Compensatory Mitigation Contract

The Sites Authority intends to use the SOQ submittal input on the Preliminary Draft Compensatory Mitigation Contract using the form attached hereto as Attachment A. The Evaluation Committee will consider the nature and number of comments in evaluating SOQs. Accordingly, Respondents shall provide an explanation for each requested change using Form J in RFQ Attachment B. Comments received from Respondents may or may not be reflected in future drafts of the Compensatory Mitigation Contract at the sole discretion of the Sites Authority.

4.5.4 Scored Evaluation Criteria and Short-Listing

The Evaluation Committee will evaluate, score, and rank the responsive SOQs that satisfy the required minimum qualifications criteria (see Table 4-3) and in the judgment of the Evaluation Committee should be considered for short-listing based on information provided with a Respondent’s SOQ (provisional pass). Evaluations will consider information obtained during reference checking and will be based on consensus scoring by the Evaluation Committee.

The way the criteria will be considered by the Evaluation Committee is set forth in Table 4-3. For each scored criterion, the Evaluation Committee will assign a raw score of 1 (lowest scoring) to 10 (highest scoring) points. Raw scores will then be multiplied by the weightings in Table 4-3 to arrive at a final score. The rank scoring shall be based solely on the contents of the SOQ plus appendices and reference checking.

Based on this scoring and resultant ranking, the Sites Authority’s intent is to short-list the 2 to 3 highest ranked Compensatory Mitigation Contractor Teams to advance to the RFP of the procurement process, although the Sites Authority reserves the right to short-list more or fewer Respondents. The shortlist will be determined by the Evaluation Committee.

Table 4-3. Scored Evaluation Criteria

Criterion	Weighting (%)
1. Experience of Respondent and Key Subcontractors with successful completion of compensatory mitigation projects of similar size, scope, and complexity with recent, relevant experience particularly in California	30%
2. Team Expertise & Capability: <ul style="list-style-type: none"> • Specialized skills, methodologies, or experience working with local, California and federal regulatory agencies • Compensatory Mitigation Contractor Team’s success in achieving mitigation compliance in coordination with ongoing land acquisition and construction contractors and associated construction activities 	30%
3. Effective and Partnering Oriented Working Relationships with <ol style="list-style-type: none"> a. Public Owners Similar to the Sites Authority b. Tribal Governments c. Local communities 	15%
4. References & Reputation: <ul style="list-style-type: none"> • Professional Standing: Demonstrated history of ethical conduct • Client Satisfaction: Strong references indicating successful delivery, responsiveness, and collaboration with project partners, Tribal governments, and sensitivity to community concerns. 	10%
5. Key Personnel Experience and Capabilities	15%
TOTAL	100%

4.6 Additional Preliminary Information Related to Step 2 (RFP) of the Procurement Process

4.6.1 Interviews

The Evaluation Committee will conduct interviews during the Proposal evaluation process. Interviews will not be scored separately but will be considered when scoring other Proposal evaluation criteria.

4.6.2 Evaluation Criteria, Scoring and Ranking of Proposals

The RFP will set forth the price and non-price criteria that will be considered in the evaluation and the relative weighting of each criterion. Evaluation criteria will include applicable requirements of AB 2551 and Public Contracts Code sections 20928 et seq., and may consider but not be limited to the following:

- Expertise and experience in delivering compensatory mitigation requirements
- Approach to implementation and completion of compensatory mitigation requirements for the Project, including sequencing and schedule to support construction
- Cost effective delivery of compensatory mitigation
- Risk management and assignment
- Performance guarantees
- Allocation of responsibilities for mitigation actions
- Familiarity with regional regulators and regulations, suppliers, contractors, and ecological conditions
- Collaborative approaches to engagement with Tribal Governments, Project Partners and Working Groups
- Integration of Sites Authority's strategic policies and programs
- Compliance with laws and regulations: health and safety and skilled and trained requirements
- Quality assurance and control
- Unique methods or technologies that improve outcomes
- Sustainability practices (e.g. environmental responsibility and energy efficiency)

4.7 Sites Authority Rights and Procurement Conditions

The Sites Authority reserves, holds without limitation, and may exercise, at its sole discretion, the following rights and conditions with regard to this procurement process, including the Step 1 and the RFQ and Step 2 and the RFP, without incurring any obligations or liabilities. By responding to this RFQ, a Respondent acknowledges and consents to the Sites Authority's rights and conditions, including, without limitation, the right to:

- Amend or modify the RFQ and/or RFP through issuance of an addendum.
- Amend the scope of the Sites Project or the Compensatory Mitigation Contract.
- Appoint Evaluation Committee members to review SOQs and Proposals.
- Investigate the qualifications of any Respondent or Proposer by, among other things, contacting project references, visiting referenced facilities, accessing public information, contacting independent parties, or any other means.
- Seek or obtain information from any source related to the SOQs or Proposals.
- Hold meetings and conduct discussions and correspondence with the Respondents and Proposers.
- Require additional information, or confirm information, from a Respondent or Proposer concerning its SOQ or Proposal.
- Seek and receive clarifications from a Respondent or Proposer in writing of an SOQ or Proposal.
- Require from a Respondent or Proposer additional evidence of qualifications to perform the work required to implement the Compensatory Mitigation Contract.
- Disqualify any Respondent or Proposer that submits an incomplete or inadequate SOQ or Proposal, is not responsive to the requirements of the RFQ or RFP, or is otherwise deemed to be unqualified during any stage of the procurement process.
- Extend, suspend, withdraw, modify or cancel the RFQ or RFP at any time.
- Revise the information and other content included in the RFQ, RFP, or the draft Compensatory Mitigation Contract.
- Waive any non-material defects, deficiencies, informalities, technicalities, or irregularities in an SOQ or Proposal, or any non-material deviations from the requirements set forth in the RFQ or the RFP and accept and review a non-conforming SOQ or Proposal.
- Reject any or all SOQs or Proposals at any time.
- Reject any SOQ or Proposals containing exceptions, additions, qualifications or conditions not called for in the RFQ or RFP or otherwise not acceptable to Sites Authority, including where the requested information and materials are not provided.
- Adjust, increase, limit, suspend or rescind a Respondent's qualification rating based on subsequently-acquired information.
- Issue a new RFQ or RFP or re-advertise and/or re-solicit the requirements set forth in the RFQ or RFP at any time.
- Determine the number of Respondents to be included on the short-list for the RFQ.
- Not allow an appeal from a denial due to an incomplete or late SOQ or Proposal.

- Add the next highest-ranking Respondent to the short-list at any time during the procurement process.
- Negotiate with the next highest-ranking Proposer if the Sites Authority is unable to successfully negotiate a contract with the highest-ranking Proposer.
- Rescind a Compensatory Mitigation Contract signed by the selected Compensatory Mitigation Contractor after award by the Sites Authority, but not yet executed by the Sites Authority.
- Not issue a task order or notice to proceed after execution of the Compensatory Mitigation Contract.

This RFQ does not commit the Sites Authority to enter into a Compensatory Mitigation Contract nor does it obligate the Sites Authority or any of its Managers, employees, advisors or representatives to pay for any costs incurred by Respondents in preparation and submission of the SOQs, in anticipation of a Compensatory Mitigation Contract, or in any other activities included as part of the procurement process. By submitting an SOQ, a Respondent disclaims any right to be paid for such costs.

In no event will the Sites Authority be bound by or be liable for any obligations with respect to the Compensatory Mitigation Contract until such time (if at all) as the Compensatory Mitigation Contract, in form and substance satisfactory to the Sites Authority, has been executed and authorized by the Sites Authority and approved by all required parties and then only to the extent set forth therein.

4.8 Appeal Procedures

4.8.1 Waiver; Effect of Failure to Protest or Appeal

The protest and appeal procedures and time limits set forth in this section are mandatory and constitute any protestor's sole and exclusive remedy in the event of an appeal or protest. A protestor's failure to timely complete the protest or appeal procedures shall be deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies in any manner, or failure to comply otherwise with these procedures, shall constitute waiver of any right to further pursue the protest or appeal, including filing a claim pursuant to the Government Claims Act or legal proceedings. These provisions are included in this RFQ expressly as consideration for such waiver and agreement by any protestor, including, but not limited to, Respondents and Proposers.

4.8.2 Protest Procedures for RFQ

Protest Contents of RFQ

If any prospective Respondent has questions, concerns, or needs clarifications about the contents of the RFQ, they must submit a written question to Sites Authority by the designated deadline for submittal of written questions. If the prospective Respondent is not satisfied with Sites Authority's response, they may protest the contents of the RFQ. Any such protest shall be limited to the prospective Respondent's unresolved question, concern, or requested clarification submitted by the designated deadline for questions.

Protests based on the content of the RFQ shall be submitted in writing to Sites Authority no later than 5:00 p.m. on the fifth (5th) calendar day after Sites Authority issues the final addendum for the RFQ. The

notice of protest must be submitted in writing via email to the Contact Person. Any protest submitted untimely will be rejected by Sites Authority as invalid.

Any protest must include the following:

- The name, address, and telephone number of the person representing the protestor;
- A detailed statement of the legal and/or factual grounds for each material issue identified in the protest; and
- All factual and legal documentation in sufficient detail to establish the merits of the protest.

Any matters not set forth in the protest shall be deemed waived. Sites Authority will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. Sites Authority will provide the protestor with a written statement responding to the protest. Action by Sites Authority relative to the protest will be final and not subject to appeal or reconsideration.

Appeal of SOQ Shortlisting

A Respondent may appeal the rating of a timely and complete SOQ submitted by the Respondent. To appeal Sites Authority's determination not to shortlist a Respondent, the Respondent must deliver to Sites Authority written notice of its appeal +no later than 5:00 p.m. on the fifth (5th) business day after Sites Authority issues notice of the shortlisted Respondents (not the date Respondent receives such notification). The notice of appeal must be submitted in writing via email to the Contact Person. Failure to timely appeal a non-shortlisted determination waives any and all rights of the Respondent to further challenge Sites Authority's determination.

Respondent's notice of appeal must include a complete statement of the reasons and facts for the appeal, refer to the specific portions of all documents that form the basis for the appeal, and include the name, address, email address, and telephone number of the person representing the Respondent.

If a Respondent gives the required notice of appeal and requests a hearing, a hearing shall be conducted no later than ten (10) business days after Sites Authority's receipt of the notice of appeal. The hearing shall be an informal process conducted by the Project Appeals Hearing Officer. During the hearing, Respondent will be given the opportunity to present evidence to Sites Authority as to why it should be shortlisted.

The Project Appeals Hearing Officer will render his or her decision in writing to the Respondent. The written decision of the Project Appeals Hearing Officer shall be final. It is the intention of Sites Authority that the date for the submission of Proposals in response to the RFP will not be delayed or postponed to allow for completion of this appeal process.

4.8.3 Protest Procedures for RFP

Protest Contents of RFP

Only a shortlisted Respondent may protest the contents of the RFP. Any protest by someone other than a shortlisted Respondent will be subject to summary rejection without further consideration and the person or entity will have no right to any relief.

If a shortlisted Respondent has questions, concerns, or needs clarifications about the contents of the RFP, they must submit a written question to Sites Authority by the designated deadline for submittal of written questions. If the shortlisted Respondent is not satisfied with Sites Authority's response, they may protest the contents of the RFP. Any such protest shall be limited to the shortlisted Respondent's unresolved question, concern, or requested clarification submitted by the designated deadline for questions.

Protests based on the content of the RFP shall be submitted in writing to Sites Authority no later than 5:00 p.m. on the fifth (5th) calendar day after Sites Authority issues the final addendum for the RFP. The notice of protest must be submitted in writing via email to the Contact Person. Any protest submitted untimely will be rejected by Sites Authority as invalid.

Any protest must include the following:

- The name, address and telephone number of the person representing the shortlisted Respondent;
- A detailed statement of the legal and/or factual grounds for each material issue identified in the protest; and
- All factual and legal documentation in sufficient detail to establish the merits of the protest.

Any matters not set forth in the protest shall be deemed waived. A failure to timely file a protest will waive a shortlisted Respondent's right to protest the content of the RFP. Sites Authority will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. Sites Authority will provide the shortlisted Respondent with a written statement concurring with or denying the protest. Action by Sites Authority relative to the protest will be final and not subject to appeal or reconsideration.

Protest Selection of Proposer After RFP Process

A Proposer may protest the selection of the highest ranked Proposer at the conclusion of the RFP process. Any protest by someone other than a Proposer will be subject to summary rejection without further consideration and the person or entity will have no right to any relief. Protests based on the selection of the highest ranked Proposer shall be submitted in writing to Sites Authority no later than 5:00 p.m. on the fifth (5th) business days after receipt of notification of Sites Authority's selection. The protest must be submitted in writing via email to the Contact Person. Any protest submitted untimely will be rejected by Sites Authority as invalid and Proposer's failure to timely file a protest will waive Proposer's right to protest.

Proposer's protest must include the following:

- The name, address and telephone number of the person representing Proposer;
- A detailed statement of the legal and/or factual grounds for each material issue identified in the protest; and
- All factual and legal documentation in sufficient detail to establish the merits of the protest.

Any matters not set forth in the protest shall be deemed waived. Sites Authority will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. Sites Authority will provide the protestor with a written statement responding to the protest. Action by Sites Authority relative to the protest will be final and not subject to appeal or reconsideration.

5.0 SOQ Submittal Requirements and Evaluation Considerations

5.1 General Submittal Requirements

5.1.1 Proposal Submittal Location and Deadline

Proposal shall be submitted electronically through PlanetBids on or before the date and time listed in Table 4-1.

5.2 Withdrawals/Resubmittal of SOQs

After submitting an SOQ to the Sites Authority, the Respondent may withdraw the SOQ if all of the following occurs:

- The Respondent submits a written notice to the Sites Authority's Contact Person, signed by an authorized representative of the Respondent.
- The Sites Authority receives the request before the SOQ due date and time.

The original SOQ may be revised and resubmitted if the Sites Authority receives the revised SOQ before the SOQ due date.

5.3 SOQ Format

The SOQ shall be formatted as follows:

- **Language:** All information shall be in English.
- **Type Font:** The font shall be Times New Roman or Arial. All narrative text shall be single-spaced, 12-point font. The minimum font size for headings shall be 12-point font. The minimum font size for charts, exhibits, and other illustrative and graphical information shall be 9-point font.
- **Page Size:** With the exception of team and individual-level organization charts and project profiles, all information shall be printed on 8.5-inch by 11-inch paper. Team and individual-level organization charts may be one-sided on 11-inch by 17-inch paper.
- **Page Margins:** No text, tables, figures, photos, or other substantive content shall be printed within 0.75 inch of any page edge.
- **Page Limit:** The SOQ page limit is 50 pages or less, excluding cover, table of contents, executive summary, dividers, and appendices. A page is one printed side of one sheet (i.e., double-sided sheet counts as two pages). A single sided 11x17 page counts as 2 pages. Any content exceeding the page limits will not be reviewed and will not be included in the evaluation. Brevity and the use of graphics and tables are encouraged. Required forms are not included in the page limit.
- **Information to Include.** The SOQ shall include only information required by this RFQ. No other information will be considered in the evaluation of the SOQ. The SOQ shall include the

information described in Table 5-1 below, including without limitation, the information to be included in the SOQ Appendices as described below.

- **Dividers:** Section dividers shall contain the Section number and/or Section title. No other text, graphics, or photos are permitted on the dividers. The dividers will not be counted toward the allowable page total.
- **Front Cover:** The front cover of each SOQ shall be labeled with the name of the Respondent, along with the following:
 - Sites Project Authority
 - Compensatory Mitigation RFQ No. 26-01
 - Statement of Qualifications
 - Date of Submittal

The SOQ shall contain the information described in Table 5-1 in the order shown unless otherwise indicated.

Table 5-1. SOQ Submittal Requirements

Submittal Section / Subsection	Evaluation Considerations	Submittal Requirements
Transmittal Letter	Evaluated for Compliance – Not Scored	Provide a transmittal letter, using Form A in Attachment B to this RFQ. The letter must: <ul style="list-style-type: none"> • Be signed by an authorized representative of the proposed Compensatory Mitigation Contractor with authority to commit to the work. • Include point of contact name and contact information for all future correspondence related to the Compensatory Mitigation procurement.
Table of Contents	Evaluated for Compliance – Not Scored	Provide a Table of Contents that includes major headings of the SOQ and associated page numbers as well as a list of appropriate tables, graphics, figures, photos, appendices, etc.
Executive Summary	Evaluated for Compliance – Not Scored	Provide a brief description of the proposed Compensatory Mitigation Contract Team and the approach that your team will take to providing the required compensatory mitigation services.
<i>2 pages maximum</i>		

SOQ Section 1 – Ability to Meet Minimum Qualification Requirements

Evaluation Criteria and Considerations

Submittal Requirements

Section 1.1 – Successful Completion of Compensatory Mitigation Projects

Pass/Fail

- Successful completion of compensatory mitigation projects

- Provide an affirmative statement that the Respondent/Respondent’s team has successfully completed compensatory mitigation projects of similar size, scope, and complexity with recent, relevant experience in California with cross-reference to project experience information provided elsewhere in the SOQ.
- *If the proposed Respondent is a Joint Venture (JV) or partnership, these requirements may be met by one of the JV partners.*

Section 1.2 – Ability to Provide Required Licenses and Certifications; Enforceable Commitment to Skilled and Trained Workforce

Pass /Fail

Provide a listing of all required licenses and certifications currently in effect or planned to be obtained by the Respondent and/or all Key Subcontractors including:

- A description of the types of California contractors license(s) required by applicable law for the classification required for the work to be performed, and whether such licenses will be held by Respondent and/or by Key Subcontractors
- Public works registration with the California Department of Industrial Relations

Provide back-up documentation (copies of required licenses and certifications) in Appendix A to the SOQ.

Provide: (1) a detailed description of the proposed approach for ensuring alignment with the Authority’s adopted Workforce Policy and compliance with Public Contract Code section 20928 et seq., and (2) an affirmative statement (See Form I in RFQ Attachment B) confirming Respondent’s commitment to comply with skilled and trained workforce laws in conformance with Public Contract Code Section 20928, et seq.

Section 1.3 – Safety Statistics

Pass/Provisional Pass /Fail

If the entity’s EMR for each of the three prior years is 1.0 or less, the entity will be given a “pass” for this criterion.

If an entity’s EMR in any year is greater than 1.0, Respondent may provide explanatory / mitigating information for the Evaluation Committee to consider. Any decision to “provisionally pass” an entity with an EMR greater than 1.0 shall be at the sole discretion of the Evaluation Committee.

Provide information concerning workers’ compensation experience history and a worker safety program.

Provide Experience Modification Rate (EMR), Average Recordable Injury or Illness Rate, and Average Lost Work Rate for the last three years.

If the proposed Compensatory Mitigation Contractor is a JV or partnership, provide required information for all members or partners.

Note that the proposed Compensatory Mitigation Contractor’s overall safety program and safety plan will be requested in the RFP and evaluated as part of the Proposal evaluation process.

Section 1.4 – Ability to Provide Required Payment and Performance Bonds

Pass/Fail

Ability to provide required payment and performance bonds

The Sites Authority’s required form of payment and performance bonds and insurance requirements are included in Attachment A-7 to the Preliminary Draft Compensatory Mitigation Contract which is included in Attachment A of this RFQ.

Provide the required letter from surety(ies) confirming the proposed Compensatory Mitigation Contractor’s ability to obtain payment and performance bonds and other related information. (Form C, in Attachment B to this RFQ).

Identify names and ratings of proposed licensed surety company.

Section 1.5 – Insurance

Provisional Pass/Fail

The Sites Authority is interested in obtaining the best value from its insurance requirements for the portions of the Compensatory Mitigation that involve construction. Actual insurance requirements for the construction phases of are expected to be established as part of the Compensatory Mitigation Contract negotiations.

Construction phase insurance requirements described in this SOQ should be considered preliminary and subject to change/negotiation.

Provide evidence confirming the ability of the Compensatory Mitigation Contractor to obtain the insurance coverages described in the Preliminary Draft Compensatory Mitigation Contract.

If the proposed Compensatory Mitigation Contractor is a JV or partnership, provide required letter for each member or partner.

Section 1.6 – Financial Stability: Ability to Handle Costs and Cash Flow

Provisional Pass/Fail

In evaluating SOQs against this criterion, the Evaluation Committee will consider submitted financial statements and other information related to risk and contingent liabilities to determine if the Compensatory Mitigation Contractor (contracting entity) has sufficient financial strength to complete the Compensatory Mitigation Contract Work.

Financial Statements

In SOQ Appendix B, provide Financial Statements for the proposed Compensatory Mitigation Contractor for each of the past three fiscal years and for each quarter of any subsequent uncompleted fiscal year.

If the proposed Respondent is a JV or partnership, provide financial statements for each member or partner.

Contingent Liabilities and Financial Risk

In SOQ Appendix C, provide answers to the following questions and requests for information (Respondent may provide explanatory information for consideration if applicable):

- Describe any material historical, existing, or anticipated changes in financial position of the proposed Compensatory Mitigation Contractor including any material changes in the mode of conducting business, mergers, acquisitions, takeovers, joint ventures, and/or divestitures.
- Has the proposed Compensatory Mitigation Contractor ever filed for bankruptcy? If so, when, and describe the impact it would have on the ability to honor contractual commitments.
- List and briefly describe any threatened, pending, or past (previous 5 years) legal proceedings and judgments, or any contingent liabilities, in which the proposed Compensatory Mitigation Contractor or any parents, affiliates, and subsidiaries of the proposed Compensatory Mitigation Contractor was or is a party that would adversely affect the proposed Compensatory Mitigation Contractor's financial position or ability to honor its contractual commitments to the Sites Authority.
- In the previous 20 years, has the proposed Compensatory Mitigation Contractor failed to complete any contract, or has any contract been terminated due to alleged poor performance, cause, or default, or has the proposed Compensatory Mitigation Contractor been found to be in violation of any provision of international, federal, state, or local regulations? If so, provide an explanation.
- Has the proposed Compensatory Mitigation Contractor, or any of its partners, officers, or

stockholders owning 5% or more in the company been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination, or prevailing wages? If so, describe the circumstances.

- In the previous 20 years, has the proposed Compensatory Mitigation Contractor, or any of its partners, officers, or stockholders owning 5% or more in the company been barred from bidding on public contracts by the federal government or by any governmental entity in California or any other state? If so, describe the circumstances. Is the decision under review or was it upheld by formal legal and/or grievance process?
- Identify any Key Subcontractor bankruptcies, defaults, or contract terminations for cause in prior 5 years.

If the proposed Compensatory Mitigation Contractor is a JV or partnership, provide information for all members or partners.

SOQ Section 1 – Experience of Compensatory Mitigation Contractor and Key Subcontractors with Successful Completion of Compensatory Mitigation Projects of Similar Size, Scope, and Complexity with Recent, Relevant Experience Particularly in California

30%	Under this criterion, the Evaluation Committee will evaluate the proposed Compensatory Mitigation Contractor’s experience successfully implementing large-scale compensatory mitigation projects, particularly in California.	<p>Provide summary descriptions of the proposed Compensatory Mitigation Contractor’s experience successfully implementing terrestrial compensatory mitigation projects of similar size and complexity to the mitigation required for the Sites Project, including preserving and restoring mitigation values and satisfying required performance standards in California.</p> <p>Summary descriptions must include project name; type and amounts of mitigation fulfilled by project; delivery method; role played by proposed Respondent; Key Subcontractors and Key Personnel; date project was constructed; date performance criteria were met as approved by regulatory or permit issuing agencies; and reference information for the Permittee. This information may be provided by cross referencing to other SOQ sections or appendices.</p> <p>Summaries descriptions of projects in other states can be provided, but the proposed Compensatory Mitigation Contractor should consider explaining how these projects</p>
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relate to the opportunities and challenges of implementing mitigation projects in California.

SOQ Section 2 – Team Experience & Capability

30% Under this criterion, the Evaluation Committee will evaluate the proposed Compensatory Mitigation Contractor Team’s expertise and capability related to specialized skills, methodologies, or experience working with local, California and federal regulatory agencies, and success in the Compensatory Mitigation Contractor Team’s achieving mitigation compliance in coordination with ongoing land acquisition and construction contractors and associated construction activities.

Provide summary descriptions of Respondent’s:

- Specialized skills, methodologies, or experience working with local, California and federal regulatory agencies.
- Compensatory Mitigation Contractor Team’s success in achieving mitigation compliance in coordination with ongoing land acquisition and construction contractors and associated construction activities

Include summary descriptions of relevant projects, resumes, and reference information for the Permittee or provide this information by cross referencing to other SOQ sections or appendices.

SOQ Section 3 – Effective and Partnering Oriented Working Relationships with Public Owners Similar to the Sites Authority, Tribal Governments and Local Communities

15% Under this criterion, the Evaluation Committee will consider the proposed Compensatory Mitigation Contractor Team’s experience working collaboratively with public agencies, including new, complex entities such as the Sites Authority, Tribal Governments, and local communities

Experience with New Owners and their Teams

Describe the proposed Compensatory Mitigation Contractor Team’s experience working collaboratively with public agencies, including new, complex entities such as the Sites Authority.

Include reference to project profiles (SOQ Appendix D) and resumes (SOQ Appendix E) as applicable.

- Experience interfacing with the public agency, its Managers, 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.
- Demonstrated history of experience and positive relationships with Tribal Governments and local communities.
- Describe the Respondent’s and/or Key Subcontractor’s experience developing and implementing community outreach and

engagement programs for large-scale mitigation projects. Specifically identify where this experience involved implementing public outreach and engagement policies adopted by the owner.

- Assisting in developing strategies to fulfill compensatory mitigation requirements that account for phasing (as each construction contract is developed), cost efficiencies, evolving resource mapping, and regulatory agency collaboration.

SOQ Section 4 – References and Reputation

10%	Under this criterion, the Evaluation Committee will consider, in light of their proposed roles on the Sites Project, the proposed Compensatory Mitigation Contract Team’s references and reputation.	Provide evidence of: <ul style="list-style-type: none"> • Professional Standing: Demonstrated history of ethical conduct. • Client Satisfaction: Strong references indicating successful delivery, responsiveness, and collaboration with project partners, Tribal governments, and sensitivity to community concerns.
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SOQ Section 5– Key Personnel Experience and Capabilities

15%	Under this criterion, the Evaluation Committee will evaluate whether the proposed Compensatory Mitigation Contractor Team has the demonstrated experience, competencies, and capabilities to support successful completion of a project of similar size, scope and complexity required for the Compensatory Mitigation Contract. The Evaluation Committee will consider the history of proposed Compensatory Mitigation Contractor Team members working together, established programs for supporting major construction projects, and will consider whether proposed Key Personnel have sufficient	<p><u>Team’s Capabilities and History</u></p> <p>Summarize the history of proposed Compensatory Mitigation Team members working together on previous projects with an emphasis on Key Personnel.</p> <p>Describe proposed Compensatory Mitigation Contractor’s approach to and success with staff retention on large projects requiring multi-year construction.</p> <p>Indicate location of home or local office from which work will be conducted or equipment mobilized.</p> <p>Describe established programs and policies of the prime Compensatory Mitigation Contractor for quality management, project controls, and resource management (staffing and materials/equipment).</p> <p>Describe backups for Key Personnel and other project resources.</p> <p><u>Team Leadership</u></p> <p>Discuss Project Director’s and Project Manager(s)’ experience leading similar teams. Describe any anticipated transitions in project leadership between the preconstruction and construction phases.</p>
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experience and training to competently manage and complete the Compensatory Mitigation Contract relative to their proposed roles and responsibilities.

Discuss alignment of roles and responsibilities with qualifications and experience of Key Personnel with cross reference to resumes in SOQ Appendix B – Resumes.

Key Personnel include:

- *Project Director (responsible for direction, management and delivery of the overall Compensatory Mitigation Contract work)*
- *Project Manager(s)*
- *Public Outreach Manager(s)*
- *Safety Manager*
- *Quality Assurance Manager*

SOQ Appendix A – Proof of Licenses and Certifications

Provide a listing of all relevant licenses and certifications, including associated back-up documentation, currently in effect or planned to be obtained by the proposed Compensatory Mitigation Contractor and all Key Subcontractors.

SOQ Appendix B– Financial Information (as a separate attachment)

- Provide required audited and unaudited financial statements for each of three fiscal years, and each quarter of any subsequent uncompleted fiscal year.
- Provide required information related to contingent liabilities and financial risks.

SOQ Appendix C – Corporate Documents (as a separate attachment)

If Respondent is a privately held corporation, limited liability company, partnership, or joint venture, comprised of privately-held entities, the Respondent shall provide a listing of all of the shareholders, partners, or members known at the time of responding to this RFQ who will perform work under the Compensatory Mitigation Contract.

If the Respondent's legal entity has already been formed, the Respondent shall provide complete and fully executed copies of the organizational documents, along with those documents that allow, or would allow by the time of Contract award, the Respondent and its team members to conduct business in the State of California.

If the Respondent's legal entity has not yet been formed, then the Respondent shall provide draft copies of the underlying agreements. Once the legal entity is finalized, the Respondent shall supplement its SOQ with copies of the final organizational documents. If Respondent is short-listed, the final organizational documents shall be submitted with the Proposal as described in the upcoming RFP.

SOQ Appendix D – Reference Project Profiles

Provide up to seven descriptions of relevant projects, each completed no longer than ten years prior to the date of submission. Projects that are in-progress are acceptable, but their level of completion will be considered in the evaluation, so Respondents are encouraged to provide projects that are nearly complete if possible.

Each description should include:

- Project name, client, and location.
- Contracting method.
- Total cost.
- Start date and completion date (or estimated completion date).
- Specific roles and scope of any Key Subcontractor on the Respondent's team that was associated with the project.
- Specific roles of any Key Personnel proposed for the Compensatory Mitigation Contract work.
- Narrative description of the project.
- Narrative description of any changes in lead personnel for the reference project.
- Narrative description of major issues, claims, sanctions, and issue resolution.
- Schedule and budget performance.
- Client reference contact information (name, role on project, phone, e-mail).

Reference project profiles shall be either a maximum of two 8.5x11 pages or one 11x17 page.

SOQ Appendix E – Resumes

Provide resumes of Key Personnel. Resumes shall include education, professional licenses and certifications, years of experience, descriptions of relevant projects and role; and two project references (including client reference contact information).

Resumes shall be limited to no more than two pages each.

Respondents should note that, in addition to the Key Personnel required by this SOQ, a Respondent may add additional Key Personnel. However, Respondents are cautioned not to arbitrarily add individuals as Key Personnel (and thereby add their resumes) unless such designation materially strengthens Respondents' SOQ response.

SOQ Appendix F – Completed Forms

Provide the following in Appendix F:

- Form A: Transmittal Letter
- Form B: Insurance Company Letter of Intent Regarding Required Insurance
- Form C: Surety Letter of Intent Regarding Performance and Payment Bonds
- Form D: Organizational Conflict of Interest Certification
- Form E: Non-Collusion Declaration
- Form F: Executive Order N-6-22 Certification
- Form G: Anti-Lobbying Certification
- Form H: Debarment and Suspension Certification
- Form I: Skilled and Trained Workforce Certification
- Form J: Suggested Material Comments to the Preliminary Draft Compensatory Mitigation Contract

Forms available in Attachment B of this RFQ

SOQ Appendix G – Comments on Preliminary Draft Compensatory Mitigation Contract

Respondents may provide comments on the Preliminary Draft Compensatory Mitigation Contract, using Form J in RFQ Attachment B, provided they include explanations of the rationale for the proposed change. By failing to comment, Respondent waives its right to request such changes to future drafts of the Compensatory Mitigation Contract. The nature and number of comments provided will be considered in the SOQ evaluation.

Form J available in Attachment B of this RFQ

RFQ Attachments

Attachment A

Preliminary Draft Mitigation Contract including Form of Payment and Performance Bonds

SITES PROJECT AUTHORITY



**SITES RESERVOIR PROJECT:
DESIGN-BUILD TERRESTRIAL
COMPENSATORY MITIGATION
CONTRACT**

**Sites Project Authority
122 Old Highway 99 West
Maxwell, CA 95955**

TABLE OF CONTENTS

	Page
DESIGN-BUILD TERRESTRIAL COMPENSATORY MITIGATION CONTRACT	1
ATTACHMENT 1A -- DESCRIPTION OF ESTIMATED BASELINE COMPENSATORY MITIGATION REQUIREMENTS	A1A-1
ATTACHMENT 1B -- PLANNING/EARLY IMPLEMENTATION PHASE SCOPE OF SERVICES.....	A1B-1
ATTACHMENT 1C -- MITIGATION PHASE SCOPE OF SERVICES.....	A1C-1
ATTACHMENT 2 -- GENERAL CONDITIONS	A2-1
ATTACHMENT 3 -- SPECIAL CONDITIONS.....	A3-1
ATTACHMENT 4A -- PAYMENT SCHEDULE FOR PLANNING/EARLY IMPLEMENTATION PHASE SERVICES	A4A-1
ATTACHMENT 4B -- PAYMENT SCHEDULE FOR MITIGATION PHASE SERVICES.....	A4B-1
ATTACHMENT 5 -- SAMPLE TASK ORDER FOR PLANNING/EARLY IMPLEMENTATION PHASE SERVICES FORM.....	A5-1
ATTACHMENT 6 -- SAMPLE TASK ORDER FOR MITIGATION PHASE SERVICES FORM	A6-1
ATTACHMENT 7 PERFORMANCE BOND; PAYMENT BOND	A7-1
ATTACHMENT 8 MITIGATION CONTRACTOR CERTIFICATIONS FROM RFQ AND RFP.....	A8-1
ATTACHMENT 9 FUNDING REQUIREMENTS	A9-1

**DESIGN-BUILD TERRESTRIAL COMPENSATORY MITIGATION CONTACT
BETWEEN
SITES PROJECT AUTHORITY AND
[***INSERT MITIGATION CONTRACTOR NAME***]
FOR THE SITES RESERVOIR PROJECT**

This Design-Build Terrestrial Compensatory Mitigation Contract (“Contract”) is made and entered into this [] day of [], 202[] (“Effective Date”) by and between Sites Project Authority, a joint powers authority, (hereinafter referred to as “Sites Authority”) and [***INSERT MITIGATION CONTRACTOR NAME***] (hereinafter referred to as “Mitigation Contractor”). Sites Authority and Mitigation Contractor are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

A. Sites Authority is a public agency of the State of California and is in need of compensatory mitigation services (the “Project”) for the Sites Reservoir Project (“Sites Reservoir Project”). The Project will include four phases: (1) planning and early implementation phase (“Planning/Early Implementation Phase” or “Planning/Early Implementation Phase Services”); (2) 2027-2028 compensatory mitigation requirements (Early Impacts) (“Mitigation Phase 1” or “Mitigation Phase 1 Services”); (3) all other compensatory mitigation requirements, other than those related to the final 30% Sites Reservoir Project reservoir inundation area (“Mitigation Phase 2” or “Mitigation Phase 2 Services”) and (4) compensatory mitigation requirements for the final 30% Sites Reservoir Project reservoir inundation area (“Mitigation Phase 3” or “Mitigation Phase 3 Services”) (each a “Phase” or collectively the “Phases”), each of which are more fully described in the Contract Documents (collectively, “Services”). Mitigation Phase 1, Mitigation Phase 2 and Mitigation Phase 3 are each individually sometimes referred to as a “Mitigation Phase,” the “Mitigation Phases” or the “Mitigation Phase Services.”

B. Sites Authority is authorized by Public Contract Code section 20928 *et seq.* to use design-build contracting on the Project and issued a request for qualifications (“RFQ”) to interested and qualified teams to submit statements of qualifications (“SOQs”) and, based on the evaluation of the SOQs, short listed potential compensatory mitigation contractors, including Mitigation Contractor. Sites Authority then invited short listed compensatory mitigation contractors, including Mitigation Contractor, to submit a proposal (“RFP Proposal”) in response to Sites Authority’s request for proposals (“RFPs”).

C. Sites Authority determined that Mitigation Contractor’s RFP Proposal provided the best value to Sites Authority under a competitive process conducted in 202[] and the Sites Authority Board has awarded this Contract to Mitigation Contractor taking into consideration the representations and commitments made by the Mitigation Contractor during that process.

D. In entering into this Contract, the Parties expressly agree that Sites Authority is under no obligation to proceed with any Phase.

E. Mitigation Contractor warrants and represents that it is able and qualified to perform the Services for the Project.

F. The Parties desire to enter into this Contract for the purpose of setting forth the terms and conditions upon which Mitigation Contractor will complete the Services.

TERMS

1. CONTRACT DOCUMENTS.

1.1 Incorporation of Recitals; Contract Documents.

(a) The above referenced recitals are true and correct and are incorporated into this Contract by this reference. This Contract includes and hereby incorporates in full by reference the following documents which are the "Contract Documents", including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

[INSERT ADDITIONAL DOCUMENTS OR REMOVE DOCUMENTS LISTED IF NOT APPLICABLE TO THIS CONTRACT; THEN FINALIZE PRIOR TO EXECUTION]:

- (i) Design-Build Terrestrial Compensatory Mitigation Contract
- (ii) Description of Estimated Baseline Compensatory Mitigation Requirements (**Attachment 1A**)
- (iii) Planning/Early Implementation Phase Scope of Services (**Attachment 1B**)
- (iv) Mitigation Phase Scope of Services (**Attachment 1C**)
- (v) General Conditions (**Attachment 2**)
- (vi) Special Conditions (**Attachment 3**)
- (vii) Payment Schedule for Planning/Early Implementation Phase Services (**Attachment 4A**)
- (viii) Payment Schedule for Mitigation Phase Services (**Attachment 4B**)
- (ix) Sample Task Order for Planning/Early Implementation Phase Services Form (**Attachment 5**)
- (x) Sample Task Order for Mitigation Phase Services Form (**Attachment 6**)
- (xi) Performance and Payment Bonds (**Attachment 7**)
- (xii) Mitigation Contractor Certifications from RFQ and RFP (**Attachment 8**)
- (xiii) Funding Requirements (**Attachment 9**)
- (xiv) Change Orders
- (xv) Permits
- (xvi) Request for Qualifications and all addenda, attachments and appendices

- (xvii) Request for Proposals and all addenda, attachments and appendices

1.2 Use of Defined Terms. Any capitalized term herein not defined in the Contract, or other Contract Documents, shall have the meaning set forth in the General Conditions.

1.3 Integration/Modification. The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of this Contract. This Contract supersedes all previous contracts, agreements, and/or communications, both oral and written, and constitutes the entire understanding of Sites Authority and Mitigation Contractor. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of this Contract, Contract Documents, or any items incorporated by reference.

2. MITIGATION CONTRACTOR SERVICES AND RESPONSIBILITIES.

2.1 Background and Purpose and General Framework.

(a) The Sites 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. These authorizations cover construction-related (both temporary and permanent) 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 species¹ 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”).

(b) In addition to the Resource Agency Permits, the Sites Authority is subject to measures identified in the Sites Reservoir Project’s Final Environmental Impact Report/Environmental Impact Statement (“Final EIR/EIS”) to address impacts to Protected Terrestrial Resources. Applicable requirements for compensatory mitigation are also included in a variety of established regulatory policies. At the Federal level, these include, but are not limited to, 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

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 Contract 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 Sites Authority expects that aquatic riverine and estuarine species compensatory mitigation is likely to be addressed through a separate contracting process.

implemented by California Department of Fish and Wildlife (CDFW), including its policies on mitigation and conservation banking and the protection of Habitat Mitigation Lands (or HM Lands).

(c) 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 (i.e., compensatory mitigation).

(d) As access to the Sites Reservoir Project site is currently limited, the Sites Authority has not been able to conduct on-the-ground land cover or protocol-level species surveys for almost the entirety of the Sites Reservoir Project footprint. In addition, the Sites Reservoir Project design is at thirty percent (30%) and facility locations may change. Therefore, there is some uncertainty as to the actual terrestrial compensatory mitigation needs (acres and habitat types) of the Sites Reservoir Project. However, the currently estimated terrestrial compensatory mitigation requirements anticipated to be required for the Sites Reservoir Project are described in Attachment 1A hereto, which is incorporated herein by this reference (collectively, the "Baseline Compensatory Mitigation Requirements"). Attachment 1A describes the currently anticipated mitigation quantities and habitat types.

(e) Notwithstanding the foregoing or any other provision in this Agreement to the contrary, if the compensatory mitigation created for the Sites Authority under this Contract (i.e., the Baseline Compensatory Mitigation Requirements) should exceed the compensatory Mitigation the Sites Authority needs to fulfill Sites Reservoir Project requirements for any reason, the Sites Authority shall own any such excess compensatory mitigation and the Sites Authority, in its sole discretion, will have the right to retain, allocate, sell, transfer or assign such excess compensatory mitigation as may be determined by the Sites Authority. In the event the Sites Authority exercises the right to allocate, sell, transfer or assign the excess compensatory mitigation created under this Contract, the Sites Authority must obtain, at the Sites Authority's sole cost, any Resource Agencies' approvals necessary for such allocation, sale, transfer or assignment, and Mitigation Contractor will take all reasonable steps, at no additional cost to Mitigation Contractor, to effectuate such allocation, sale, transfer or assignment, including, but not limited to, signing necessary documentation, providing necessary information or documentation that has already been gathered and/or prepared, and/or consenting to the allocation, sale, transfer or assignment. The intent of this paragraph is to ensure that the Sites Authority is able to fully utilize all compensatory mitigation values created under this Contract or obtain the value for any excess compensatory mitigation and to ensure that Mitigation Contractor will take all steps, at no additional cost to Mitigation Contractor, reasonably necessary to ensure that the Sites Authority can effectuate this intent.

(f) The Mitigation Contractor will be fully responsible for all aspects of satisfying the Baseline Compensatory Mitigation Requirements, including the planning, development and implementation, in consultation with the Sites Authority and the applicable Resource Agencies, of that suite of mitigation actions that is best suited to the Sites 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, cost efficiencies, maximizing stacking of mitigation, etc.).

(g) The Sites Authority has or will develop an Environmental Compliance Program ("Environmental Compliance Program") for the Sites Reservoir Project (including the

mitigation Project that is the subject of this Contract) to provide a framework for ensuring that the Sites Authority's environmental compliance commitments and obligations are realized and to provide a common platform for reporting that will enhance coordination among the various construction packages. To operationalize this Program, the Authority is developing an Environmental Compliance Manual ("Environmental Compliance Manual"). The Environmental Compliance Manual provides guidance to the Authority, or its designees², on managing and overseeing contractor compliance with the environmental requirements described in the Authority's permits and approvals. The Mitigation Contractor will (1) need to comply with the Environmental Compliance Program for its activities (this is expected to primarily be related to any construction related activities) and (2) assist the Sites Authority in meeting the compensatory mitigation requirements in its permits and approvals, and thus, reflected in the Environmental Compliance Manual. As such, the Mitigation Contractor will be expected to understand and implement the Environmental Compliance Program and protocols described in the Environmental Compliance Manual, including the requirement to use the Sites Authority's software program, thereby integrating proactively and efficiently with the Sites Authority's team.

(h) The Mitigation Contractor is responsible for the satisfaction of the Baseline Compensatory Mitigation Requirements. These responsibilities include, without limitation, in addition to acquiring mitigation lands or conservation easements, the funding of endowments required for the compensatory mitigation, the provision of financial security in the form of bonds or letters of credits that may be required by the Resource Agencies for the compensatory mitigation, and responsibility for achieving Resource 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.

(i) If new fee title purchases are required for the compensatory mitigation (whether in lieu of or in addition to conservation easement(s)), the Sites Authority may require on a case by case basis to be the long-term fee title landowner or easement holder allowing the Authority to accomplish secondary goals on these lands now or in the future. This could include (to the extent allowed by the Sites 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. The Sites Authority will consider if it will require to be the fee title landowner or easement holder on a case-by-case basis.

2.2 Planning/Early Implementation Phase.

(a) Commencement of Planning/Early Implementation Phase. Mitigation Contractor shall not commence Planning/Early Implementation Phase Services for the Planning/Early Implementation Phase until Sites Authority issuance of a Task Order to complete certain Planning/Early Implementation Phase Services in accordance with the Contract Documents. Sites Authority has no obligation to issue a Task Order for any Planning/Early Implementation Phase Services. All Planning/Early Implementation Phase Services performed by Mitigation Contractor prior to Sites Authority's issuance of a Task Order for such Planning/Early Implementation Phase shall be at Mitigation Contractor's sole risk.

(b) Planning/Early Implementation Phase Services. Mitigation Contractor promises and agrees to furnish to Sites Authority all labor, materials, tools, equipment, services,

² The Authority's designees may include, without limitation, environmental consultants and the CMAR Contractor and the Mitigation Contractor.

and incidental and customary work necessary to fully and adequately perform the Planning/Early Implementation Phase and complete the Planning/Early Implementation Phase Services consistent with the requirements in the Contract Documents. The Tasks and Deliverables for the Planning/Early Implementation Phase are set forth in Attachment 1B hereto, which incorporated herein by this reference.

(c) Planning/Early Implementation Phase Task Orders. Planning/Early Implementation Phase Services shall be performed pursuant to one or more Task Orders issued in a form substantially similar to the sample form of Task Order for Planning/Early Implementation Phase Services attached hereto attached as Attachment 5 and shall be subject to all terms and conditions of the Contract Documents. No compensation shall be provided for any Planning/Early Implementation Phase Services unless authorized by a fully executed Task Order.

(d) Planning/Early Implementation Phase Delays. Mitigation Contractor shall not be entitled to any costs due to any impacts, disruption, or delays occurring during performance of Planning/Early Implementation Phase Services. If Sites Authority or any other party exceeds or fails to meet any time limit provided in the Contract Documents for performance of any action during Planning/Early Implementation Phase Services, Contractor's sole remedy shall be an adjustment of the time period for performance of Planning/Early Implementation Phase Services. Any delay that occurs during the Planning/Early Implementation Phase shall have no impact on Sites Authority's right to terminate Planning/Early Implementation Phase Services at any time as provided in the General Conditions.

2.3 Mitigation Phases.

(a) Commencement of Mitigation Phases. Mitigation Contractor shall not commence Mitigation Phase Services for a Mitigation Phase until Sites Authority issuance of a Task Order to complete certain Mitigation Phase Services in accordance with the Contract Documents. Sites Authority has no obligation to issue a Task Order for any Mitigation Phase Services. All Mitigation Phase Services performed by Mitigation Contractor prior to Sites Authority's issuance of a Task Order for such Mitigation Phase Services shall be at Mitigation Contractor's sole risk.

(b) Mitigation Phase Services. Mitigation Contractor promises and agrees to furnish to Sites Authority all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform each Mitigation Phase and complete the Mitigation Phase Services consistent with the requirements in the Contract Documents. The Tasks and Deliverables for each Mitigation Phase are set forth in Attachment 1C hereto, which incorporated herein by this reference.

(c) Mitigation Phase Task Orders. Mitigation Phase Services shall be performed pursuant to one or more Task Orders issued in a form substantially similar to the sample form of Task Order for Mitigation Phase Services attached hereto attached as Attachment 6 and shall be subject to all terms and conditions of the Contract Documents. No compensation shall be provided for any Mitigation Phase Services unless authorized by a fully executed Task Order.

(d) Mitigation Phase Delays. Mitigation Contractor shall not be entitled to any costs due to any impacts, disruption, or delays occurring during performance of Mitigation Phase Services. If Sites Authority or any other party exceeds or fails to meet any time limit provided in the Contract Documents for performance of any action during Mitigation Phase Services,

Contractor's sole remedy shall be an adjustment of the time period for performance of Mitigation Phase Services. Any delay that occurs during a Mitigation Phase shall have no impact on Sites Authority's right to terminate Mitigation Phase Services at any time as provided in the General Conditions.

3. MITIGATION CONTRACTOR'S COMPENSATION.

3.1 Planning/Early Implementation Phase Compensation.

(a) Planning/Early Implementation Phase Compensation. For Planning/Early Implementation Phase Services satisfactorily rendered in accordance with the terms of this Agreement, Sites Authority agrees to compensate Mitigation Contractor as described on the payment schedule attached as Attachment 4A.

3.2 Mitigation Phase Compensation.

(a) Mitigation Phase Compensation. For Mitigation Phase Services satisfactorily rendered in accordance with the terms of this Agreement, Sites Authority agrees to compensate Mitigation Contractor as described on the payment schedule attached as Attachment 4B.

4. Skilled and Trained Workforce Requirements.

4.1 Skilled and Trained Workforce Requirements. Pursuant to Mitigation Contractor's RFP Proposal, Mitigation Contractor agrees to comply with Sites Authority's Construction Workforce Policy and Public Contract Code section 20928 *et seq.* (the "Skilled and Trained Workforce Requirements"), including any applicable Project Labor Agreement requirements. Mitigation Contractor and Subcontractors, including lower tier subcontractors, shall at all times comply with the requirements of the Skilled and Trained Workforce Requirements in the prosecution of the Project. Mitigation Contractor agrees to require Subcontractors, including lower tier subcontractors, to agree in writing in the form of a letter of assent, or similar, to be bound by each and every provision of the Skilled and Trained Workforce Requirements prior to the commencement of Services covered by the Skilled and Trained Workforce Requirements or at the time of such subcontract, whichever occurs first. Any delays related to labor disputes involving implementation of the Skilled and Trained Workforce Requirements shall be the responsibility of the Mitigation Contractor. Mitigation Contractor shall be responsible for any delays or extra costs resulting from the foregoing.

5. PROJECT FUNDING REQUIREMENTS.

5.1 Project Funding. Funding for this Contract has been or will be provided in full or in part by federal, state, or local grants and/or loans (collectively, the "Funding Requirements"). Mitigation Contractor shall comply, and assist Sites Authority in complying, with all duties, requirements, and obligations in and arising out of the Funding Requirements. The Funding Requirements are included in Attachment 9 to this Contract.

6. THE LOCAL COMMUNITY.

6.1 Working with the Local Community; Development Agreements. Mitigation Contractor shall be responsive to the community needs in Maxwell and the Project Area and Local Area. All work on the Project will be, to the extent possible, performed in a manner that is

compatible with the needs of the local communities within vicinity of the Project work area or directly affected by the Project work. This includes, but is not limited to, participating in local community working group discussions to foster collaboration and address issues of local concern during the Project (when requested by Sites Authority), abiding by the “Respect for Local Community” value of Sites Authority, and, to the extent allowed by law, encouraging and utilizing Project Area and Local Area business and workforce participation in the Project by conducting workforce employment outreach, providing training, and connecting with local contractors, businesses, and suppliers. Mitigation Contractor shall also be required to work with the Sites Authority to ensure compliance with applicable requirements under any Development Agreement(s) that relate to satisfying compensatory mitigation requirements for the Sites Reservoir Project.

7. ENVIRONMENTAL STEWARDSHIP.

7.1 Environmental Compliance. Sites Authority operates under a number of environmental permits issued by various Governmental Bodies. Mitigation Contractor shall be an environmental steward on the Project and comply with all applicable federal, state, and local environmental rules and regulations, including, but not limited to, all environmental permits applicable to the Project and the Sites Reservoir Project, as well as all relevant environmental commitments made in the Final EIR/EIS.

8. SITES PROJECT AUTHORITY POLICIES.

8.1 Policy Compliance. Sites Authority has adopted various policies and procedures that govern the completion of the Sites Reservoir Project. To the extent applicable, Mitigation Contractor shall comply with these adopted policies and procedures, including, but not limited to, the following:

- (a) Construction Workforce Policy – April 18, 2025
- (b) Procurement and Contract Policy – November 15, 2024
- (c) Real Property and Land Management Policy – May 25, 2022
- (d) Records Management Policy – February 16, 2024
- (e) Contracting Strategy – July 22, 2022
- (f) Local Community Working Group Policy Recommendations – January 19, 2024

SIGNATURE PAGE TO DESIGN-BUILD TERRESTRIAL COMPENSATORY MITIGATION CONTRACT BY AND BETWEEN SITES PROJECT AUTHORITY AND [*INSERT***]**

IN WITNESS WHEREOF, the Parties hereby execute this Design-Build Terrestrial Compensatory Mitigation Contract as of the Effective Date.

SITES PROJECT AUTHORITY

[***INSERT NAME OF MITIGATION CONTRACTOR***]

By: _____
[INSERT NAME]
[INSERT TITLE]

[IF CORPORATION, TWO SIGNATURES, PRESIDENT OR VICE PRESIDENT AND SECRETARY OR TREASURER REQUIRED]

By: _____

ATTEST:

Its: _____

By: _____
[INSERT NAME]

Printed Name: _____

[DELETE THE FOLLOWING SIGNATURE LINE IF NOT REQUIRED]

By: _____

APPROVED AS TO FORM:

Its: _____

By: _____
[INSERT NAME]

Printed Name: _____

**ATTACHMENT 1A
DESCRIPTION OF ESTIMATED BASELINE COMPENSATORY MITIGATION
REQUIREMENTS**

The currently estimated terrestrial compensatory mitigation requirements anticipated to be required for the Sites Reservoir Project are described in Tables 1 through 4 below (collectively, the “Baseline Compensatory Mitigation Requirements”). The Parties acknowledge and agree that these requirements may be updated (increased or decreased) based on the furtherance of Sites Reservoir Project design and permitting requirements, as amended, during the term of the Contract.

It is important to note that Tables 1 through 4 represent potential Project terrestrial compensatory mitigation requirements based on individual permit / approval and does not include stacking of different requirements. The Parties acknowledge and agree that stacking of requirements is to occur to the extent possible. In addition, for a number of the habitat types and species in Tables 1 through 4, the Project’s permits and approvals include specific requirements that are to be met for specific habitat type and species that are not represented in the values shown in Tables 1 through 4 below.

[THE FOLLOWING TABLES, INCLUDING ALLOCATION OF MITIGATION REQUIREMENTS AMONG THE MITIGATION PHASES, WILL BE INCLUDED IN THE RFP AND FINALIZED PRIOR TO EXECUTION OF THE CONTRACT. ADDITIONALLY, THE AUTHORITY WILL CONTINUE TO REVIEW ITS PERMIT OBLIGATIONS AND MAY CLARIFY THE REQUIREMENTS TO MORE CLEARLY MATCH THE PROJECT’S PERMIT REQUIREMENTS IN THE RFP.]

Table 1 reflects the anticipated acreage of permanent impacts on non-wetland land cover types, minimum required mitigation, and anticipated needs by mitigation task order. These values are described in the Projects Final EIR/EIS (Sites Authority and Bureau of Reclamation 2023). As appropriate, required mitigation may change during the permitting process.

Table 1. Acreages of Permanent Project Impacts on Non-Wetland Land Cover Types, Minimum Required Mitigation, and Anticipated Needs by Mitigation Task Order (all values in acres)

Land Cover Type	Total Project Impacts ^a	Total Required Mitigation ^b	MITIGATION PHASE 1	MITIGATION PHASE 2	MITIGATION PHASE 3
Annual Grassland	13,108	Unknown ^c			
Blue Oak Woodland	315	315			
Chamise Chaparral	<1	0			
Mixed Chaparral	1	0			
Oak Savanna	646	646			
Upland Riparian	56	56			
Important Farmland	152 ^d	152 ^e			

^a Total project impact acreages are based on the acreages presented in the Final EIR/EIS (Sites Authority and Bureau of Reclamation 2023).

^b Total mitigation is based on the minimum 1:1 acreage ratio included in the Final EIR/EIS (Sites Authority and Bureau of Reclamation 2023).

^c The annual grassland natural community is not considered a sensitive natural community and would not require mitigation as such. Mitigation could be required, however, if areas of sensitive natural communities within the annual grassland community, including California brome – blue wildrye prairie, gum plant patches, needlegrass – melic grass grassland, and white-tip clover swales, are identified during onsite field surveys. Other mitigation requirements for annual grassland as special-status wildlife habitat are discussed below in Table 2.

^d Important farmland permanently converted by project facilities, from Chapter 15 of the Final EIR/EIS.

^e Assuming a 1:1 ratio, per the Final EIR/EIS: The Authority will coordinate with the California Farmland Conservancy Program to identify suitable lands and purchase agricultural conservation easements from willing sellers at a ratio of at least 1:1 to preserve Important Farmland in an amount commensurate with the quantity and quality of converted farmlands.

Table 2 reflects the anticipated acreage of permanent impacts on wildlife habitat and anticipated required mitigation based on the Project’s environmental permits issued by resource agencies. (i.e., U.S. Fish and Wildlife Service [USFWS] Biological Opinion, CDFW Incidental Take Permit, and CDFW Master Lake and Streambed Alteration Agreement). Permits and authorizations issued to the Authority are available for review online at: <https://sitesproject.org/permitting/>. As described above, the Parties acknowledge and agree that these requirements may be updated (increased or decreased) based on furtherance of Sites Reservoir Project design and permitting requirements during the term of the Contract.

Table 2 does not include special-status plant species as the USFWS concurred with the Reclamation’s determination that the Project may affect, but not likely to adversely affect Keck’s checkermallow, Greene’s tuctoria, palmate-bracted bird’s beak, and Hoover’s spurge. In the unlikely event that these special-status plant species are found during pre-construction surveys and cannot be avoided, consultation will be reinitiated with the USFWS. The Parties acknowledge that a Contract amendment may be required if these species are detected and cannot be avoided.

Table 2. Acreages of Permanent Project Impacts on Wildlife Habitat, Required Mitigation, and Anticipated Needs by Mitigation Task Order (all values in acres)

Wildlife Species	Habitat Type	Total Project Impacts	Total Required Mitigation	MITIGATION PHASE 1	MITIGATION PHASE 2	MITIGATION PHASE 3
Vernal Pool Branchiopod*	Aquatic	13	39 ^a			
Valley Elderberry Longhorn Beetle*	Riparian	63	189			
	Non-riparian	13,251	13,251			
Monarch Butterfly*	All	15,276	15,276			
Crotch Bumble Bee	All	13,868	13,868			
Western Spadefoot*	Aquatic	525	525			
	Upland	13,515	TBD ^b			
Northwestern Pond Turtle*	Higher Value Aquatic	91	91 ^c			

Wildlife Species	Habitat Type	Total Project Impacts	Total Required Mitigation	MITIGATION PHASE 1	MITIGATION PHASE 2	MITIGATION PHASE 3
	Higher Value Upland	2,915	TBD ^b			
	Lower Value Aquatic	531	531			
	Lower Value Upland	8,960	TBD ^b			
Giant Garter Snake*	Aquatic	1	3			
	Upland	20	60			
Northern Harrier	All	UNK	NA ^g			
Burrowing owl	All	1,400	2,800 ^h			
Golden Eagle	Foraging	NA	NA ^d			
	Nesting	NA	NA ^e			
Bald Eagle	All	NA	NA ^d			
Swainson's Hawk	Foraging	13,291	13,291			
	Nesting	3 nest trees	3 nest trees ^f			
Tricolored Blackbird	Foraging	4,155	4,155			
	Nesting	0.5	1.5			
American Badger	All	NA	NA ^d			

* Information based on Table 21 in the USFWS Construction Biological Opinion (2024-0125050-S7-001).

^a Up to 26 acres protection, 13 acres restoration.

^b Depends on configuration of aquatic habitat.

^c Actual upland requirement is not by acre, but all uplands within 650 feet of aquatic.

^d Final EIR/EIS says the natural community mitigation requirements would mitigate impacts on this species (Sites Authority and U.S. Bureau of Reclamation 2023).

^e Need to purchase credits for actual nest trees at in-lieu bank.

^f Determining the number of nest trees onsite requires field visit. Upland mitigation must be within 1 mile, 1-5 miles, or 5-10 miles from nest with habitat ratios depending on distance from nest.

^g Adverse impacts to fish and wildlife resources that cannot be avoided, the Authority shall mitigate with Measures 4.1 through 4.5 at minimum ratios described in Table 4 of the Master Streambed Alteration Agreement (EPIMS NOTIFICATION NO. COL-46998-R2).

^h Assumed ratio of 1:1. Credit ratio not provided by CDFW yet as Construction ITP (No. 2081-2022-006-02) is being amended to include burrowing owl.

Table 3. Acreages of Permanent Project Impacts on Aquatic Resources under the jurisdiction of the Clean Water Act, Minimum Required Mitigation, and Anticipated Needs by Mitigation Task Order (all values in acres)

Aquatic Resource Type	Total Project Impacts)^a	Total Required Mitigation^b	MITIGATION PHASE 1	MITIGATION PHASE 2	MITIGATION PHASE 3
Forested Wetland	3.85	7.7			
Freshwater Marsh	55.55	111.1			
Managed Wetland ^c	0	0			
Scrub-Shrub Wetland	7.88	15.76			
Seasonal Wetland ^d	377.78	755.56			
Intermittent Stream	259.19	518.38			
Ephemeral Stream	28.97	57.94			
Pond	50.62	101.24			
Reservoir	1.76	3.52			
Canal	4.55	9.1			
Ditch	0.88	1.76			

^a Total Project impacts have generally been calculated based on a 30 percent increase in acreage and a 1.2 percent decrease in linear feet in comparison with original values determined based on land cover mapping to account for the differential between aerial (desktop) mapping and delineation field surveys at three properties accessible in 2023/24. The differential was calculated using weighted averages based on number of delineated aquatic features for each property and represents a conservative estimate of impacts.

^b Total mitigation is based on the minimum 2:1 acreage ratio included in the Project's Section 401 and Section 401 Clean Water Act Permit Applications. This could change during the permitting process.

^c Managed wetland aquatic resource types are included in this table as they are present within the Project area. They are also included for additional context as they would be subject to temporary impacts. Should onsite restoration of temporary impacts not be feasible or greater than 1:1 mitigation be required for temporary impacts, then additional offsite mitigation may be necessary.

^d The seasonal wetland type includes wetlands that may be more specifically identified as vernal pool, alkaline seasonal wetland, or slope wetland during on-the-ground surveys.

^e Totals may differ slightly from adding individual features due to rounding.

Table 4 reflects the anticipated acreage of permanent impacts on aquatic resources under the jurisdiction of Fish and Game Code Section 1602 and anticipated required mitigation. The Projects Master Lake and Streambed Alteration Permit is available for review online at: <https://sitesproject.org/permitting/>.

Table 4. Acreages of Permanent Project Impacts on Aquatic Resources under the jurisdiction Fish and Game Code Section 1602, Minimum Required Mitigation, and Anticipated Needs by Mitigation Task Order (all values in acres)

Aquatic Resource Type	Total Estimated Project Impacts	Ratio	Total Required Mitigation^{a, b}	MITIGATION PHASE 1	MITIGATION PHASE 2	MITIGATION PHASE 3
Canal/Ditch ^c	4.18	1:1	4.18			
Ephemeral Stream	22.32	3:1	66.96			
Forested Wetland	2.97	4:1	11.88			
Freshwater Marsh	42.72	4:1	170.88			
Intermittent Stream	199.4	3:1	598.2			
Managed Wetland	0	4:1	--			
Pond	39.01	3:1	117.03			
Reservoir	1.35	1:1	1.35			
Scrub-shrub Wetland	6.11	4:1	24.44			
Seasonal Wetland	290.72	4:1	1,162.88			
Riparian	49.11	3:1	147.33			

^a Acreages subject to adjustment via field verification.

^b The Total Required Mitigation as described in this Table 4 is not necessarily in addition to the Total Required Mitigation as described in Table 3 for the same types of Aquatic Resource Types, but may be subsumed within and satisfied by the same mitigation provided for the overlapping Aquatic Resource Types.

^c Canals and ditches may be subject to mitigation requirements, contingent on hydrologic connectivity and site-specific features.

ATTACHMENT 1B
PLANNING/EARLY IMPLEMENTATION PHASE SCOPE OF SERVICES

During the Planning/Early Implementation Phase, Mitigation Contractor shall undertake the Planning/Early Implementation Phase Services described below.

The Mitigation Contractor will provide the Sites Authority with regular (at least) quarterly progress reports, in form and substance to be mutually agreed to by the Sites Authority and the Mitigation Contractor. In addition, Mitigation Contractor will use its commercially reasonable efforts to perform the following tasks and deliver the following deliverables in the timeframes as described below:

Task A: Mitigation Framework Memorandum

Estimated time to delivery: 90 to 120 days, not to exceed 180 days, after initial Task Order is issued by the Sites Authority for this Task A.

1. Mitigation Contractor will prepare a detailed written overall framework and schedule for planning, fulfilling and implementing mitigation actions necessary to satisfy the Baseline Compensatory Mitigation Requirements, including the completion of a regional opportunities assessment to assess the ability to accomplish the mitigation requirements (the "Mitigation Framework Memorandum"). The Mitigation contractor's schedule shall be overlaid on the construction schedule for the Sites Reservoir Project and must demonstrate the mitigation implementation will not impact the construction schedule for the Sites Reservoir Project.
2. The Mitigation Framework Memorandum will include a plan and approach to collectively define team objectives and working policies and locality preferences for mitigation, discuss anticipated endowment arrangements and endowment holders, identify and describe team lines of communication, establish working roles and authority, and describe other team collaboration means and methods. It will include a strategy for the development and implementation of compensatory mitigation to address the Baseline Compensatory Mitigation Requirements, and shall be consistent with the following planning principles:
 - Planning Principle #1 – Mitigation acquisition will be sequenced and timed to avoid impacting progress of construction of the Sites Reservoir Project.
 - Planning Principle #2 – The Authority is seeking the most cost efficient approaches to mitigation, whether owner-provided (Permittee-Responsible/Turn Key Mitigation) or provided by third parties (e.g., conservation or mitigation banks).
 - Planning Principle #3 – The Mitigation Framework Memorandum will align with the Contracting Strategy Development Summary Report adopted by the Sites Project Authority Board of Directors (Board) on July 27, 2022.
 - Planning Principle #4 – The Mitigation Contractor will be required to maximize the "stacking" of mitigation lands to the greatest extent possible (i.e., having the same Mitigation Site provide compensatory mitigation for

multiple different types of Project terrestrial compensatory mitigation), and thereby provide the compensatory mitigation package to the Sites Authority in the most cost effective manner that minimizes the amount of purchased acres or credits. The Mitigation Framework Memorandum will include all the Mitigation Contractor's assumptions for implementation of mitigation stacking to meet the Baseline Compensatory Mitigation Requirements.

- Planning Principle #5 -- The mitigation package for the Sites Reservoir Project should represent 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 Sites Reservoir Project has significance and adds value to the same level and degree that the water element of the Sites Reservoir Project contributes to California water management. Rather than assembling a fragmented collection of mitigation parcels, the Authority intends to deliver a cohesive, large-scale, and ecologically meaningful mitigation elements that complements the magnitude and importance of the Sites Reservoir itself.

The Mitigation Framework Memorandum shall also include recommendations for what portions of the Baseline Compensatory Mitigation Requirements should be satisfied by purchasing bank credits from an existing or planned mitigation or conservation bank ("Bank Credits"), and what portion of the Baseline Compensatory Mitigation Requirements should be satisfied through a Permittee-Responsible Mitigation/Turnkey Mitigation Project carried out by Mitigation Contractor. To the extent the Approved Mitigation Framework Memorandum recommends the purchase of Bank Credits to satisfy any portion of the Baseline Compensatory Mitigation Requirements, the Approved Mitigation Framework Memorandum will also include a detailed analysis of the availability and pricing of such Bank Credits and a recommendation as to the timing of entering into and consummating a purchase agreement for the acquisition of such Bank Credits.

The Mitigation Contractor will undertake a mitigation screening analysis to evaluate potential Mitigation Sites and evaluate whether such Mitigation Sites can in fact meet the requirements for the Baseline Compensatory Mitigation Requirements. The Mitigation Contractor may meet with staff from the Resource Agencies to solicit feedback on the potential Mitigation Sites and the potential compensatory mitigation requirements. In addition, the Mitigation Contractor may reach out to property owners of potential Mitigation Sites to determine if the property owners are a willing seller, and evaluate title status for the potential Mitigation Sites to identify any concerns or constraints to mitigation implementation. The Mitigation Contractor will prioritize the proposed Mitigation Sites based on Resource Agency input, resources present, feasibility for acquisition and implementation, and timing for delivery.

The analysis will be provided in the Mitigation Framework Memorandum for review and approval by the Sites Authority, which approval will not be unreasonably withheld, delayed or conditioned, and will be subject to the following procedure: the Mitigation Framework Memorandum shall be reviewed and approved or disapproved by the Sites Authority in writing, pursuant to the discretion noted above, within thirty (30) calendar days after receipt by the Sites Authority of written request for approval thereof (the "Approval Request"). If the Sites Authority disapproves any such Approval Request with such thirty (30) calendar day period, then (a) concurrent with such notice of disapproval the Sites Authority shall state the specific reasons for such disapproval in a written notice delivered to Mitigation Contractor and how any such disapproval can be remedied by Mitigation Contractor to the Sites Authority's reasonable satisfaction, and (b) Mitigation Contractor shall then prepare and submit a revised Mitigation Framework Memorandum for the Sites

Authority's approval, which approval procedure will be the same as the procedure for the initial Approval Request, and thereafter the process will repeat until the Mitigation Framework Memorandum is approved by the Sites Authority.

TASK A Deliverable: Approved Mitigation Framework Memorandum (electronic only)

TASK B: Potential Purchase of Bank Credits.

To the extent the Approved Mitigation Framework Memorandum includes a recommendation for the purchase of Bank Credits, and to the extent authorized by the Sites Authority, Mitigation Contractor will serve as the representative of the Sites Authority to negotiate and enter into contracts to purchase such Bank Credits from third-party owned and operated banks on terms and conditions that are acceptable to the Sites Authority in its sole and absolute discretion, and close on the acquisition of such Bank Credits. Mitigation Contractor shall not serve as the representative of Sites Authority with respect to the purchase of Bank Credits from Mitigation Contractor owned and operated banks.

TASK B Deliverable: Purchased Bank Credits approved by Sites Authority.

[THESE SERVICES WILL BE FINALIZED PRIOR TO EXECUTION OF THE CONTRACT.]

**ATTACHMENT 1C
MITIGATION PHASE SCOPE OF SERVICES**

During each Mitigation Phase, Mitigation Contractor shall undertake the Mitigation Phase Services for which the Sites Authority has issued a Task Order, as described below.

The Mitigation Contractor will provide the Sites Authority with regular (at least) quarterly progress reports, in form and substance to be mutually agreed to by the Sites Authority and the Mitigation Contractor. In addition, Mitigation Contractor will use its commercially reasonable efforts to perform the following tasks and deliver the following deliverables in the timeframes as described below:

TASK 1: PERFORMANCE AND PAYMENT BONDS – Estimated time to delivery: To be completed for each Task Order for Mitigation Phase Services prior to commencement of any Mitigation Phase Services under such Task Order.

For each Mitigation Phase Services Task Order, Mitigation Contractor will obtain a Performance Bond and Payment Bond for the Mitigation Phase Services for such Task Order in accordance with the requirements of Section 3.3 of the General Conditions of the Contract.

TASK 1 DELIVERABLE: One hard copy original and one electronic copy (PDF file) of the original executed Performance Bond and Payment Bond.

**TASK 2: LAND CONTROL – Estimated time to delivery: (a) Task 2.1, _____;
(b) Task 2.2, _____**

Mitigation Contractor will work closely with the Sites Authority or its designee and the Resource Agencies to define the compensatory mitigation package provided to satisfy the Baseline Compensatory Mitigation Requirements for the applicable Mitigation Phase. Based upon the assessment conducted and reflected in the Mitigation Framework Memorandum, Mitigation Contractor will negotiate and secure contracts for conservation easements and/or fee title of Mitigation Sites to meet the Baseline Habitat Mitigation Requirements for the applicable Mitigation Phase. The Mitigation Contractor will prepare detailed summaries of the proposed mitigation approach for the Resource Agencies to incorporate into the Sites Reservoir Project regulatory permits as and when outlined in Task 2.2 below.

TASK 2.1: SECURE RIGHTS TO ACQUIRE MITIGATION SITES

The Mitigation Contractor will conduct outreach, enter into negotiations, and contract with land owners of the Mitigation Sites, as necessary, to meet the Sites Authority's Baseline Habitat Mitigation Requirements (Tables 1 through 4) for the applicable Mitigation Phase (each such contract for any Mitigation Site, whether structured as a purchase and sale agreement or an option agreement, is referred to herein as "Purchase and Sale Agreement"). A Purchase and Sale Agreement for each Mitigation Site will provide documentation that Mitigation Contractor controls the right to obtain a conservation easement on the property or fee title to the property. It is understood that encumbrances to title or rights severed from the property could affect the ability to entitle a particular Mitigation Site.

Mitigation Contractor agrees that if the Sites Authority duly terminates this Agreement in accordance with the Contract Documents at any time after Task 2.1 is complete or partially complete and the Sites Authority has paid Mitigation Contractor in full or partially for Task 2.1,

and if the Sites Authority is not itself in breach of this Agreement at the time of such termination beyond any applicable cure period, then within seventy-five (75) days after the date of such termination:

1. if requested by the Sites Authority in writing within ten (10) business days after the date of such termination, for any Mitigation Site where the closing has not yet occurred under the applicable Purchase and Sale Agreement as of the date of such termination, Mitigation Contractor will either (i) assign such Purchase and Sale Agreement to the Sites Authority without representations or warranties of any kind, subject to obtaining any necessary consents of the land owner(s) of the Mitigation Site subject to such Purchase and Sale Agreement; or (ii) terminate such Purchase and Sale Agreement if the consent of the land owner(s) of the Mitigation Site is required under the Purchase and Sale Agreement for such assignment to the Sites Authority and the landowner(s) refuse to provide such consent; and
2. if requested by the Sites Authority in writing within ten (10) business days after the date of such termination, for any Mitigation Site where the closing has already occurred under the applicable Purchase and Sale Agreement but for which a conservation easement has not yet been recorded for the benefit of the Sites Authority as of the date of such termination, Mitigation Contractor will either (i) convey to the Sites Authority Mitigation Contractor's entire interest in the Mitigation Site in its "AS-IS WHERE IS" condition; or (ii) record a conservation easement over such Mitigation Site for the benefit of the Authority, where the choice regarding whether to proceed with foregoing clause (i) or clause (ii) shall be made solely by the Sites Authority for each individual Mitigation Site.

With respect to assignment of Purchase and Sale Agreements under Task 2.1(a)(i), any such assignment shall include assignment and transfer of all applicable earnest money deposits and option payments, including any required instructions to an escrow or other holding company authorizing such funds to be used by the Sites Authority or placed on account of the Sites Authority in accordance with the terms of the Purchase and Sale Agreement. If any such assignment fails to assign and transfer such funds, then the Sites Authority may immediately declare Mitigation Contractor in default of its obligations under this Contract and draw upon the payment and performance bonds provided by Mitigation Contractor in an amount equal to the applicable earnest money or option payment.

TASK 2.1 DELIVERABLE: Electronic (.PDF) copies of executed Purchase and Sale Agreements for the applicable Mitigation Sites needed to satisfy the Authority's Baseline Mitigation Requirements for such Mitigation Phase with the purchase price and other financial information redacted for confidentiality.

TASK 2.2: DETAILED INFORMATION ON THE MITIGATION SITES FOR SITES AUTHORITY PERMITTING

In coordination with the Sites Authority, the Mitigation Contractor will compile relevant information on the Mitigation Sites to develop a comprehensive mitigation strategy for the Sites Reservoir Project. Such coordination shall include, without limitation, Mitigation Contractor providing such information to the Sites Authority on a regular basis, for the Sites Authority's review, comment and approval, and the Mitigation Contractor considering and addressing any comments from the Site's Authority's in good faith.

To complete the mitigation strategy, Mitigation Contractor will coordinate closely with the Resource Agencies to ensure that the information compiled is sufficient to support permit issuance decisions. This information will include material drawn from the Mitigation Framework Memorandum and the Property Assessment and Warranties for each Mitigation Site and will detail the mitigation elements and approach for each Mitigation Site to the extent necessary to support permit issuance decisions. A comprehensive report, identified as the "Mitigation Plan Framework", will detail the site-specific habitat requirements for each property as well as the linkage of each property to the overall compensatory mitigation requirements of the Sites Reservoir Project. The site-specific elements of each Mitigation Site will be presented in a summary format required by the Resource Agencies to be a comprehensive form of Mitigation Site evaluation. The information will also support the development of the mitigation calculator by the Resource Agencies, including, but not limited to: assessments of watershed, temporal effects, risk, feasibility, and functional habitat evaluation. The Mitigation Plan Framework could be submitted by the Sites Authority to the Resource Agencies to support permit issuance decisions. If the Resource Agencies notify Mitigation Contractor in writing that the Mitigation Plan Framework is missing mitigation information that is required by the Resource Agencies prior to the issuance of permits, Mitigation Contractor will use commercially reasonable efforts to provide the missing information to the Resource Agencies within 30 days of such written notice from the Resource Agencies.

TASK 2.2 DELIVERABLE: Mitigation Plan Framework Report (electronic only)

TASK 3: SITE-SPECIFIC MITIGATION PLAN DEVELOPMENT – Estimated delivery time
co _____ [NOTE: THE DELIVERY TIME WILL NEED TO
BE ESTABLISHED IN A MANNER THAT IT WILL NOT IMPACT THE CONSTRUCTION
SCHEDULE FOR THE SITES RESERVOIR PROJECT.]

The Mitigation Contractor will provide all necessary technical support and information to the Resource Agencies to process and approve the Habitat Mitigation Plans and/or Compensatory Mitigation Plans, as applicable, for the Mitigation Sites for the applicable Mitigation Phase. This will include attending meetings, conducting field surveys and visits to the Mitigation Sites, developing the technical, legal, and financial documents, and coordinating with the relevant partners, such as land management entities, to facilitate establishment of the long-term stewardship components of the Project. Mitigation Contractor will work with the Sites Authority and the Resource Agencies to implement a phased approach to completing the items described in this Task 3, recognizing, for example, that mitigation requiring wetland or habitat creation takes longer to implement than mitigation requiring preservation only, and further recognizing that some, but not all, of the items described in this Task 3 are likely to be required by the Resource Agencies for the Sites Authority to commence construction of portions of the Sites Reservoir Project. Mitigation Contractor and the Sites Authority agree to reasonably cooperate with each other and to work with the Resource Agencies to develop a phasing schedule for this Task 3 that is acceptable to the Resource Agencies, and that meets the Sites Authority's schedule for commencement of construction of various components of the Sites Reservoir Project.

TASK 3.1: DEVELOPMENT OF THE HABITAT MITIGATION PLAN AND/OR COMPENSATORY MITIGATION PLAN FOR EACH MITIGATION SITE

This task includes all technical documents necessary to complete the mitigation and/or conservation required on a specific Mitigation Site by the regulatory permits. Each Mitigation Site will have a stand-alone Habitat Mitigation Plan and/or Compensatory Mitigation Plan, as applicable, detailing the Mitigation Sites's ecological baseline and future potential, legal survey and title review, long-term stewardship requirements, financial evaluation of stewardship

obligations, and all other elements to comply with the state and federal policies and mitigation requirements.

As needed for restoration sites, the habitat development component of the plan will include relevant topographic and hydrologic data collection, concept design development, design-related technical studies, and construction document preparation. Specific work items associated with habitat restoration will include:

- Detailed site survey and topographic mapping/analysis.
- Plans, Specifications & Estimate (PS&E) at the 30 percent level. Prior to construction, detailed grading plans, general notes, and erosion control plans and details will be incorporated for agency review prior to submittal for the contractor.
- Development of performance standards and monitoring requirements.
- Preparation and submittal of all necessary local, state, and federal permits to implement the habitat restoration.
- Development of a CEQA/NEPA document for the Sites Authority to evaluate and incorporate as appropriate under the existing permits for the Sites Reservoir Project.

TASK 3.1 DELIVERABLES: Habitat Mitigation Plan and/or Compensatory Mitigation Plan for each Mitigation Site (electronic only).

TASK 3.2: COMPLETE LAND TRANSACTION FOR EACH MITIGATION SITE

Subsequent to the development of the Habitat Mitigation Plan/Compensatory Mitigation Plan for a Mitigation Site, and prior to recordation of the Conservation Easement and the initiation of habitat restoration (if applicable), the terms of the property's Purchase and Sale Agreement will be fulfilled and Mitigation Contractor' interest in the property will be recorded on title. This will provide the ability for Mitigation Contractor to execute a conservation easement and implement habitat restoration (as appropriate).

TASK 3.2 DELIVERABLES: Updated title report for each Mitigation Site.

TASK 3.3: REGULATORY APPROVAL OF THE HABITAT MITIGATION PLAN / COMPENSATORY MITIGATION PLAN FOR EACH MITIGATION SITE, AND HABITAT RESTORATION WORK AS APPROPRIATE

The Mitigation Contractor will engage with the Resource Agencies to incorporate all comments as appropriate to achieve a feasible mitigation approach for each Mitigation Site. A "Final" Habitat Mitigation Plan/Compensatory Mitigation Plan will be prepared, including all relevant permits to implement habitat restoration if applicable, written approval of each plan will be secured from the relevant Resource Agencies. Upon securing written approval, if habitat restoration is required, Mitigation Contractor will oversee the implementation of the approved habitat restoration plan. (The implementation shall be completed by Mitigation Contractor or a Mitigation Contractor subcontractor pursuant to the terms of this Contract.) As appropriate, this Task 3 covers the implementation of any pre-construction measures that may be required by the Resource Agencies, including without limitation, construction equipment mobilization and demobilization, site preparation, excavation, planting, erosion control measures, access control, debris removal,

and grade checking, as applicable. The equipment that may be used in habitat restoration could include scrapers, excavators, backhoes, bulldozers and water trucks.

TASK 3.3 DELIVERABLES: Final Habitat Mitigation Plan/Compensatory Mitigation Plan with written approval(s) from the relevant Resource Agency(s) for each Mitigation Site. As-built plans approved by the appropriate Resource Agencies for habitat restoration for each Mitigation Site.

TASK 4: LAND STEWARDSHIP – Estimated delivery time: _____.

The Mitigation Contractor will prepare the conservation easement for recordation and fund the long-term stewardship accounts (endowments) for each Mitigation Site. Mitigation Contractor will conduct all coordination with the easement holder, title company, and applicable County necessary for recordation, and will provide conformed copies of the recorded documents to the Resource Agencies and the Sites Authority. As part of this coordination, Mitigation Contractor will negotiate with the conservation easement holder the costs of holding and monitoring the conservation easement and pay set up costs. Long-term financing of conservation easement monitoring will be provided by a conservation easement monitoring endowment funded by the Mitigation Contractor to be held by the appropriate endowment holder. The endowment holder and endowment arrangements shall be subject to review and comment by the Sites Authority and shall be acceptable to the Sites Authority.

TASK 4.1: CONSERVATION EASEMENT

The Mitigation Contractor will establish conservation easements over the Mitigation Sites in accordance with Applicable Laws. This will require advance coordination with qualified conservation easement holders and the Resource Agencies. Items to be addressed include:

- Clearing easements or encumbrances necessary to record the conservation easement.
- Acquiring rights to the Mitigation Sites.
- Evaluating the qualifications of the proposed conservation easement holder(s), and their willingness to generally accept the agency approved form of conservation easement.
- Coordination with the conservation easement holder of the long-term management plan.

The Mitigation Contractor will identify an appropriate conservation easement holder, acceptable to the Sites Authority and the appropriate Resource Agencies for each Mitigation Site, to hold the conservation easement.

The product of this task will be recorded conservation easements on each Mitigation Site that meets the needs of the State and federal permits. The Mitigation Contractor will coordinate with the conservation easement holders selected to hold the conservation easements and provide and manage all contracts and funding necessary to fulfill this requirement.

TASK 4.1 DELIVERABLES: Conformed copy of the recorded conservation easement for each Mitigation Site.

TASK 4.2: LONG-TERM STEWARDSHIP FUND ESTABLISHMENT

Each Mitigation Site will include a long-term stewardship account – an endowment. Mitigation Contractor will fund these endowment accounts which are necessary to provide for long-term management of the sites. Mitigation Contractor will develop and coordinate each endowment funding agreement with the endowment holder selected for the Mitigation Site, which endowment holder shall be acceptable to the Sites Authority. The endowment funding agreement must correlate to the long-term management activities outlined in the final management plans and will include the following elements:

- Prepare endowment calculations which are agreeable to the landowner/manager and the applicable Resource Agencies.
- Select a recipient for the endowment funds acceptable to the Sites Authority and the appropriate Resource Agencies.
- Prepare a recipient agreement to execute with the selected endowment recipient.

TASK 4.2 DELIVERABLES: Endowment Funding Agreement executed by the endowment holder, and verification of funding of the endowment account.

TASK 5: INTERIM MONITORING AND MANAGEMENT – Estimated delivery time: Mitigation Contractor will fulfill permit conditions for habitat restoration sites within a timeframe required by the applicable Regulatory Agencies.

Long-term monitoring and management are only associated with Mitigation Sites where there is associated habitat restoration. Although the Resource -Agency approved monitoring and reporting requirements for the habitat restoration component(s) of the Mitigation Sites are not yet known, it is assumed that monitoring will be conducted as long as necessary to fulfill the permits from the Resource Agencies, with a requirement to demonstrate that the mitigation can function without human intervention for a minimum of three years.

The Mitigation Contractor will perform all tasks necessary to document performance associated with the habitat restoration identified in the Habitat Mitigation Plan(s)/Compensatory Mitigation Plan(s). The tasks required to accomplish this outcome are described below.

TASK 5.1: INTERIM MANAGEMENT

The Mitigation Contractor will oversee the establishment of the target habitat and maintain the Mitigation Sites while performance standards are being met. The post-project maintenance work covers activities from the completion of construction through achievement of the performance standards. The maintenance activities may include the following elements:

- Invasive species control.
- Vegetation establishment and maintenance (e.g., herbicide application, spot irrigation, etc.).
- Debris removal.
- Trespass control (via signs, gates, and patrol).

- Site access maintenance (access roads).
- Annual report preparation.

This task also includes the implementation of the monitoring program that will be approved by the Regulatory Agencies and memorialized in the final mitigation plans.

TASK 5.1 DELIVERABLES: Annual monitoring and maintenance reports for each Mitigation Site with associated habitat restoration, each year for the number of years required by the Regulatory Agencies (electronic only).

[THESE SERVICES WILL BE FINALIZED PRIOR TO EXECUTION OF THE CONTRACT.]

DRAFT

**ATTACHMENT 2
GENERAL CONDITIONS**

ARTICLE 1 TERMS; DEFINITIONS	A2 - 4
1.1 Applicability.	A2 - 4
1.2 Defined Terms.	A2 - 4
1.3 Terminology.	A2 - 10
ARTICLE 2 EXAMINATION; GENERAL PROVISIONS REGARDING THE CONTRACT DOCUMENTS	A2 - 10
2.1 Examination.	A2 - 10
2.2 Intent of Contract Documents.	A2 - 10
2.3 Reference Standards.	A2 - 11
2.4 Reporting and Resolving Discrepancies.	A2 - 11
2.5 Order of Precedence.	A2 - 12
2.6 Amending and Supplementing Contract Documents.	A2 - 13
2.7 Work Product.	A2 - 13
2.8 Confidential Information.	A2 - 13
ARTICLE 3 INDEMNIFICATION; INSURANCE; BONDS	A2 - 14
3.1 Indemnification.	A2 - 14
3.2 Insurance.	A2 - 15
3.3 Performance and Payment Bonds.	A2 - 19
ARTICLE 4 COST OF WORK.	A2 - 20
4.1 Mitigation Contract Guaranteed Maximum Price.	A2 - 20
4.2 Subcontracted Mitigation Phase Services.	A2 - 21
ARTICLE 5 MITIGATION CONTRACTOR RESPONSIBILITIES.	A2 - 24
5.1 General Responsibilities.	A2 - 24
5.2 Staffing of Project.	A2 - 26
5.3 Subcontractors.	A2 - 26
5.4 Safety Requirements.	A2 - 28
5.5 Security.	A2 - 30
5.6 Hazardous Waste.	A2 - 30
5.7 Water Quality Management and Compliance.	A2 - 31
5.8 Environmental Requirements.	A2 - 32
5.9 Labor Requirements.	A2 - 34

ARTICLE 6 MATERIALS; EQUIPMENT.....	A2 - 35
6.1 Materials, Equipment.	A2 - 35
6.2 Test and Inspections of Work.	A2 - 36
ARTICLE 7 PROSECUTION OF THE WORK.....	A2 - 37
7.1 Access to Work.	A2 - 37
7.2 Quality Assurance, Quality Control.	A2 - 37
7.3 Mitigation Contractor’s Performance of Services.	A2 - 38
7.4 Cooperation.	A2 - 38
7.5 Defective Work.	A2 - 39
7.6 Partial Utilization.	A2 - 40
ARTICLE 8 SCHEDULE; CONTRACT TIME.....	A2 - 40
8.1 Project Schedule.	A2 - 40
8.2 Time for Completion.	A2 - 41
8.3 Damages.	A2 - 42
ARTICLE 9 CHANGE ORDERS; DISPUTE RESOLUTION.....	A2 - 43
9.1 Planning/Early Implementation Phase Change Orders.	A2 - 43
9.2 Mitigation Phase Services Change Orders.	A2 - 44
9.3 Partnering.	A2 - 48
9.4 Procedure for Resolving Claims.	A2 - 49
ARTICLE 10 TERMINATION; SUSPENSION.....	A2 - 53
10.1 Termination of Planning/Early Implementation Phase Services.	A2 - 53
10.2 Suspension of Planning/Early Implementation Phase Services by Sites Authority.	A2 - 54
10.3 Suspension of Mitigation Phase Services by Sites Authority.	A2 - 55
10.4 Termination of Mitigation Phase Services for Cause by Sites Authority.	A2 - 56
10.5 Termination of Mitigation Phase Services for Convenience by Sites Authority.	A2 - 56
ARTICLE 11 MEASUREMENT; PAYMENT.....	A2 - 57
11.1 Payment of Compensation for Services Other than Payments for Mitigation Phase Services Constituting Construction of Public Works.	A2 - 57
11.2 Payment of Compensation for Mitigation Phase Services Constituting Construction of Public Works	A2 - 58

ARTICLE 12 MISCELLANEOUS CONTRACT PROVISIONS	A2 - 62
12.1 Patents	A2 - 62
12.2 Separate Contracts	A2 - 62
12.3 Document Retention & Examination	A2 - 62
12.4 Notice	A2 - 63
12.5 Notice of Third Party Claims	A2 - 63
12.6 State License Board Notice	A2 - 63
12.7 Assignment of Contract	A2 - 63
12.8 Change In Name And Nature Of Mitigation Contractor's Legal Entity	A2 - 64
12.9 Prohibited Interests	A2 - 64
12.10 Controlling Law	A2 - 64
12.11 Jurisdiction; Venue	A2 - 64
12.12 Cumulative Remedies	A2 - 64
12.13 Survival of Obligations	A2 - 65
12.14 Severability	A2 - 65
12.15 Headings	A2 - 65
12.16 Assignment of Antitrust Actions	A2 - 65
12.17 Other Legal Provisions	A2 - 65

**ARTICLE 1
TERMS; DEFINITIONS**

1.1 Applicability.

A. These General Conditions govern the Planning/Early Implementation Phase, Mitigation Phases, and completion of the Project by Mitigation Contractor.

1.2 Defined Terms. [*UPDATE DEFINED TERMS AS NECESSARY***]**

A. Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Act of God. An earthquake of magnitude of 3.5 or higher on the Richter scale or other natural disasters.
2. Applicable Laws. The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities, or private authorities with jurisdiction (including utilities), to the extent they apply to the Project.
3. Bank Credits. Credits from an existing or planned mitigation or conservation bank providing terrestrial compensatory mitigation.
4. Baseline Compensatory Mitigation Requirements. As defined in Attachment 1A to the Contract.
5. Change Order. A document that authorizes an addition, deletion, or revision in the Project or an adjustment in the Mitigation Contract Guaranteed Maximum Price (GMP) or Contract Time, issued in accordance with the Contract Documents.
6. Change Order Request. A request made by Mitigation Contractor for an adjustment to a Task Order or Contract Time as the result of a Mitigation Contractor-claimed change to the Project.
7. Contract. The entire integrated written agreement between Sites Authority and Mitigation Contractor concerning the Project.
8. Contract Time. The amount of time stated in a Task Order to achieve a Milestone Date.
9. Critical Path. A sequence of logically tied activities that represents the longest path within a project, which determines the shortest possible duration. Any delay of activity completion along this path will proportionately affect the completion date of the project.
10. Critical Path Method (CPM) Schedule. A scheduling method that uses a network diagram to depict the sequences of tasks required to complete the Project, or a

portion thereof, which are known as paths. Once the paths are defined, the duration of each path is calculated by an algorithm to identify the Critical Path, which determines the total duration of the Project, or a portion thereof.

11. Critical Supply Shortage. An unusual shortage in materials that is (a) supported by documented proof that Mitigation Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Mitigation Contractor at the time a Task Order was issued. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.
12. Day. A calendar day of 24 hours measured from midnight to the next midnight.
13. Defective Work. Work that is unsatisfactory, faulty, or deficient, that does not conform to the Contract Documents, or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
14. Development Agreements. Any Development Agreement(s) entered into by the Sites Authority and any county or counties within the Local Area that relate to the Sites Reservoir Project.
15. Force Majeure Event. An event that materially affects a Party's performance and is one or more of the following: (1) Acts of God; (2) terrorism or other acts of a public enemy; (3) pandemics, epidemics or quarantine restrictions; (4) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Mitigation Contractor and its Subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) a Critical Supply Shortage.
16. Funding Requirements. The requirements of the state and/or federal funding sources for the Project and more particularly described in Attachment 9 to the Contract.
17. Governmental Approvals. Any permit, license, authorization, consent, certification, exemption, grant, waiver, ruling, entitlement, variance or other approval, and any revision, modification, amendment, supplement, renewal or extension of any of the foregoing, issued by a Governmental Body of whatever kind and however described, which is required under Applicable Law to be obtained or maintained by any person with respect to the Project.
18. Governmental Body. Any federal, state, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body, or any official thereof, other than the Sites

Authority, having jurisdiction in any way over or in respect of any aspect of the performance of this Contract or the Project.

19. Hazardous Waste. The term “Hazardous Waste” shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time, or any substance or material identified as hazardous under any state or federal statute governing handling, disposal and/or cleanup of any such substance or material, whichever is more restrictive.

20. Holiday. Holidays occur on:

New Year’s Day – January 1
Martin Luther King Jr Day – Third Monday in January
Memorial Day – Last Monday in May
Independence Day – July 4
Labor Day – First Monday in September
Thanksgiving Day – Fourth Thursday in November
Friday after Thanksgiving
Christmas Day – December 25

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

21. Key Personnel. Mitigation Contractor’s personnel identified as key to the overall success of the Project, and, at a minimum, including those positions defined as Key Personnel in Mitigation Contractor’s SOQ. Key Personnel are specifically identified in the Special Conditions.

22. Key Subcontractor. A Subcontractor identified in Mitigation Contractor’s SOQ that Mitigation Contractor contracts with to fulfill a key role in Mitigation Contractor completing the Project. Key Subcontractors are identified in the Special Conditions.

23. Local Area. The Project Area plus Butte, Placer, Sacramento, Shasta, Sutter, and Tehama counties.

24. Milestone Date. The date upon which Mitigation Contractor is required to complete a task under a Task Order, or a particular stage, element or component of the Project. A Milestone Date may be defined as a date certain or as a number of calendar days or working days from a Task Order or other event.

25. Mitigation Contract GMP. The maximum possible compensation paid by Sites Authority to Mitigation Contractor as full compensation for performance of all Services as agreed to by the Parties, subject to any additions or deductions as provided in the Contract Documents.

26. Mitigation Contractor. The entity with which Sites Authority has contracted for performance of the Planning/Early Implementation Phase Services and Mitigation Phase Services.

27. Mitigation Contractor's Representative. The person designated by Mitigation Contractor to act as its representative during the performance of the Contract and identified in the Special Conditions.
28. Mitigation Contractor's RFP Proposal. The proposal submitted by Mitigation Contractor in response to the RFP.
29. Mitigation Contractor's SOQ. The statement of qualifications submitted by Mitigation Contractor in response to the RFQ.
30. Mitigation Phase. One of the Mitigation Phases performed by Mitigation Contractor and includes the Mitigation Phase Services.
31. Mitigation Phase Pricing. The total price for Mitigation Contractor to complete the Mitigation Phase Services for a Mitigation Phase. The components of the Mitigation Phase Pricing are further described in the Contract Documents.
32. Mitigation Phase Services. The services performed by Mitigation Contractor as part of a Mitigation Phase in accordance with the applicable Mitigation Phase Task Order and the Contract Documents.
33. Mitigation Site. Any lands or areas upon which Mitigation Contractor is providing any terrestrial compensatory mitigation in accordance with the Contract Documents (other than land providing third-party Bank Credits), including rights-of-way and easements for access thereto.
34. Parties or Party. Sites Authority and Mitigation Contractor, or either of them, as the context requires.
35. Payment Bond. The labor and materials payment bond provided by Mitigation Contractor's surety to secure the payment obligations of Mitigation Contractor for Work, as described in and maintained pursuant to this Contract and in the form set forth in the Contract Documents.
36. Performance Bond. The performance bond provided by Mitigation Contractor's surety to secure performance of Work, as described in and maintained pursuant to this Contract and in the form set forth in the Contract Documents.
37. Phase. Either the Planning/Early Implementation Phase or any Mitigation Phase.
38. Planning/Early Implementation Phase. Planning/Early Implementation Phase of the Project performed by Mitigation Contractor and includes the Planning/Early Implementation Phase Services.
39. Planning/Early Implementation Phase Pricing. The total price for Mitigation Contractor to complete the Planning/Early Implementation Phase Services. The components of the Planning/Early Implementation Phase Pricing are further described in the Contract Documents.
40. Planning/Early Implementation Phase Services. The services performed by Mitigation Contractor as part of the Planning/Early Implementation Phase in

accordance with the Planning/Early Implementation Phase Scope of Services and the Contract Documents.

41. Project. The entire of the Planning/Early Implementation Phase Services and the Mitigation Phase Services required to be completed pursuant to the Contract Documents.
42. Project Area. Colusa, Glenn, and Yolo counties.
43. Quality Control (QC). Includes, among other things, checks; inspection of material handling and construction; calibration and maintenance of sampling and testing equipment; working plan review; document control; production process control; any inspection, sampling, and testing done for these purposes; and documentation of these activities that are performed by Mitigation Contractor, Subcontractors, or Suppliers to ensure the Work meets the requirements of the Contract Documents.
44. Quality Control Plan. The plan to implement Quality Control on the Project and further described in the Contract Documents.
45. Recyclable Waste Materials. Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include, but are not limited to, asphalt, concrete, brick, concrete block, and rock.
46. Request for Information or RFI. Mitigation Contractor's written request to Sites Authority for clarification about the Contract Documents, any other document, or Project condition.
47. Request for Qualifications or RFQ. Sites Authority's request for qualifications for the Project and issued to mitigation contractor entities.
48. Request for Proposals or RFP. Sites Authority's request for proposals issued to mitigation contractor entities short listed after the RFQ process.
49. Required Mitigation Phase Services Insurance. The insurance policies and coverage required to be provided by Mitigation Contractor under this Contract for the Mitigation Phase Services.
50. Reservoir Committee. The reservoir committee of the Sites Authority, established by a joint powers authority agreement, as such Reservoir Committee may be modified from time to time.
51. Resource Agency or Resource Agencies. Any Governmental Body issuing any Resource Agency Permit(s) for the Sites Reservoir Project or any terrestrial compensatory mitigation provided by Mitigation Contractor under the Contract.
52. Sites Authority. A California joint powers authority operating under and by virtue of Section 6500 *et seq.*, of the California Government Code, established for the purpose of, among other things, effectively study, promoting, developing, designing, financing, acquiring, constructing, managing, and operating the Sites Reservoir Project and related facilities such as recreation and power generation.

53. Sites Authority Board. The board of directors that govern the Sites Project Authority.
54. Sites Authority's Representative. The person designed by Sites Authority to act as its representative during the performance of the Contract, and identified in the Special Conditions, or other person authorized to act for and on behalf of Sites Authority, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.
55. Sites Reservoir Project. The project by Sites Authority to construct an approximately 1.5 million acre-foot off-stream reservoir, intake, tunnels, conveyance facilities, transmission and substation facilities, new and improved roads, a new bridge and other appurtenant facilities.
56. Subcontracted Mitigation Phase Services. Mitigation Phase Services performed by Subcontractors, but not Mitigation Contractor, with their own forces in accordance with the Contract Documents.
57. Subcontractor. An individual or entity having a contract with Mitigation Contractor for performance of any portion of Services and, where applicable, any lower tier subcontractors performing Services.
58. Submittal. Written and graphic information prepared and supplied by Mitigation Contractor demonstrating various portions of the Work.
59. Substantial Completion. The time at which the Services under an applicable Task Order are complete in accordance with the requirements in the Contract Documents.
60. Supplier. A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Mitigation Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
61. Task Order. An order issued by Sites Authority that authorizes Mitigation Contractor to proceed with certain Planning/Early Implementation Phase Services during the Planning/Early Implementation Phase or certain Mitigation Phase Services during a Mitigation Phase.
62. Work. Work provided by Mitigation Contractor in the performance of the Services under the Contract Documents to complete the Project.
63. Work Product. All original papers, maps, models, estimates, plans, specifications, calculations, designs, studies, surveys, reports, data, notes, computer files, documents, drawings and other work product produced by Mitigation Contractor pursuant to the Contract Documents.

1.3 Terminology.

- A. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or mitigation industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 EXAMINATION; GENERAL PROVISIONS REGARDING THE CONTRACT DOCUMENTS

2.1 Examination.

- A. Examination of Conditions. As part of the Planning/Early Implementation Phase Services and throughout the Mitigation Phase Services, Mitigation Contractor shall be familiar with all local and other conditions which may be material to Mitigation Contractor's performance of the Work (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor).
- B. Examination of Contract Documents. Before commencing any portion of the Mitigation Phase Services, Mitigation Contractor shall, in addition to the Planning/Early Implementation Phase Services, carefully examine all applicable Contract Documents and other information given to Mitigation Contractor as to Project requirements. Mitigation Contractor shall immediately notify Sites Authority of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Mitigation Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Mitigation Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall Mitigation Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.
- C. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, Sites Authority's Representative will provide any required additional instructions, by means written direction, necessary for proper execution of Work.
- D. Mitigation Contractor's Variation from Contract Document Requirements. If it is found that Mitigation Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all Applicable Laws, the Sites Authority's Representative may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by Mitigation Contractor at Mitigation Contractor's expense.

2.2 Intent of Contract Documents.

- A. Complementary. The Contract Documents are complementary, what is required by any one of them will be binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be undertaken in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the

indicated result will be provided whether or not specifically called for, at no additional cost to Sites Authority.

- B. Completion of Work. Mitigation Contractor shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project. If utilities to equipment or fixtures are not shown but are necessary to operate any equipment or fixtures, the utilities service installation is considered to be part of the Work. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control Mitigation Contractor in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Clarifications and interpretations of the Contract Documents shall be issued by the Sites Authority's Representative as provided in these General Conditions.

2.3 Reference Standards.

- A. Standards, Specifications, Codes, Laws, and Regulations. Reference to federal specifications, federal standards, state standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of the performance of the Work, except as may be otherwise specifically stated in the Contract Documents.
- B. Responsibilities. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Sites Authority, Mitigation Contractor, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Sites Authority, or any of their officers, directors, members, partners, employees, agents, consultants, or Subcontractors, any duty or authority to supervise or direct the performance of Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

2.4 Reporting and Resolving Discrepancies.

- A. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Mitigation Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Mitigation Contractor shall promptly report in writing to Sites Authority any conflict, error, ambiguity, or discrepancy which Mitigation Contractor discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from Sites Authority before proceeding with any Work affected thereby. If, during the performance of the Work, Mitigation Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, Mitigation Contractor shall promptly submit a written RFI to Sites Authority. Mitigation Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by

Mitigation Contractor before receipt of an amendment or supplement shall be at Mitigation Contractor's own risk.

2.5 Order of Precedence.

[INSERT ADDITIONAL DOCUMENTS OR REMOVE DOCUMENTS LISTED IF NOT APPLICABLE TO THIS CONTRACT PRIOR TO EXECUTION OF CONTRACT]

- A. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
1. Permits from other agencies as may be required by law
 2. Change Orders, most recent first
 3. Contract
 4. Funding Requirements
 5. Project Labor Agreement, if and to the extent applicable
 6. Special Conditions
 7. Task Order
 8. Planning/Early Implementation Phase Scope of Services and Mitigation Phase Scope of Services
 9. General Conditions
 10. RFP and all addenda, attachments and appendices
 11. RFQ and all addenda, attachments and appendices
 12. Mitigation Contractor Certifications from RFQ and RFP
 13. Mitigation Contractor's SOQ
 14. To the extent applicable, in the following order:
 - a. Local agency standards and specifications
 - b. Standard drawings
 - c. Reference documents
- B. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality shall always apply.

2.6 Amending and Supplementing Contract Documents.

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Project or to modify the terms and conditions thereof only by Change Order.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to Sites Authority, by one or more of the following ways:
 - 1. Sites Authority's Representative's review of a Submittal or substitution request without exception (subject to the provisions of the Contract Documents); or
 - 2. Sites Authority's Representative's issuance of a response to an RFI.
- C. However, no review or RFI response will reduce or modify Mitigation Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

2.7 Work Product.

- A. Mitigation Contractor hereby assigns to Sites Authority all right, title, and interest, including any copyrights, patents, or any other intellectual property rights in all Work Product and all ideas, methods or information specifically developed for Work Product. Mitigation Contractor will take such steps as are necessary to perfect or protect the ownership interest of Sites Authority in such Work Product. Upon completion, expiration or termination of this Contract, Mitigation Contractor shall turn over to Sites Authority all such original Work Product in Mitigation Contractor's possession or control.

2.8 Confidential Information.

- A. No Unauthorized Disclosure. All information gained or Work Product produced by Mitigation Contractor in the performance of this Contract will be considered confidential, unless such information is in the public domain. Mitigation Contractor shall not release or disclose any such information or Work Product to persons or entities other than Sites Authority without the prior written consent of Sites Authority, except as otherwise required by law. Mitigation Contractor shall promptly notify Sites Authority should Mitigation Contractor, or its representatives, be served summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery request or court order from any third party regarding this Contract and the Services performed under this Contract.
- B. Media. Mitigation Contractor shall not comment publicly to the press or any other media or issue any news release or public relations item of any nature whatsoever regarding this Contract without prior review of the contents thereof by Sites Authority and receipt of Sites Authority's written permission.

**ARTICLE 3
INDEMNIFICATION; INSURANCE; BONDS**

3.1 Indemnification.

- A. Indemnification. To the fullest extent permitted by law, Mitigation Contractor shall immediately defend (with counsel of Sites Authority's choosing), indemnify and hold harmless Sites Authority, its officials, officers, employees, agents, and authorized volunteers, and each of them from and against:
1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Planning/Early Implementation Phase Services, Mitigation Phase Services, Work or this Contract, including claims made by Subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of Sites Authority or its officials, officers, employees, agents, or authorized volunteers (including passive negligence), except such loss or damages caused by the sole negligence or willful misconduct or active negligence of Sites Authority or its officials, officers, employees, or authorized volunteers.
 2. Mitigation Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Mitigation Contractor's Work during the course of construction of the improvements or after the Project is complete, as the result of defects or negligence in Mitigation Contractor's construction of the Work.
 3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any Applicable Law, compliance with which is the responsibility of Mitigation Contractor.
 4. Any and all losses, expenses, damages (including damages to the Project itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Mitigation Contractor to faithfully perform the Planning/Early Implementation Phase Services and Mitigation Phase Services and all of Mitigation Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.
- B. Defense. Mitigation Contractor shall immediately defend, at Mitigation Contractor's own cost, expense and risk, with the counsel of Sites Authority choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Sites Authority or its officials, officers, employees, agents, or authorized volunteers. Mitigation Contractor shall pay and satisfy any judgment,

award or decree that may be rendered against Sites Authority or its officials, officers, employees, agents, or authorized volunteers, in any such suit, action or other legal proceeding. Mitigation Contractor shall reimburse Sites Authority and its officials, officers, employees, agents, and authorized volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

- C. Survival, Insurance. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article. Mitigation Contractor's obligation to indemnify and defend Sites Authority shall not be restricted to insurance proceeds, if any, received by Sites Authority and its officials, officers, employees, agents, and authorized volunteers.

3.2 Insurance.

A. General Requirements.

1. Mitigation Contractor shall obtain, and at all times during performance of the Services, maintain all of the insurance described in this Article.
2. Mitigation Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to Sites Authority that it has secured all insurance required hereunder. Failure to provide and maintain all required insurance shall be grounds for Sites Authority to terminate this Contract for cause. Mitigation Contractor shall furnish Sites Authority with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to Sites Authority. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to Sites Authority. All certificates and endorsements must be received and approved by Sites Authority before Services commence.
3. Mitigation Contractor shall require Subcontractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by Sites Authority. Mitigation Contractor shall make certain that any and all Subcontractors hired by Mitigation Contractor are insured in accordance with this Contract. Mitigation Contractor shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence satisfactory to Sites Authority that the Subcontractor has secured all insurance required under this Article. If any Subcontractor's coverage does not comply with the foregoing provisions, Mitigation Contractor shall indemnify and hold Sites Authority harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by Sites Authority as a result thereof.
4. Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, if Mitigation Contractor maintains higher limits than the minimums shown above, Sites Authority requires and shall be entitled to coverage for the higher limits maintained by Mitigation Contractor. Any available insurance

proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Sites Authority.

- B. Additional Insureds; Waiver of Subrogation. Sites Authority, its officials, officers, employees, agents and authorized volunteers shall be named as additional insureds Mitigation Contractor's and its Subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Mitigation Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for Subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in the Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds hereunder. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against Sites Authority, its officers, officials, agents, employees or volunteers or shall specifically allow Mitigation Contractor - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Mitigation Contractor hereby waives its own right of recovery against Sites Authority, and shall require similar written express waivers and insurance clauses from each of its Subcontractors. Copies of these waivers shall be submitted to Sites Authority prior to commencement of Services.
- C. Workers' Compensation Insurance. Mitigation Contractor shall provide workers' compensation insurance for all of the employees engaged in Services under this Contract, on or at a Mitigation Site, and Mitigation Contractor shall require Subcontractors similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Mitigation Contractor's insurance. In case any class of employees engaged in Services under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, Mitigation Contractor shall provide or shall cause Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. Mitigation Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. Mitigation Contractor shall file with Sites Authority certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to Sites Authority, if in the form and coverage as set forth in the Contract Documents.
- D. Employer's Liability Insurance. Mitigation Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars (\$1,000,000.00) per person per accident. Mitigation Contractor shall provide Sites Authority with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of Sites Authority.
- E. Commercial General Liability Insurance. Mitigation Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury

which may arise from or out of Mitigation Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve Mitigation Contractor from liability in excess of such coverage, nor shall it limit Mitigation Contractor's indemnification obligations to Sites Authority, and shall not preclude Sites Authority from taking such other actions available to Sites Authority under other provisions of the Contract Documents or law.
 2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
 3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Mitigation Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.
 4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, Sites Authority may require additional coverage to be purchased by Mitigation Contractor to restore the required limits. Mitigation Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.
 5. All policies of general liability insurance shall permit and Mitigation Contractor does hereby waive any right of subrogation which any insurer of Mitigation Contractor may acquire from Mitigation Contractor by virtue of the payment of any loss.
- F. Automobile Liability Insurance. Mitigation Contractor shall provide Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars (\$1,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed

by Mitigation Contractor or for which Mitigation Contractor is responsible, in a form and with insurance companies acceptable to Sites Authority. All policies of automobile insurance shall permit and Mitigation Contractor does hereby waive any right of subrogation which any insurer of Mitigation Contractor may acquire from Mitigation Contractor by virtue of the payment of any loss.

G. Professional Liability Insurance. Mitigation Contractor, along with all architects, engineers, consultants or design professionals retained by Mitigation Contractor, shall procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$2,000,000 per occurrence. Defense costs shall be paid in addition to the limits.

H. Form and Proof of Carriage of Insurance.

1. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by Sites Authority's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by Mitigation Contractor. At the election of Sites Authority, Mitigation Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, Mitigation Contractor shall provide a "follow form" endorsement satisfactory to Sites Authority indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
2. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Sites Authority; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Sites Authority, its officials, officers, agents, employees, and volunteers.
3. The certificates(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to Sites Authority prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, Sites Authority may terminate the Contract or stop the Service in accordance with the Contract Documents, unless Sites Authority receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Mitigation Contractor shall not commence operations under this Contract until Sites Authority has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

4. The certificate(s) of insurance, policies and endorsements shall so covenant and shall be construed as primary, and Sites Authority's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
5. Sites Authority reserves the right to adjust the monetary limits and types of insurance coverages during the term of this Contract including any extension thereof if, in Sites Authority's reasonable judgment, the amount or type of insurance carried by Mitigation Contractor becomes inadequate.
6. Mitigation Contractor shall report to Sites Authority, in addition to Mitigation Contractor's insurer, any and all insurance claims submitted by Mitigation Contractor in connection with the Services under this Contract.
7. Products/completed operations coverage shall extend a minimum of three years after the Project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. Sites Authority, its officers, officials, agents employees, and volunteers shall be included as insureds under the policy.

3.3 Performance and Payment Bonds.

- A. Generally. Prior to Mitigation Contractor's commencement of Mitigation Phase Services for each Task Order for a Mitigation Phase, Mitigation Contractor shall submit Performance Bonds and Payment Bonds for the Work to be performed for such Task Order for a Mitigation Phase on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to Sites Authority conditioned upon the faithful performance by Mitigation Contractor of all requirements of the Contract Documents. The obligations of the Performance Bond surety shall continue so long as any obligation of Mitigation Contractor under the applicable Task Order for a Mitigation Phase remains. Nothing herein shall limit Sites Authority's rights or Mitigation Contractor's or surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.
- B. Amount of Bonds. The initial Performance Bond and Payment Bonds for each Task Order for a Mitigation Phase shall be in a sum no less than one hundred percent (100%) of the estimated cost of the Services to be provided by Mitigation Contractor for such Task Order for a Mitigation Phase as of the date of issuance of the applicable Task Order for each Mitigation Phase. No payment will be made to Mitigation Contractor for Task Order for a Mitigation Phase until the bonds have been approved by Sites Authority for such Task Order for the Mitigation Phase. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an

increase in the Mitigation Contract GMP, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to Mitigation Contractor will release the surety. If Mitigation Contractor fails to furnish any required bond, Sites Authority may terminate the Contract for cause.

- C. Monitoring of Sureties. Mitigation Contractor shall be responsible throughout the Project for monitoring the financial condition of any surety issuing bonds under this Contract and for making inquiries no less often than annually to confirm that each such surety complies with the qualification requirements specified in this Article. In the event any surety is declared bankrupt or becomes insolvent or has the rights to do business in the state terminated, Mitigation Contractor shall promptly notify Sites Authority of such event and shall promptly take steps to ensure continued compliance with this Article by furnishing or arranging for the furnishing of a substitute or additional bond of a surety whose qualifications satisfy all above requirements.
- D. Insufficient Bonds. Should, in Sites Authority's sole opinion, any bond become insufficient or surety found to be unsatisfactory, Mitigation Contractor shall renew or replace the effected bond within 10 Days of receiving notice from Sites Authority. In the event the surety or Mitigation Contractor intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to Sites Authority, and Mitigation Contractor shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Article are accepted by Sites Authority.

ARTICLE 4 COST OF WORK.

4.1 Mitigation Contract Guaranteed Maximum Price. The Mitigation Contract GMP for delivering the Baseline Compensatory Mitigation Requirements will be an amount equal to [] and 00/100 Dollars (\$).]

- A. Mitigation Contractor guarantees that the final cost to complete the Project and deliver the Baseline Compensatory Mitigation Requirements shall not exceed the Mitigation Contract GMP, subject to any additions or deductions as provided in the Contract Documents. Except as otherwise provided in the Contract Documents, Mitigation Contractor shall assume the risk of all costs in excess of the Mitigation Contract GMP in the performance of the Work and to complete the Project, in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs. Should Mitigation Contractor believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to the Contract Documents. If the final accounting of the costs for the Project exceeds the Mitigation Contract GMP, including all adjustments to the Mitigation Contract GMP in accordance with the Contract Documents, Mitigation Contractor shall be solely responsible for all costs exceeding such amount. To the extent the Sites Authority provides written notice to Mitigation Contractor of a change in the Baseline Compensatory Mitigation Requirements (e.g., based on Sites Reservoir Project design and permitting requirements during the term of the Contract), then any change to the Mitigation Contract GMP resulting from such change in the Baseline Compensatory Mitigation Requirements shall be addressed through the Change Order process as described in Article 9 of the General Conditions.

- B. The Mitigation Contract GMP includes and assumes that from time to time, Mitigation Contractor will encounter delays and difficult conditions, other interference, or conditions at the Mitigation Sites. Mitigation Contractor assumes full responsibility for its examination, investigation and understanding of the difficulties which may be encountered, and has included in the Mitigation Contract GMP the cost of any Services associated with such difficulties.

4.2 Subcontracted Mitigation Phase Services.

- A. Subcontracted Mitigation Phase Services Bid or Proposal Packages. To the extent required by Applicable Laws for any of the Mitigation Phase Services, Mitigation Contractor shall develop and prepare separate and specific bid packages for each category of Subcontracted Mitigation Phase Services that clearly delineates the scope of subcontracted Work for such Mitigation Phase Services. Mitigation Contractor shall be responsible for the assembly, reproduction and distribution of all documents defining the scope of work for each category of Subcontracted Mitigation Phase Services.
- B. Competitive Subcontractor Procurement.
1. Compliance with Law. Mitigation Contractor shall procure Subcontractors through a competitive process that complies with both Public Contract Code Section 20928.3 and the Funding Requirements, to the extent required by Applicable Laws. Subcontractors shall be selected in accordance with protections provided by State law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Public Contract Code sections 4100 *et seq.*).
 2. Prequalification. Mitigation Contractor may, at its option, advertise for statements of qualifications in order to shortlist interested subcontractors prior to soliciting bids or proposals. A short listing process shall not place unreasonable requirements on subcontractors to qualify, shall not require unnecessary experience or excessive bonding, and shall not enable any arbitrary action in determining whether a subcontractor is prequalified.
 3. Public Notice. Mitigation Contractor shall provide notice of bidding for Subcontracted Mitigation Phase Services in accordance with the publication requirements applicable to Sites Authority's competitive bidding process including a fixed date and time on which qualification statements, bids, or proposals will be due. In addition, Mitigation Contractor shall take affirmative steps to provide the public notice of bidding to both the Project Area and Local Area. This includes, but is not limited to, posting the public notice of bidding to electronic contractor bidding lists or trade journals in the Project Area and Local Area and performing public outreach to potential subcontractors in the Project Area and Local Area. The solicitation shall, to the extent applicable, give notice that selected subcontractors shall be bound to the applicable skilled and trained workforce requirements, and shall require that to be eligible for an award, the bid or proposal must include a binding commitment to be bound by the terms of the applicable skilled and trained workforce requirements.
 4. Sites Authority Review of Bid Packages and Notice. At least fourteen (14) Days prior to the release of Subcontracted Mitigation Phase Services for bidding,

Mitigation Contractor shall provide Sites Authority with a copy of the written notice it will publish (including newspaper advertising) to solicit potential subcontractors and a copy of the bid packages for the Subcontracted Mitigation Phase Services. Sites Authority reserves the right to request that Mitigation Contractor reasonably revise its published notice or bid package for Subcontracted Mitigation Phase Services.

5. Low Bid; Best Value. Mitigation Contractor shall award subcontracts to responsible subcontractors with the lowest responsive bid unless Sites Authority allows Mitigation Contractor to award by best value. The solicitation shall set forth whether the award will be given to the lowest responsible bidder or on a best value basis.
 - a. Low Bid. If the solicitation is for the lowest responsible bid, then the solicitation shall set forth how Mitigation Contractor will determine the lowest responsible bidder. The solicitation shall include sufficiently-detailed specifications and information to enable all bidders to respond and provide firm fixed price bids that may be compared equally amongst various bidders. Mitigation Contractor shall not negotiate with the bidders to determine the lowest responsible bid.
 - b. Best Value. If the solicitation is for proposals to be considered on a best value basis, then the solicitation shall identify all evaluation factors and their relative importance to determination of the award. Mitigation Contractor shall develop a written method of determining the proposer who will provide the best value to the Project, which shall include consideration of price and other relevant factors. Mitigation Contractor shall document its basis for making the award.
6. Bid/Proposal Opening. Mitigation Contractor shall invite Sites Authority to attend all bid and proposal opening(s) for Subcontracted Mitigation Phase Services and shall within 48 hours of the bid or proposal opening(s) provide copies or access to all bid or proposal documents provided by all proposers or bidders.
7. Review of Bids, Proposals.
 - a. Solicitations shall include a procedure, developed and administered by Mitigation Contractor, for protesting a prequalification determination or contract award. Mitigation Contractor shall notify Sites Authority of any protest prior to responding to such protest. Mitigation Contractor shall be solely responsible for determining any protests to any of its subcontract awards.
 - b. Mitigation Contractor may reject all bids or proposals and may waive any inconsequential irregularities in any bid or proposal. If Mitigation Contractor rejects a bid or proposal as non-responsive, or otherwise determines the bidder or proposer is not eligible or qualified, Mitigation Contractor shall document the basis for any rejection.
8. Contracts. Construction subcontracts shall be on a lump sum or unit price basis, and Mitigation Contractor shall not award contracts to Subcontractors on a basis that uses a percentage of construction cost contracting.
9. Rights of Sites Authority.

- a. Without limiting anything set forth herein, Mitigation Contractor acknowledges and agrees that Sites Authority shall have the right to: (a) review and comment on all procurement documents; (b) attend any bid or proposal openings; (c) attend any meetings with prospective subcontractors; (d) review all bids, proposals, and other information developed or otherwise resulting from any competitive procurement, including Mitigation Contractor's tabulation, scoring or evaluation materials; and (e) otherwise participate in the contract award process. Mitigation Contractor shall provide Sites Authority sufficient time, but in no case less than 20 Days, to exercise its rights regarding the foregoing. Upon contract award, Mitigation Contractor shall provide the Sites Authority with a description of the competitive process undertaken in connection with such contract award, together with copies of all material documents used in connection therewith and agreements resulting therefrom.
- b. Sites Authority, in its discretion, shall have the right to direct Mitigation Contractor to reject any or all bids and proposals and re-solicit any Subcontracted Mitigation Phase Services in accordance with the procurement requirements of this Article in the event Sites Authority is not satisfied that the competitive process or pricing received is fair, reasonable and consistent with industry standards for similar services. Mitigation Contractor shall not be entitled to an increase of the Mitigation Contract GMP or any extension of Contract Time if Sites Authority requires Mitigation Contractor to re-solicit any Subcontracted Mitigation Phase Services due to Mitigation Contractor failing to follow the Contract requirements for solicitation of Subcontracted Mitigation Phase Services.

C. Noncompetitive Subcontractor Procurement.

1. Mitigation Contractor may procure Subcontractors without following the above competitive procurement procedures only if both of the following apply:
 - a. The subcontract qualifies for non-competitive procurement under the Federal Guidelines at 2 C.F.R. Section 200.320 and the appropriate documentation has been provided and accepted by the Authority to demonstrate this; and
 - b. The selection of the subcontractor complies with Sites Authority's procurement policies and procedures.
2. If following Mitigation Contractor's diligent and good faith solicitation of a number of sources, Mitigation Contractor determines that competition is determined to be inadequate, Mitigation Contractor may, with Sites Authority's express written authorization, utilize a noncompetitive process or may self-perform the Subcontracted Mitigation Phase Services by following the procurement procedures for Self-Performed Mitigation Phase Services.
3. For a noncompetitive procurement, Mitigation Contractor may obtain quotes, negotiate price or utilize any other selection method. Noncompetitively procured Subcontractors must still meet all other requirements of the Contract Documents, including but not limited to agreeing to be subject to the skilled and trained workforce requirements, if applicable, being registered with the Department of Industrial Relations to perform public works, and maintaining all appropriate

licenses and qualifications to perform the respective Subcontracted Mitigation Phase Services.

ARTICLE 5 MITIGATION CONTRACTOR RESPONSIBILITIES.

5.1 General Responsibilities.

- A. Applicable Laws. Mitigation Contractor shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Services. Except where otherwise expressly required by Applicable Laws, neither Sites Authority nor the Sites Authority's Representative shall be responsible for monitoring Mitigation Contractor's compliance with any Applicable Laws. If Mitigation Contractor performs any Services knowing or having reason to know that it is contrary to Applicable Laws, Mitigation Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Services.
- B. Standard of Care. Mitigation Contractor shall perform the Services using its best professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms hereof and applicable law, code, rule or regulation. Mitigation Contractor warrants that the Services and Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. Mitigation Contractor shall supervise, inspect, and direct the Services and Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. Mitigation Contractor shall perform, at its own cost and expense and without reimbursement from Sites Authority, any services necessary to correct errors or omissions which are caused by Mitigation Contractor's failure to comply with the standard of care provided for herein.
- C. Best Efforts. Mitigation Contractor recognizes the relations of trust and confidence that are established by this Contract, and covenants with Sites Authority to furnish Mitigation Contractor's best skill and judgment, and to actively cooperate and assist in furthering the best interests of Sites Authority in all matters pertaining to the Project. Mitigation Contractor agrees to furnish efficient business administration and capable supervision, and to use every effort to keep upon the work an adequate supply of workmen and materials in order to secure its execution in the most expeditious and economical manner consistent with Sites Authority's best interests. Mitigation Contractor's employees assigned to the Project shall at all times be reasonably satisfactory to Sites Authority.
- D. Independent Contractor. Mitigation Contractor in the performance of this Contract shall be and act as an independent contractor. Mitigation Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of Sites Authority, and are not entitled to benefits of any kind or nature normally provided employees of Sites Authority or to which Sites Authority's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Mitigation Contractor shall assume full responsibility for payment of all federal, state and local taxes or

contributions, including unemployment insurance, social security and income taxes with respect to Mitigation Contractor's employees. In the performance of the Services, Mitigation Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Mitigation Contractor's Services, Sites Authority being interested only in the results obtained.

- E. Meetings. Before Mitigation Contractor's commencement of Work for each Phase, a conference attended by Sites Authority, Mitigation Contractor, Sites Authority's Representative, and others as appropriate will be held to establish a working understanding among the Parties as to the Phase and to discuss the schedules referred to herein. Mitigation Contractor shall schedule and hold regular progress meetings at least weekly and at other times as requested by Sites Authority's Representative or as required by progress of the Work. Mitigation Contractor and Sites Authority shall attend each meeting. Mitigation Contractor may at its discretion request attendance by representatives of its Subcontractors, Suppliers, or manufacturers. The Sites Authority's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other issues which may develop. During each meeting, Mitigation Contractor shall present any issues which may impact its progress with a view to resolve these issues expeditiously.
- F. Permits and Licenses. All necessary permits and licenses necessary for prosecution of the Work shall be secured and paid for by Mitigation Contractor, including, but not limited to, permits, licenses and fees required by a Governmental Body, unless otherwise expressly provided by the Contract Documents. Mitigation Contractor shall arrange and pay for any inspection of the Work related to permits and licenses, including certification, required by the Contract Documents or by Governmental Bodies, except for any inspections delineated as Sites Authority's responsibility pursuant to the Contract Documents. Before Substantial Completion of the Services under any Task Order, Mitigation Contractor shall submit all licenses, permits, certificates of inspection and required approvals with respect to such Services to Sites Authority.
- G. Taxes. Mitigation Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work, and in accordance with the applicable requirements of any Development Agreement.. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Mitigation Contractor will be responsible. Without limiting any of the foregoing, in the event Sites Authority seeks to obtain any available exemption under Applicable Law from sales, consumer, use, and similar taxes for the Project, Mitigation Contractor will cooperate with Sites Authority in seeking such an exemption, and will utilize (and cause its Subcontractors to utilize) any such exemption to the extent available in performance of the Work.
- H. Mitigation Responsibility. The Sites Authority shall have no obligation whatsoever by reason of the purchase of any terrestrial compensatory mitigation hereunder, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity

of such terrestrial compensatory mitigation. Mitigation Contractor shall be fully and completely responsible for satisfying any and all conditions placed on the Mitigation Sites and the terrestrial compensatory mitigation by all Governmental Bodies.

5.2 Staffing of Project.

- A. Employment of Workers. Mitigation Contractor shall comply with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all Subcontractors and consultants to comply with the same. Each person executing the Contract on behalf of Mitigation Contractor verifies that he or she is a duly authorized officer of Mitigation Contractor and that any of the following shall be grounds for Sites Authority to terminate the Contract for cause: (1) failure of Mitigation Contractor or its Subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.
- B. Competent Workers. Mitigation Contractor shall at all times enforce strict discipline and good order among its employees. Mitigation Contractor shall not employ on the Project any unfit person or any one not skilled in the services assigned to him or her. Any person in the employ of Mitigation Contractor whom Sites Authority may deem incompetent or unfit shall be dismissed from performing services and shall not be employed on the Project.
- C. Supervision. Mitigation Contractor shall continuously keep a competent and experienced full-time Project superintendent acceptable to Sites Authority. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of Mitigation Contractor. Mitigation Contractor shall continuously provide efficient supervision of the Project.

5.3 Subcontractors.

- A. Subcontracting Generally.
 - 1. Licenses. Mitigation Contractor shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. All Subcontractors performing Mitigation Phase Services shall possess a valid contractor license if and to the extent required by Applicable Law for the classification required for the work to be performed by Subcontractors at the commencement of the Mitigation Phase Services and throughout the duration of the Work.
 - 2. Responsibility for Subcontractors. All subcontracted Work shall be performed under written subcontracts. Mitigation Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Services. Mitigation Contractor shall be as fully responsible to Sites Authority for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by its Subcontractors, as Mitigation Contractor is for acts and omissions of persons

directly employed by Mitigation Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any Subcontractor and Sites Authority. Sites Authority reserves the right to accept all Subcontractors. Sites Authority's acceptance of any Subcontractor under this Contract shall not in any way relieve Mitigation Contractor of its obligations in the Contract Documents. Subcontracts entered into by Sites Authority for the performance of the Work shall neither supersede nor abrogate any of the terms or provisions of this Contract.

3. Claims. Mitigation Contractor shall be responsible for settling and resolving all claims with Subcontractors. Mitigation Contractor shall provide to Sites Authority, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any subcontract that may have a material and adverse effect on performance by Mitigation Contractor of its obligations under the Contract Documents.
 4. Payment. Mitigation Contractor shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective subcontracts and the requirements of this Article and Applicable Law. No Subcontractor shall have any right or claim against Sites Authority for labor, services, materials or equipment furnished for the Project. Mitigation Contractor acknowledges that its indemnity obligations under this Contract shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Project. Mitigation Contractor shall, at Sites Authority's request, furnish satisfactory evidence that all obligations of the nature designated above in this Article have been paid, discharged or waived. If Mitigation Contractor fails to do so Sites Authority may, after having notified Mitigation Contractor, withhold from Mitigation Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Mitigation Contractor will be resumed in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon Sites Authority to either Mitigation Contractor, the surety or any third party.
 5. Assignment. Each subcontract agreement shall include a provision that allows for an irrevocable assignment of the subcontract to Sites Authority, solely at Sites Authority's election and without cost or penalty. The provision shall indicate that Sites Authority's acceptance of the assignment shall not affect any obligations of the Subcontractor's performance or payment bond surety. Sites Authority may accept the assignment by delivering written notice to Mitigation Contractor and Subcontractor.
- B. Subcontracting Planning/Early Implementation Phase Services. Mitigation Contractor shall perform the Planning/Early Implementation Phase Services with resources available within its own organization and no portion of the Planning/Early Implementation Phase Services shall be subcontracted without written authorization by Sites Authority, except that which is expressly identified in Mitigation Contractor's RFP Proposal.
- C. Substitution of Subcontractors.

1. Subcontractors Performing Planning/Early Implementation Phase Services. Mitigation Contractor shall not substitute a Subcontractor performing Planning/Early Implementation Phase Services except with Sites Authority's express written authorization.
2. Subcontractors Performing Mitigation Phase Services. Subcontractors performing Mitigation Phase Services shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (Public Contract Code sections 4100 *et seq.*), to the extent applicable to the Work being performed by the Subcontractor. Mitigation Contractor shall not substitute Subcontractors that are awarded a contract pursuant to the above process, except in accordance with the Subletting and Subcontracting Fair Practices Act. Mitigation Contractor may substitute a Subcontractor without following the Subletting and Subcontracting Fair Practices Act that Mitigation Contractor procures through a noncompetitive procurement.
3. All Subcontractor Substitution. Sites Authority will not grant an increase to the Mitigation Contract GMP or grant an extension of Contract Time in the event of a substitution of any Subcontractor.

D. Dismissal of Subcontractors.

1. Subcontractor. Sites Authority reserves the right to order Mitigation Contractor to dismiss any Subcontractor and to terminate any subcontract if, in Sites Authority's opinion, the Subcontractor fails to comply with the requirements of the Contract Documents insofar as the same may be applicable to the Subcontractor's Work. Nothing herein contained shall create any contractual relation between any Subcontractor and Sites Authority or relieve Mitigation Contractor of any liability or obligation hereunder. No Subcontractor will be recognized as such, and all persons engaged in the Work will be considered as employees of Mitigation Contractor and Mitigation Contractor shall be responsible for their Work.
2. Staff Member of Subcontractor. If at any time during the Project, Sites Authority reasonably determines that the performance of any member of Subcontractor's staff performing Services is unsatisfactory, Sites Authority may require Mitigation Contractor to remove such staff member immediately and replace the staff member at no cost or penalty to Sites Authority.
3. No Increase in Price, Time. Sites Authority will not grant an increase to the Mitigation Contract GMP or grant an extension of the Contract Time in the event of a dismissal of any Subcontractor.

5.4 Safety Requirements.

- A. General Safety Requirements. Mitigation Contractor shall be solely responsible for all safety precautions and programs in connection with the Services. Mitigation Contractor shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Mitigation Contractor shall take all reasonable precautions for the health and safety of, and shall provide all reasonable protection to prevent damage, injury or loss to all employees performing any Services and all other persons who may be affected

thereby. Mitigation Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers on the Sites Reservoir Project in accordance with Applicable Laws. Mitigation Contractor shall notify owners of adjacent property and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. Mitigation Contractor shall maintain emergency first aid treatment for its employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. Mitigation Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.

- B. Emergency Response Plan. Mitigation Contractor must prepare and provide to the Sites Authority, for the Site Authority's review, comment and approval, prior to commencement of any Mitigation Phase Services an emergency response plan that includes ensuring sufficient response to any medical or fire emergency, such as injury to an employee or a wildfire, without burdening the current emergency response resources like police and fire.
- C. Safety Manager. Mitigation Contractor assumes responsibility for implementing and monitoring all health and safety precautions and programs related to the performance of the Work. Mitigation Contractor shall, prior to commencing Work, designate an individual with the qualifications and experience necessary to supervise the implementation and monitoring of all health and safety precautions and programs related to the Work.
- D. Safety Inspections and Meetings. Mitigation Contractor is solely responsible to inspect, survey, and assess the Mitigation Sites and identify the existence of all permit-required confined spaces and non-permit confined spaces and comply with applicable OSHA regulations and standards. Mitigation Contractor's Mitigation Site assessment shall begin upon the initiation of Work at a Mitigation Site and continue throughout the duration of the Project.
- E. Safety Program. Mitigation Contractor shall submit an illness and injury prevention program and a Site specific safety program to Sites Authority for the Sites Authority's review, comment and approval, prior to beginning the Mitigation Phase Services ("Safety Program"). The Safety Program shall include, but not be limited to, worker safety, electrical safety, lock-out/tag-out, arc flash safety personal protection equipment while working in vicinity of energized electrical equipment, hazard communication, fire protection plan, emergency access plan, health and safety inspections of mechanized equipment, machinery, hoists, cranes, scaffolding, excavations, shoring, and related items. Mitigation Contractor shall maintain a confined space program that meets or exceeds Applicable Law. Mitigation Contractor needs to make themselves aware of Sites Authority's safety policies and procedures, and shall meet or exceed all Sites Authority standards in areas where Sites Authority must enter to perform inspections.
- F. Safety Compliance Requirements. Mitigation Contractor shall, and shall cause all Subcontractors to, comply with: (1) all Applicable Law relating to safety; and (2) any Sites Authority health and safety requirements. Mitigation Contractor shall immediately

report (no later than within 12 hours after its occurrence), in writing, any health and safety-related injury, loss, damage, accident or near miss arising from the Work to the Sites Authority's Representative and, to the extent mandated by Applicable Law, to any Governmental Body having jurisdiction over health and safety-related matters involving the Project. Sites Authority shall have the right to suspend any or all Work if Mitigation Contractor fails to comply with its obligations hereunder without any requirements of increasing the Mitigation Contract GMP or Contract Time.

- G. Emergencies. Prior to commencement of any Mitigation Phase Services, Mitigation Contractor shall develop and provide to the Sites Authority an emergency response plan in accordance with the Contract Documents. The emergency response plan shall establish the protocols for Mitigation Contractor in dealing with emergencies impacting the performance of the Work and ensure there is sufficient response to any medical or fire emergency, such as injury to an employee or a wildfire at a Mitigation Site, without burdening the current emergency response resources like police and fire. The emergency response plan shall be subject to the approval of Sites Authority. In case of an emergency which threatens immediate loss or damage to property or health and safety of life, Mitigation Contractor shall act immediately to prevent threatened loss, damage, injury or death. Mitigation Contractor shall notify Sites Authority's Representative of the situation and all actions taken immediately thereafter. Prior to commencing Mitigation Phase Services and at all times during the performance of the Work, Mitigation Contractor shall provide Sites Authority with 24-hour emergency phone numbers where its representatives can be contacted. When Sites Authority has been notified of emergency situations requiring, in Sites Authority's reasonable opinion, immediate attention and rectification, Sites Authority will so notify Mitigation Contractor. In the event Mitigation Contractor fails to commence actions to prevent threatened loss, damage, injury or death immediately after notification from Sites Authority, Sites Authority may take all appropriate rectification actions and deduct the costs thereof from monies owed to Mitigation Contractor.

5.5 Security.

- A. Security Generally. Mitigation Contractor shall be responsible for the security and protection of the Project, including any security requirements set forth in the Contract Documents. Mitigation Contractor shall comply with, and cause all Subcontractors to comply with, all terms and conditions related to security.
- B. Security Plan. Mitigation Contractor shall, prior to commencement of any Mitigation Phase Services, provide, for Sites Authority's review, comment and approval, a Security Plan, prepared in accordance with the Contract Documents. Mitigation Contractor shall not perform any Mitigation Phase Services until the Sites Authority has reviewed and approved on the Security Plan. Mitigation Contractor shall provide a final Security Plan, having addressed any comments provided by Sites Authority, as a pre-condition to the Mitigation Phase Services.

5.6 Hazardous Waste.

- A. Hazardous Waste Introduced by Mitigation Contractor. Sites Authority shall not be responsible for any Hazardous Waste brought to any Mitigation Site by Mitigation Contractor. If Mitigation Contractor: (i) introduces and/or discharges a Hazardous Waste onto a Mitigation Site in a manner not specified by the Contract Documents;

and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, Mitigation Contractor shall hire a qualified remediation contractor at Mitigation Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall Mitigation Contractor perform Services for which it is not qualified. Sites Authority, in its sole discretion, may require Mitigation Contractor to retain at Mitigation Contractor's cost an independent testing laboratory.

- B. Encountering Hazardous Waste. If Mitigation Contractor encounters Hazardous Waste which may cause foreseeable injury or damage, Mitigation Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify Sites Authority (and promptly thereafter confirm such notice in writing). Mitigation Contractor shall contract for any services required to directly remove and/or abate Hazardous Waste, if required. The Work in the affected area shall not thereafter be resumed except by written agreement of Sites Authority and Mitigation Contractor.
- C. Hazardous Waste Indemnification. Mitigation Contractor shall indemnify, defend, and hold harmless Sites Authority from and against claims, damages, losses and expenses, arising from Hazardous Waste on any Mitigation Site, if such Hazardous Waste was brought to the Mitigation Site by Mitigation Contractor. Nothing in this paragraph shall obligate Mitigation Contractor to indemnify Sites Authority in the event of the sole or active negligence or willful misconduct of Sites Authority, its officers, agents, or employees.

5.7 Water Quality Management and Compliance.

- A. Storm Water. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Project. Mitigation Contractor hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.
- B. Discharge of Storm Water. Mitigation Contractor shall keep itself and all Subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 13000 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to, California State Water Resources Control Board Order Number 2009-0009-DWQ (NPDES Permit No. CAS000002), as amended by Order Numbers 2010-0014-DWQ, 2012-0006-DWQ, and any subsequent amendment to or renewal thereof, State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004), and any amendment or renewal thereof.
- C. Construction General Permit. Mitigation Contractor shall comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with the Services ("Construction General Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Mitigation

Contractor shall comply with the lawful requirements of Sites Authority, and any other applicable municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

- D. Violations. Failure to comply with the Construction General Permit, laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in these Contract Documents, Mitigation Contractor agrees to indemnify and hold harmless Sites Authority, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, fees, costs, expenses, or losses or liabilities of any kind or nature which Sites Authority, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Construction General Permit, laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of Sites Authority, its officials, officers, agents, employees or authorized volunteers. Sites Authority reserves the right to defend any enforcement action or civil action brought against Sites Authority for Mitigation Contractor's failure to comply with any applicable water quality law, regulation, or policy. Mitigation Contractor hereby agrees to be bound by, and to reimburse Sites Authority for the costs associated with, any settlement reached between Sites Authority and any relevant enforcement entity.

5.8 Environmental Requirements.

A. Environmental Quality Protection.

1. Environmental Regulations. Sites Authority operates under a number of environmental permits issued by various Governmental Bodies. Mitigation Contractor shall comply with all requirements of Applicable Law for environmental rules and regulations. Any infractions of Applicable Law by Mitigation Contractor during the term of the Contract, which result in penalties, will be the responsibility of Mitigation Contractor. If due to an action, inaction, or negligence by Mitigation Contractor, Sites Authority becomes subject to non-compliance penalties, the cost of such penalties shall be borne by Mitigation Contractor.
2. Cultural Resources. If, in the performance of the Work, Mitigation Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, Mitigation Contractor shall notify the Sites Authority's Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to Sites Authority's Representative within two (2) Days. Mitigation Contractor shall immediately cease any construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If directed by Sites Authority's Representative, Mitigation Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all Applicable Laws. Should the presence of cultural resources be confirmed, Mitigation Contractor will assist Sites Authority's Representative in the preparation and implementation of a data

recovery plan. Mitigation Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any Sites Authority directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents. Should Mitigation Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to a Mitigation Site, it will be subject to disciplinary action, arrest and penalty under Applicable Law. Mitigation Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Mitigation Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify Sites Authority pursuant to the Contract Documents.

- B. Noise Restrictions. Mitigation Contractor shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. Mitigation Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, Mitigation Contractor shall promptly remove the equipment and shall not return said equipment to Project until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment at the Site or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by Mitigation Contractor.
- C. Diversion of Recyclable Waste Material. In compliance with the applicable Sites Authority's waste reduction and recycling efforts, Mitigation Contractor shall divert all recyclable waste materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Mitigation Contractor shall complete and execute any certification forms required by Sites Authority or other applicable agencies to document Mitigation Contractor's compliance with these diversion requirements.
- D. Air Pollution Control.
1. General. Mitigation Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.
 2. Air Rules. Without limiting the foregoing, Mitigation Contractor must fully comply with all Applicable Laws in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board ("CARB"). Mitigation Contractor shall specifically be aware of the application of these limits and requirements to "portable

equipment", which definition includes any item of equipment with a fuel-powered engine.

3. CARB Regulations. To the extent applicable, Mitigation Contractor, shall comply, and shall ensure all Subcontractors comply, with all requirements of CARB including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("CARB Regulation"). Throughout Project, and for three (3) years thereafter, Mitigation Contractor shall make available for inspection and copying any and all documents or information associated with Mitigation Contractor's and Subcontractors' fleet including, without limitation, the certificate of reported compliance, fuel/refueling records, maintenance records, emissions records, and any other information Mitigation Contractor is required to produce, keep or maintain pursuant to the CARB Regulation upon two (2) calendar days' notice from Sites Authority. Mitigation Contractor shall be solely liable for any and all costs associated with complying with the CARB Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the CARB Regulation. Mitigation Contractor shall defend, indemnify and hold harmless Sites Authority, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the CARB Regulation.
- E. Dust Control. Mitigation Contractor, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.
- F. Greenhouse Gas Emissions. Sites Authority has committed to a "net zero" threshold for greenhouse emissions over the life of the Sites Reservoir Project. To the extent possible, Mitigation Contractor will minimize emissions resulting from the Project.

5.9 Labor Requirements.

- A. Prevailing Rates of Wages.
 1. Prevailing Wage Laws. Mitigation Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since portions of the Project involve an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Mitigation Contractor agrees to fully comply with such Prevailing Wage Laws to the extent applicable to the Project.
 2. Davis-Bacon. If the Contract is subject to the Davis-Bacon Act, the federal minimum wage rates for this Project are predetermined by the United States Secretary of Labor. These rates are available directly from the Department of Labor at <http://www.wdol.gov> and included in the Contract Documents. If there is a difference between the minimum wage rates predetermined by the Secretary of

Labor and the general prevailing wage rates determined by the director of the DIR for similar classifications of labor, Mitigation Contractor and its Subcontractors shall pay not less than the higher wage rate.

- B. Public Works Contractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, Mitigation Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into the Contract, Mitigation Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Mitigation Contractor shall maintain a current registration for the duration of the Project. Mitigation Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time the subcontract is entered into and maintain registration for the duration of the Project.
- C. Nondiscrimination/Equal Employment Opportunity. Pursuant to Labor Code section 1735 and other Applicable Law, Mitigation Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. Mitigation Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.
- D. Debarment of Contractors and Subcontractors. Contractors or Subcontractors may not perform work on a public works project who are ineligible to perform work pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred Subcontractor by Mitigation Contractor on the Project shall be returned to Sites Authority. Mitigation Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor who has been allowed to work on the Project.

ARTICLE 6 MATERIALS; EQUIPMENT

6.1 Materials, Equipment.

- A. New Materials, Equipment. Unless otherwise specified, all materials, parts, and equipment furnished by Mitigation Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality. No materials, supplies, or equipment for Mitigation Phase Services under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or Supplier. Mitigation Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to Sites Authority free from any claims, liens, or charges.

- B. Necessary Materials, Equipment. Except as otherwise specifically stated in the Contract Documents, Mitigation Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Project within the Contract Time. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Mitigation Phase Services and shall be stored properly and protected as required by the Contract Documents. Mitigation Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work. Materials shall be stored on the Site in such manner so as not to interfere with any operations of Sites Authority or any separate contractor.

6.2 Test and Inspections of Work.

A. Inspection of Work.

1. Inspection Notifications, Costs. If the Contract Documents, the Sites Authority's Representative, Applicable Law, or Governmental Body requires any part of the Work to be tested or approved, Mitigation Contractor shall provide the Sites Authority's Representative at least two (2) Days' notice of its readiness for observation or inspection. If inspection is by a Governmental Body other than Sites Authority, Mitigation Contractor shall promptly inform Sites Authority of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Mitigation Contractor. Costs for Sites Authority testing and inspection shall be paid by Sites Authority. Costs of tests for Work found not to be in compliance shall be paid by Mitigation Contractor.
2. Inspection Hours. If Mitigation Contractor gives notice of an inspection pursuant to the Contract Documents, Sites Authority will provide inspection during normal working hours, Monday through Friday, 24 hours a day. For inspections on Saturdays, Sundays, or Holidays, Mitigation Contractor shall first, pursuant to procedures in the Contract Documents, receive authorization in writing from Sites Authority to work outside normal working hours.
3. Extra Costs. Mitigation Contractor shall pay for the cost of any minimum "show up" costs of a technician that was called for by Mitigation Contractor but ultimately Mitigation Contractor work was not ready for the inspection. Any such costs shall be deducted from any amounts due to Mitigation Contractor. If any Work is done or covered up without the required testing or approval, Mitigation Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at Mitigation Contractor's cost in compliance with the Contract Documents.
4. Reexamination of Work. Reexamination of Work may be ordered by Sites Authority. If so ordered, Work must be uncovered or deconstructed by Mitigation Contractor. If Work is found to be in accordance with the Contract Documents, Sites Authority shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Mitigation Contractor shall pay all costs.

**ARTICLE 7
PROSECUTION OF THE WORK**

7.1 Access to Work.

- A. Sites Authority, Sites Authority's Representative, their consultants and other representatives and personnel, independent testing laboratories, and Governmental Bodies with jurisdictional interests will have access to the Mitigation Sites and Project at reasonable times for their observation, inspection, and testing. Mitigation Contractor shall provide them proper and safe conditions for such access and advise them of Mitigation Contractor's safety procedures and programs.

7.2 Quality Assurance, Quality Control.

- A. Generally. Mitigation Contractor shall have full responsibility for quality assurance and quality control for the Services, including compliance with the Contract Documents. Without limiting any other requirement hereunder, Mitigation Contractor shall perform quality control inspection and testing services to ensure compliance with the Contract Documents.
- B. Quality Control Plan. Mitigation Contractor shall prepare and submit to Sites Authority for review and approval a written Quality Control Plan that encompasses all requirements of the Contract Documents with regard to all quality control processes for the Services. The Quality Control Plan shall identify Mitigation Contractor's overall framework for implementation of its Quality Control programs across all aspects of the Work. Mitigation Contractor shall submit the Quality Control Plan for Sites Authority's approval. Sites Authority's approval of the overall Quality Control Plan shall be a condition precedent to Mitigation Contractor performing Services.
- C. Internal Quality Control Audits. Mitigation Contractor shall establish and maintain documented procedures for planning and implementing internal quality audits to verify whether quality activities and related results comply with planned arrangements and to determine the effectiveness of the quality system. Audits shall be conducted on a planned and scheduled basis, consistent with the importance of the activities being performed. Mitigation Contractor's management personnel responsible for the relevant area shall take timely corrective action on deficiencies found during the audit. Sites Authority shall have the right to request and review the audit results. Follow-up audit activities shall verify and record the implementation and effectiveness of the corrective action taken. Sites Authority may require Mitigation Contractor to perform follow-up audits at Sites Authority's sole discretion.
- D. Review and Update of QC Plan. Mitigation Contractor shall continuously review the performance of the Quality Control Plan to ensure its continuing suitability in satisfying the requirements of the Contract Documents. Mitigation Contractor's reviews shall, at a minimum, review the results of internal audits, Sites Authority audit results, corrective actions taken, trends in Defective Work, and time to resolution. Sites Authority may, in its sole discretion, participate in Mitigation Contractor's reviews and may request data from the reviews. Mitigation Contractor shall incorporate the findings and quality improvement recommendations of Mitigation Contractor reviews into the Quality Control Plan.

7.3 Mitigation Contractor's Performance of Services.

- A. Means and Methods. Mitigation Contractor is solely responsible for the means and methods utilized to perform Services. Mitigation Contractor shall perform all Services in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Mitigation Contractor warrants that all employees and Subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Mitigation Contractor represents that it, its employees and Subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Contract. Mitigation Contractor shall perform the Services in full compliance with all Applicable Laws and to all Governmental Bodies having authority over the Project.
- B. Mitigation Contractor's Responsibility for Work. Responsibility for, and security of, all Work and materials related to Mitigation Contractor's Work is the responsibility of Mitigation Contractor. Sites Authority shall not be held responsible for the care or protection of any material or parts of the Work. Mitigation Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work and all loss or damage shall be borne by Mitigation Contractor. Mitigation Contractor shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion.
- C. Surveys and Field Engineering. Mitigation Contractor shall utilize a properly licensed surveyor to perform all surveys required for the control and completion of the Work and all necessary surveys to compute quantities of Work performed.

7.4 Cooperation.

- A. Cooperation. Mitigation Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by Sites Authority in prosecution of the Sites Reservoir Project in the light of such other contracts, if any. Mitigation Contractor shall not cause any unnecessary hindrance or delay to any other contractor working at the Sites Reservoir Project. Sites Authority shall not be responsible for any damages suffered or for extra costs incurred by Mitigation Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Sites Reservoir Project.
- B. Coordination Meetings. Sites Authority intends to have coordination meetings among Sites Authority, Mitigation Contractor and the various separate contractors in an effort to manage the overall program associated with the work being performed at or in the vicinity of the Sites Reservoir Project and to avoid or mitigate cost and time impacts to the overall Sites Reservoir Project. Mitigation Contractor agrees that it will attend and participate in these logistics meetings and shall cooperate with Sites Authority and the separate contractors to the extent reasonably necessary for the performance by such separate contractors of their work.

- C. Interrelated Work. If part of the Work depends on proper execution of construction or operations by Sites Authority or a separate contractor, Mitigation Contractor shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to Sites Authority any apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Mitigation Contractor to report apparent discrepancies or defects in the other construction shall constitute acknowledgement that Sites Authority's or the separate contractor's completed or partially completed construction is fit and proper to receive the Work.
- D. Disputes Associated with Separate Work. If simultaneous execution of any contract for the Sites Reservoir Project is likely to cause interference with performance of some other contract or contracts, Sites Authority shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously.

7.5 Defective Work.

A. Correction of Defective Work.

1. Failure to Correct. If Mitigation Contractor fails to correct Defective Work, remove and replace rejected Work as required by Sites Authority, or fails to perform the Work in accordance with the Contract Documents, Sites Authority may, after seven (7) Days written notice to Mitigation Contractor, correct, or remedy any such deficiency if Mitigation Contractor has failed to commence correcting such deficient Work.
2. Correction of Work by Sites Authority. In connection with such corrective or remedial action, Sites Authority may take possession of all or part of the Work and suspend Mitigation Contractor's services related thereto. Mitigation Contractor shall allow Sites Authority, and the agents, employees, other contractors, and consultants of each of them, access to the Mitigation Sites to enable Sites Authority to exercise the rights and remedies to correct the Defective Work.
3. Costs of Correcting Defective Work. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, attorneys, and other professionals and all court or other dispute resolution costs) incurred or sustained by Sites Authority correcting the Defective Work will be charged against Mitigation Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Sites Authority shall be entitled to reimbursement of the costs from Mitigation Contractor. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective Work. If the Change Order is executed after all payments under the Contract have been paid by Sites Authority and the Project retention is held in an escrow account as permitted by the Contract Documents, Mitigation Contractor will promptly alert the escrow holder, in writing, of the amount of retention to be paid to Sites Authority. Mitigation Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of the Work attributable to Sites Authority correcting Defective Work.

- B. Acceptance of Defective Work. If, instead of requiring correction or removal and replacement of Defective Work, Sites Authority prefers to accept it, Sites Authority may do so. Mitigation Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, attorneys, and other professionals and all court or other dispute resolution costs) attributable to Sites Authority's evaluation of and determination to accept the Defective Work and for the diminished value of the Work. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Sites Authority shall be entitled to an appropriate decrease in the Mitigation Contract GMP, reflecting the diminished value of Work, and reimbursement of all costs incurred by Sites Authority.

7.6 Partial Utilization.

- A. Use by Sites Authority, at Sites Authority's option, of any part of the Project which (a) has specifically been identified in the Contract Documents or (b) constitutes a separately functioning and usable part of the Project that can be used by Sites Authority for its intended purpose without significant interference with Mitigation Contractor's performance of the remainder of the Work, may be accomplished at any time. This use shall not relieve Mitigation Contractor of its responsibilities under the Contract. Partial utilization of the Project shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents, unless specifically accepted in writing by Sites Authority, and this use shall not relieve Mitigation Contractor of its responsibilities under the Contract.

ARTICLE 8 SCHEDULE; CONTRACT TIME

8.1 Project Schedule.

- A. General Requirements. Except as otherwise specifically stated in the Contract Documents, this Article will apply to a CPM Schedule for the Services. The CPM Schedule shall be prepared in an electronic scheduling program acceptable to Sites Authority and as specified in the Contract Documents. Mitigation Contractor shall deliver the CPM Schedule and all updates to Sites Authority in both paper and electronic form. The electronic versions shall be in the format, and include all data used, to prepare the CPM Schedule. The CPM Schedule shall be overlaid on the construction schedule for the Sites Reservoir Project and must demonstrate the mitigation implementation will not impact the construction schedule for the Sites Reservoir Project.
- B. Schedule. The receipt or approval of any CPM Schedule by Sites Authority shall not in any way relieve Mitigation Contractor of its obligations under the Contract Documents. Mitigation Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Mitigation Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the CPM Schedule shall not excuse Mitigation Contractor from performing Work required within the specified Contract Time. If the required CPM Schedule is not received by the time the first payment under the Contract is due, Mitigation Contractor shall not be paid until the CPM Schedule is received, reviewed, and accepted by Sites Authority.

- C. Schedule Contents. The CPM Schedule shall indicate the beginning and completion dates of all phases of Work; critical path for all critical, sequential time related activities; and “float time” for all “slack” or “gaps” in the non-critical activities. The CPM Schedule shall include appropriate time allowances and constraints for Submittals, items of interface with Work performed by others, and specified construction, start-up and performance tests. All float shall be owned by the Sites Authority. CPM Schedules indicating early or late completion shall not modify or have any effect on the Contract Time, regardless of whether the schedules are reviewed and/or accepted by Sites Authority.
- D. Schedule Updates. Mitigation Contractor shall continuously update its CPM Schedule. Mitigation Contractor shall submit an updated and accurate CPM Schedule to Sites Authority: (1) prior to the start of Work, if there are any changes to the initial schedule; (2) with each payment request; and (3) whenever requested to do so by Sites Authority. Sites Authority may withhold payments or other amounts due under the Contract Documents if Mitigation Contractor fails to submit an updated and accurate CPM Schedule. Upon Sites Authority’s request, Mitigation Contractor shall submit any schedules or updates to Sites Authority in the native electronic format of the software used to create the CPM Schedule.
- E. Acceptance. Acceptance of the CPM Schedule by Sites Authority will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Mitigation Contractor from Mitigation Contractor’s full responsibility therefor.

8.2 Time for Completion.

- A. Time for Completion. The Contract Time shall commence: (1) on the date stated in the applicable Task Order, or (2) if the Task Order does not specify a commencement date, then on the date of the Task Order and, in both cases, shall be completed within the Contract Time. Sites Authority is under no obligation to consider early completion of the Work and Contract Time shall not be amended by Sites Authority’s receipt or acceptance of Mitigation Contractor’s proposed earlier completion date. Any difference in time between Mitigation Contractor’s early completion and the Contract Time shall be considered a part of the Project float. Mitigation Contractor shall not be entitled to compensation, and Sites Authority will not compensate Mitigation Contractor, for delays which impact early completion. Mitigation Contractor shall not, under any circumstances, receive additional compensation from Sites Authority (including but not limited to direct, indirect, general, administrative, or other forms of overhead costs) for the period between the time of earlier completion proposed by Mitigation Contractor and the Contract Time.
- B. Inclement Weather. Mitigation Contractor shall abide by Sites Authority’s determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the Critical Path of the applicable CPM Schedule.
- C. Sites Authority-Caused Extension of Time. Mitigation Contractor’s entitlement to an extension of Contract Time is limited to a Sites Authority-caused extension of the Critical Path, reduced by Mitigation Contractor’s concurrent delay, and established by a proper time impact analysis. No time extension shall be allowed unless, and then

only to the extent that, the Sites Authority-caused delay extends the Critical Path beyond the Contract Time. Sites Authority shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Mitigation Contractor shall not be entitled to an adjustment of Contract Time for delays within the control of Mitigation Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Mitigation Contractor. If approved, the increase in time required to complete Work shall be added to the Contract Time.

- D. Force Majeure. If a delay to the Critical Path results from a Force Majeure Event, Mitigation Contractor will be entitled to a time extension, but will not receive an adjustment to the Mitigation Contract GMP or any other compensation. Such a non-compensable adjustment shall be Mitigation Contractor's sole and exclusive remedy for a Force Majeure Event.
- E. No Damages for Reasonable Delay.
 - 1. Sites Authority's liability to Mitigation Contractor for delays for which Sites Authority is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall Sites Authority be liable for any costs which are borne by Mitigation Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.
 - 2. Damages caused by unreasonable Sites Authority delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.
- F. Procedure for Extension of Contract Time and Delay Damages. Mitigation Contractor shall not be entitled to any extension of Contract Time or adjustment to the Mitigation Contract GMP for delay damages unless Mitigation Contractor properly notices the delay and requests a Change Order in accordance with these General Conditions. Mitigation Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Mitigation Contractor's right to an extension of Contract Time or adjustment to the Mitigation Contract GMP for delay damages.

8.3 Damages.

- A. Subject to Sections 3.2 and 3.3 of the Special Conditions, Mitigation Contractor shall be liable for all direct claims, damages, losses, and expenses of any nature, character, or description arising out of and to the extent caused by the breach or failure of Mitigation Contractor to perform or timely perform its obligations under this Contract including, but not limited to, any costs associated with increased mitigation ratios stemming from temporal loss imposed solely as a result of Mitigation Contractor's default in the performance of its obligations under this Contract.
- B. Without limitation of the foregoing, in the event that any breach or failure of Mitigation Contractor timely perform its obligations under this Contract results in the Sites Authority being required to provide financial securities of any type to any Governmental Body in order to avoid impacting progress of planned construction of the Sites

Reservoir Project, then without limiting the Sites Authority's other rights or remedies or the Mitigation Contractor's other obligations hereunder, Mitigation Contractor will be required to reimburse the Sites Authority for any and all costs incurred by the Sites Authority in providing any such financial securities within thirty (30) days after receipt of written notice from Sites Authority demanding such reimbursement. If Mitigation Contractor fails to timely make such reimbursement, Sites Authority may, after having notified Mitigation Contractor, withhold from Mitigation Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such costs whereupon payment to the Mitigation Contractor will be resumed in accordance with the terms of this Contract.

ARTICLE 9 CHANGE ORDERS; DISPUTE RESOLUTION

9.1 Planning/Early Implementation Phase Change Orders.

- A. Additional Planning/Early Implementation Phase Services. Sites Authority may direct Mitigation Contractor to perform additional Planning/Early Implementation Phase Services that Sites Authority determines to be necessary for the proper completion of the Planning/Early Implementation Phase but which the Parties did not reasonably anticipate would be necessary for completion of the Planning/Early Implementation Phase. Additional Planning/Early Implementation Phase Services will be as agreed to by the parties, subject to adjustment as allowed by the Contract Documents.
- B. Excusable Delay. Mitigation Contractor may request additional time to complete a task or submittal milestone only in the event of an excusable delay. For purposes of this Article, an excusable delay is a delay only to the completion of a Planning/Early Implementation Service and caused by the following: (i) the actions of Sites Authority or its employees; (ii) the actions of those in direct contractual relationship with Sites Authority, except for Mitigation Contractor; (iii) the actions of any Governmental Body having jurisdiction over the Project acting in their role as an authority having jurisdiction; (iv) the actions of any parties not within the reasonable control of Mitigation Contractor; or (v) a Force Majeure Event. Mitigation Contractor shall not be entitled to any damages or costs resulting from an excusable delay.
- C. Change Order Procedures.
 - 1. An increase to the Planning/Early Implementation Phase Pricing and/or extensions of time for the performance of Planning/Early Implementation Phase Services must be approved through a Change Order. If Mitigation Contractor thinks it is entitled to a Change Order, Mitigation Contractor must request a Change Order within five (5) Days of a Sites Authority directive to perform additional Planning/Early Implementation Phase Services or of the event otherwise giving rise to the additional work.
 - 2. To increase the Planning/Early Implementation Phase Pricing, Mitigation Contractor's request for a Change Order shall include documentation supporting the need for the request and a cost proposal for the additional Planning/Early Implementation Phase Services that shows the applicable rates and provides a fair estimate of the amount of work needed to complete the additional Planning/Early Implementation Phase Services. Sites Authority may request that Mitigation

Contractor propose other options or efficiencies, including de-scoping a portion of the additional Planning/Early Implementation Phase Services.

3. To receive an extension of time for the performance of Planning/Early Implementation Phase Services, Mitigation Contractor's request shall include documentation supporting the need for the request, and a time impact analysis showing the impact of the extension on completion of the Planning/Early Implementation Phase Services, as well as the impact on potential Work and on the Work as a whole. The time impact analysis shall include options to mitigate the impact to the Critical Path of the Services, including the commencement of Mitigation Phase Services. The request shall be limited to only the amount of time that is reasonably necessary for Mitigation Contractor to complete the additional Planning/Early Implementation Phase Services. An extension of time shall be a last resort, and shall only be granted if, and to the extent that, Mitigation Contractor cannot reasonably complete the Planning/Early Implementation Phase Services on time, including by expediting the Planning/Early Implementation Phase Services, at no additional cost to Sites Authority.
 4. If additional Planning/Early Implementation Phase Services also result in an excusable delay, Mitigation Contractor shall request an increase to the Planning/Early Implementation Phase Pricing and an extension of time concurrently.
- D. Exclusions from Additional Planning/Early Implementation Phase Services. Additional Planning/Early Implementation Phase Services shall not include work or services necessary because of negligent errors, omissions or conflicts of any type in Mitigation Contractor's performance of the Planning/Early Implementation Phase Services. All such work or services shall constitute Planning/Early Implementation Phase Services and shall be performed at no cost to Sites Authority.
- E. Reduction of Planning/Early Implementation Phase Services. Sites Authority shall have the right to reduce the scope of the Planning/Early Implementation Phase Services at any time by written notice to Mitigation Contractor. Changes to the Planning/Early Implementation Phase Services that reduce the scope of the Planning/Early Implementation Phase Services shall be effective upon the delivery of the written notice by Sites Authority pursuant to this Article. Any reduction in the scope of the Planning/Early Implementation Phase Services shall result in an appropriate reduction in the Planning/Early Implementation Phase Pricing, which shall be reflected in a Change Order.

9.2 Mitigation Phase Services Change Orders.

This Section 9.2 shall apply to Change Orders for Mitigation Phase Services.

A. Change Orders Generally.

1. All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. Sites Authority, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and Mitigation Contractor's compensation and the time for completion shall be adjusted

accordingly. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Mitigation Contractor shall not be entitled to a claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve Mitigation Contractor from the obligation to proceed with performance of the Work, including additional Work, promptly and expeditiously. Any alterations, extensions of time, additional Work, or any other changes may be made without securing consent of Mitigation Contractor's surety or sureties.

2. Mitigation Contractor agrees that one of the purposes of the Contract is to minimize the risk for Change Orders and reduce the likelihood of Change Orders. Change Order Requests shall be kept to a minimum. Subject to Sites Authority approval, the Mitigation Contract GMP shall not be modified except in the event of the following circumstances: (a) Sites Authority directs and authorizes a change which is related solely to discretionary changes by Sites Authority (the foregoing excludes changes resulting from the acts, omissions or other conduct of Mitigation Contractor); (b) changes directed by a Governmental Body with jurisdiction over the Project, or portions thereof, which could not be reasonably foreseen or anticipated by Mitigation Contractor at the execution of the applicable Task Order; (c) changes necessitated by amendment(s) to or enactment(s) of Applicable Laws which could not be reasonably anticipated or foreseen by Mitigation Contractor at the at the execution of the applicable Task Order; (d) changes resulting from emergencies not caused, in whole or in part, by the acts, omissions or other conduct of Mitigation Contractor or its Subcontractors, employees, agents or representatives; or (e) where expressly allowed by the Contract Documents.
3. Mitigation Contractor has no right to a Change Order for a time extension, extra work, or other costs of any kind whatsoever (including, without limitation, direct and indirect costs, delay and disruption damages, overhead, profit or mark-up) resulting from issues related to: Mitigation Site conditions; constructability issues, including but not limited to construction feasibility, schedule or cost; or where Mitigation Contractor failed to recommend alternative solutions as part of their Planning/Early Implementation Phase Services.
4. Mitigation Contractor shall not be entitled to an increase to the Mitigation Contract GMP if the Mitigation Contract GMP contains any contingency or allowances for the costs, which must be utilized and exhausted prior to requesting a Change Order. Mitigation Contractor may only increase the Mitigation Contract GMP through a duly requested and approved Change Order.

B. Change Order Procedures.

1. Sites Authority Written Directive. Sites Authority may direct changes in the Work by delivering a written directive. To the extent the written directive results in a change to compensation or time, Mitigation Contractor must timely request a Change Order and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a written directive, Mitigation Contractor's failure to timely request a Change Order shall constitute a waiver by Mitigation

Contractor of any adjustment to compensation or time extension for Work performed under the directive. Sites Authority shall not be liable to Mitigation Contractor for Work performed or omitted by Mitigation Contractor in reliance on verbal orders. Sites Authority shall have the right to order changes in the Work by a unilateral Change Order setting forth Sites Authority's determination of the reasonable additions or savings in the Mitigation Contract GMP or Contract Time.

2. Mitigation Contractor's Notice of Change or Delay.

- a. If Mitigation Contractor intends to initiate a Change Order Request, Mitigation Contractor shall provide Sites Authority with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:
 - (i) If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) Days from the date Mitigation Contractor discovers that the Force Majeure Event gives rise to a change, unless that the conditions are such that notice within three (3) Days is not possible or practicable.
 - (ii) If due to any other matter that may involve an adjustment to the Mitigation Contract GMP or Contract Time, within seven (7) Days from the early of the discovery date of the matter or when the matter should have been discovered.
- b. To be considered valid and complete, the notice of change or delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs or time. If the circumstances give rise to both a cost adjustment and time extension, Mitigation Contractor shall submit the notice of change and notice of delay concurrently.

3. Change Order Request.

- a. Mitigation Contractor shall submit a Change Order Request for any adjustment to the Mitigation Contract GMP or Contract Time. The Change Order Request shall be made prior to incurring any expense and within fourteen (14) Days from either Mitigation Contractor's notice of change or delay or Sites Authority's written directive ordering the change. For any costs or information that cannot be determined at the time Mitigation Contractor submits a Change Order Request, Mitigation Contractor shall submit to Sites Authority notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination. The Change Order Request shall include all of the following information (unless inapplicable to the change or delay):
 - (i) A detailed description of the circumstances giving rise to the request;
 - (ii) A complete itemized cost proposal, including itemized pricing for Subcontractors;

- (iii) Supporting documentation for all costs;
 - (iv) A time impact analysis showing the impact of the delay to the Critical Path of the applicable Task Order;
 - (v) If any costs or information cannot be determined at the time of the Change Order Request, a rough order of magnitude of the Change Order costs and the reason the costs or information cannot be determined at the time; and
 - (vi) Certification to the accuracy of the Change Order Request under penalty of perjury
- b. The time impact analysis shall be in the Critical Path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule. Sites Authority may demand, and Mitigation Contractor shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. Mitigation Contractor shall provide the requested additional information within five (5) Days of the request.
4. Sites Authority's Final Decision on Change Order; Ordered Changes. If Sites Authority denies the Change Order Request or disagrees with the proposal submitted by Mitigation Contractor, it will notify Mitigation Contractor, and Sites Authority will provide its opinion of the appropriate price or time extension. If no agreement can be reached, Sites Authority shall have the right in its sole discretion to order the Work performed, to the extent permitted by law, on a time and materials basis or to issue a unilateral Change Order setting forth Sites Authority's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Sites Authority's determination shall become final and binding if Mitigation Contractor fails to submit a claim in writing in accordance with the General Conditions to Sites Authority within fourteen (14) Days of denying the Change Order Request, or for the issuance of a unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as Sites Authority may reasonably require.
5. Mitigation Contractor's Waiver of Further Relief.
- a. Mitigation Contractor recognizes and acknowledges that timely submission of a formal written notice of change or delay and Change Order Request, whether or not the circumstances of the change may be known to Sites Authority or available to Sites Authority through other means, is not a mere formality but is of crucial importance to the ability of Sites Authority to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

- b. **MITIGATION CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE OR DELAY, CHANGE ORDER REQUEST, NOTICE DISPUTING A UNILATERAL CHANGE ORDER, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY MITIGATION CONTRACTOR OF THE RIGHT TO A MITIGATION CONTRACT GMP ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**
- C. Change Order Format. A Change Order signed by Mitigation Contractor indicates Mitigation Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order. Sites Authority may designate the forms to be used for notices, requests, and Change Orders. If so designated, Mitigation Contractor may only use such forms. Mitigation Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. Mitigation Contractor may not change or modify Sites Authority's Change Order form in an attempt to reserve additional rights.
- D. Determining Adjustments to Compensation.
1. Pricing Generally. Mitigation Contractor shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article.
 2. Unit Pricing. For the increasing or decreasing of Work within the Mitigation Contract GMP that is paid for on an unit price basis, the additional Work shall be paid for according to the unit price established for such Work and the Mitigation Contract GMP will be adjusted accordingly. An adjustment in compensation will be made for changes which require increases or decreases in the quantity of any unit price item in such a manner as to materially increase or decrease its unit cost, as determined by Site Authority, or which for any other reason cannot in the judgment of Site Authority be equitably paid for at the unit price.
 3. Lump Sum Pricing. Compensation for lump sum Change Orders shall be limited to expenditures necessitated specifically by the additional Work.

9.3 Partnering.

- A. Dispute Resolution Ladder. At the discretion of Sites Authority, the Parties will partner to create a dispute resolution ladder to facilitate open communication and close cooperation that involves both Mitigation Contractor and Sites Authority personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve Project objectives, resolve issues, and implement actions as required. The dispute resolution ladder will provide the

authority for both Mitigation Contractor and Sites Authority personnel at all levels with parameters and procedures for escalating disputes.

- B. Formal Partnering. Mitigation Contractor and Sites Authority shall participate in a partnering process among all members of the Project team. The partnering process will assist Sites Authority and Mitigation Contractor to develop a collaborative environment so that communication, coordination, and cooperation are the standard, and to encourage resolution of conflicts at the lowest responsible management level. The objectives of the partnering process are to (a) identify potential problem areas, issues and differences of opinion early, (b) develop and implement procedures for resolving them in order to prevent them from becoming Claims, (c) achieve effective and efficient performance and completion of the Work in accordance with the Contract Documents, and (d) create mutual trust and respect for each Party's respective roles and interests in the Project while recognizing the respective risks inherent in those roles. The partnering process shall take place during the entire length of the Planning/Early Implementation Phase and the Mitigation Phases. A third-party facilitator shall be chosen by Sites Authority and Mitigation Contractor that is mutually agreeable to the Parties. Mitigation Contractor shall make all arrangements to hire the facilitator and provide a suitable meeting location for the partnering workshops.

9.4 Procedure for Resolving Claims.

- A. Prerequisites. Mitigation Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Mitigation Contract GMP or Contract Time, including but not limited to all requirements for a Change Order, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Mitigation Contractor's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.
- B. Intent. Effective January 1, 1991, Section 20104 *et seq.*, of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all Applicable Law, including but not limited to these statutes.
- C. Claims.
1. For purposes of this Article, "Claim" means a separate demand by Mitigation Contractor for:
 - a. An adjustment to the Contract Time including, without limitation, for relief from damages or penalties for delay assessed by Sites Authority;
 - b. Payment by Sites Authority of money or damages arising from Services done by or on behalf of Mitigation Contractor pursuant to the Contract, payment for

which is not otherwise expressly provided or to which Mitigation Contractor is not otherwise entitled; or

- c. An amount the payment of which is disputed by Sites Authority.
2. A "Claim" does not include any demand for payment for which Mitigation Contractor has failed to provide notice, submit a Change Order Request, or otherwise failed to follow any procedures contained in the Contract Documents.
- D. Filing Claims. Claims governed by this Article may not be filed unless and until Mitigation Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Mitigation Contract GMP or Contract Time, and Mitigation Contractor's Change Order Request has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to Sites Authority and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.
- E. Documentation. Mitigation Contractor shall submit all Claims in the following format:
1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made
 2. List of documents relating to Claim:
 - a. Clarifications (Requests for Information)
 - b. Schedules
 - c. Other
 3. Chronology of events and correspondence
 4. Narrative analysis of Claim merit
 5. Analysis of Claim cost, including calculations and supporting documents
 6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of Contract Time is requested
- F. Sites Authority's Response. Upon receipt of a Claim pursuant to this Article, Sites Authority shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide Mitigation Contractor a written statement identifying

what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after Sites Authority issues its written statement.

1. If Sites Authority needs approval from the Sites Authority Board to provide Mitigation Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the Sites Authority Board does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, Sites Authority shall have up to three (3) Days following the next duly publicly noticed meeting of the Sites Authority Board after the 45-Day period, or extension, expires to provide Mitigation Contractor a written statement identifying the disputed portion and the undisputed portion.
2. Within 30 Days of receipt of a Claim, Sites Authority may request in writing additional documentation supporting the Claim or relating to defenses or claims Sites Authority may have against Mitigation Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Sites Authority and Mitigation Contractor. Mitigation Contractor shall provide the requested documentation or information within 30 Days of the written request by Sites Authority. Sites Authority's written response to the Claim, as further documented, shall be submitted to Mitigation Contractor within 30 Days (if the Claim is less than \$50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by Mitigation Contractor in producing the additional information or requested documentation, whichever is greater.

G. Meet and Confer. If Mitigation Contractor disputes Sites Authority's written response, or Sites Authority fails to respond within the time prescribed, Mitigation Contractor may so notify Sites Authority, in writing, either within 15 Days of receipt of Sites Authority's response or within 15 Days of Sites Authority's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, Sites Authority shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

H. Mediation.

1. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, Sites Authority shall provide Mitigation Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after Sites Authority issues its written statement. Any disputed portion of the Claim, as identified by Mitigation Contractor in writing, shall be submitted to nonbinding mediation, with Sites Authority and Mitigation Contractor sharing the associated costs equally. Sites Authority and Mitigation Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

2. If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
 3. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.
 4. Unless otherwise agreed to by Sites Authority and Mitigation Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
 5. The mediation shall be held no earlier than the date Mitigation Contractor completes the applicable Task Order or the date that Mitigation Contractor last performs Work on the Project, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- I. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, Mitigation Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the California Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time Mitigation Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.
- J. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties or unless mediation was held prior to commencement of the action in accordance with California Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both Parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the California Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the California Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with

Section 1141.10) of Title 3 of Part 3 of the California Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

K. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the California Government Code.
 2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Mitigation Contract GMP, or compensation or payment for additional Services, disputed Services, construction claims and/or changed conditions, Mitigation Contractor must comply with the claim procedures set forth in California Government Code section 900, *et seq.* prior to filing any lawsuit against Sites Authority.
 3. Such California Government Code claims and any subsequent lawsuit based upon the California Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Mitigation Contract GMP for additional Services, disputed Services, construction claims, and/or changed conditions have been followed by Mitigation Contractor. If Mitigation Contractor does not comply with the California Government Code claim procedure or the prerequisite contractual requirements, Mitigation Contractor may not file any action against Sites Authority.
 4. A California Government Code claim shall be inclusive of all unresolved Claims known to Mitigation Contractor or that should reasonably be known to Mitigation Contractor excepting only new unrelated Claims that arise after the California Government Code claim is submitted.
- L. Non-Waiver. Sites Authority's failure to respond to a Claim from Mitigation Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

**ARTICLE 10
TERMINATION; SUSPENSION**

10.1 Termination of Planning/Early Implementation Phase Services.

A. Termination Without Cause.

1. Sites Authority may, at any time, with or without reason, terminate the Contract during the Planning/Early Implementation Phase and compensate Mitigation Contractor only for the Planning/Early Implementation Phase Services satisfactorily rendered to the date of termination. Written notice by Sites Authority

shall be sufficient to stop further performance of Planning/Early Implementation Phase Services by Mitigation Contractor. Notice shall be deemed given when received by Mitigation Contractor or no later than three (3) Days after the day the notice was mailed, whichever is sooner. Mitigation Contractor cannot terminate this Contract without cause.

2. All deliverables including, without limitation, Work Product, documents, engineering, budget costs, preliminary design, schedule and data developed by Mitigation Contractor during the Planning/Early Implementation Phase shall become the exclusive property of Sites Authority and shall be provided to Sites Authority within ten (10) Days of Sites Authority's notice to Mitigation Contractor of termination.

B. Termination for Cause by Sites Authority.

1. Sites Authority may terminate the Contract during the Planning/Early Implementation Phase upon giving of written notice of intention to terminate for cause. Cause shall include, without limitation, the following:
 - a. material violation of this Contract by Mitigation Contractor;
 - b. any act by Mitigation Contractor exposing Sites Authority to liability to others for personal injury or property damage; or
 - c. Mitigation Contractor is adjudged to be bankrupt, Mitigation Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Mitigation Contractor's insolvency.
2. Written notice by Sites Authority shall contain the reasons for such intention to terminate and unless within three (3) Days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, the Contract shall upon the expiration of the three (3) Days cease and terminate. In the event of this termination, Sites Authority may secure Planning/Early Implementation Phase Services from another contractor. If the expense, fees, and/or costs to Sites Authority exceeds the cost of providing the Planning/Early Implementation Phase Services pursuant to this Contract, Mitigation Contractor shall immediately pay the excess expense, fees, and/or costs to Sites Authority upon the receipt of Sites Authority's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to Sites Authority.

10.2 Suspension of Planning/Early Implementation Phase Services by Sites Authority.

- A. Sites Authority may, for any reason through a written notice to Mitigation Contractor, order Mitigation Contractor to suspend performance of the Planning/Early Implementation Phase Services. Prior to any resumption of Planning/Early Implementation Phase Services at Sites Authority's direction, Mitigation Contractor shall notify Sites Authority of any additional costs Mitigation Contractor believes it is entitled to within 30 Days of its receipt of the request to resume suspended Planning/Early Implementation Phase Services, or such claim shall conclusively be deemed to have been waived. Sites Authority shall not be liable for any additional

costs, damages or anticipated profits incurred by Mitigation Contractor or its Subcontractors and the Planning/Early Implementation Phase Pricing shall not be increased during the period of suspension, except the actual costs incurred by Mitigation Contractor, excluding overhead and profit, for reasonable and unavoidable costs of suspending the Planning/Early Implementation Phase Services. If Mitigation Contractor establishes that the suspension of the Planning/Early Implementation Phase Services had a material and adverse effect on Mitigation Contractor's costs for the performance of the Planning/Early Implementation Phase Services, Mitigation Contractor shall be entitled to cost relief, as appropriate and determined by Sites Authority acting reasonably and subject to Mitigation Contractor's duty to mitigate damages.

10.3 Suspension of Mitigation Phase Services by Sites Authority.

- A. Sites Authority in its sole and absolute discretion for any reason or no reason whatsoever may at any time, with or without cause, suspend performance of all or any part of the Mitigation Phase Services by giving not less than five (5) Days written notice to Mitigation Contractor. Such notice of suspension of Mitigation Phase Services will designate the amount and type of labor, material and equipment to be committed to the Project during the period of suspension. Mitigation Contractor shall use its best efforts to utilize its labor, material, and equipment in such a manner as to minimize costs and/or Project schedule impacts associated with suspension.
- B. Upon receipt of any such notice, Mitigation Contractor shall, unless the notice requires otherwise: (1) immediately discontinue Mitigation Phase Services on the date and to the extent specified in the notice; (2) place no further orders or subcontracts for material, services, equipment or facilities with respect to suspended Work other than to the extent required in the notice; (3) promptly make every reasonable effort to obtain suspension upon terms satisfactory to Sites Authority of all orders, subcontracts, and rental agreements to the extent they relate to performance of Mitigation Phase Services suspended; and (4) continue to protect and maintain the Project including those portions on which Mitigation Phase Services have been suspended.
- C. Sites Authority shall not be liable for any additional costs, damages or anticipated profits incurred by Mitigation Contractor or its Subcontractors and the Mitigation Contract GMP shall not be increased during the period of suspension, except the actual costs incurred by Mitigation Contractor, excluding overhead and profit, for (a) the purpose of safeguarding the Project and material and equipment in transit or at the Site during the period of suspension, (b) Mitigation Contractor's or its Subcontractor's rented equipment which must be maintained at the Site and to the extent costs cannot be mitigated by Mitigation Contractor, or (c) other reasonable and unavoidable costs of shutting down the Project, or reassembling personnel and equipment resulting directly from such suspension. Mitigation Contractor shall be granted an extension of the Contract Time equal to the number of days performance of Mitigation Phase Services are suspended; provided, however, that no actual costs or extension of Contract Time shall be granted if the suspension results from Mitigation Contractor's non-compliance with the requirements of the Contract.

10.4 Termination of Mitigation Phase Services for Cause by Sites Authority.

- A. In the sole estimation of Sites Authority, if Mitigation Contractor refuses or fails to prosecute the Mitigation Phase Services or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete Work within such time, or if Mitigation Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or Mitigation Contractor or any of its Subcontractors should violate any of the provisions of this Contract, Sites Authority may serve written notice upon Mitigation Contractor and its surety of Sites Authority's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that Mitigation Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) Days unless such violations have ceased and arrangements satisfactory to Sites Authority have been made for correction of said violations.
- B. After expiration of the ten (10) Day period, Sites Authority may terminate the Contract by providing a notice of termination to Mitigation Contractor. Sites Authority may take over and complete the Work by any method it may deem appropriate, including enforcement of the Performance Bond. If Sites Authority takes over the Work, Sites Authority may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to Mitigation Contractor as may be on the Mitigation Sites.
- C. Mitigation Contractor shall not be entitled to receive any further payment hereunder as a result of such termination. Mitigation Contractor and its surety shall be liable to Sites Authority for any excess costs or other damages incurred by Sites Authority to complete the Work, including professional services and expenses, reasonable overhead, profit, and attorneys' fees. This payment obligation shall survive completion of the Project and termination or expiration of this Contract.

10.5 Termination of Mitigation Phase Services for Convenience by Sites Authority.

- A. Sites Authority may terminate performance of the Mitigation Phase Services in whole or, from time to time, in part, upon ten (10) Days written notice if Sites Authority determines that termination is in Sites Authority's interest. Mitigation Contractor shall discontinue all or any part of the Work upon delivery to Mitigation Contractor of a notice of termination specifying that the termination is for the convenience of Sites Authority, the extent of termination, and the effective date of such termination.
- B. After receipt of notice of termination, and except as directed by Sites Authority, Mitigation Contractor shall, regardless of any delay in determining or adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations: (1) stop Work as specified in the notice of termination; (2) complete any Work specified in the notice of termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents; (3) leave the Mitigation Sites upon which Mitigation Contractor was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety; (4) terminate all subcontracts to the extent that they relate to the portions of the Work

terminated; and (5) place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.

- C. In case of such termination for Sites Authority's convenience, Mitigation Contractor shall be entitled to receive payment for Mitigation Phase Services actually completed by Mitigation Contractor in conformity with this Contract prior to Mitigation Contractor's receipt of Sites Authority's notice of termination and costs incurred by reason of such termination. Any documentation substantiating costs incurred by Mitigation Contractor solely as a result of Sites Authority's exercise of its right to terminate this Contract pursuant to this clause, which costs Mitigation Contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by Sites Authority no later than 30 Days after the effective date of the notice of termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by Sites Authority's Termination of Mitigation Phase Services for Convenience." If Sites Authority rejects any costs, Mitigation Contractor shall be deemed to waive the rejected costs unless Mitigation Contractor files a claim within thirty (30) Days of the rejection pursuant to the dispute resolution procedures in these General Conditions.
- D. Mitigation Contractor shall be entitled to receive only the amounts payable under this Article, and Mitigation Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to Sites Authority.
- E. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.
- F. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, Sites Authority may immediately order Mitigation Contractor to cease Mitigation Phase Services until such safety or liability issues are addressed to the satisfaction of Sites Authority or the Contract is terminated.
- G. If Sites Authority terminates Mitigation Contractor for cause, and it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Mitigation Contractor shall be entitled to receive only the amounts payable under this Article, and Mitigation Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 11 MEASUREMENT; PAYMENT

11.1 Payment of Compensation for Services Other than Payments for Mitigation Phase Services Constituting Construction of Public Works.

- A. Compensation. Sites Authority shall pay Mitigation Contractor the Services in the manner and subject to the terms and conditions set forth in this Contract. Mitigation Contractor agrees that the compensation, when earned, shall be Mitigation Contractor's entire compensation and reimbursement for the performance of Services,

inclusive of all costs, expenses and disbursements paid or incurred by Mitigation Contractor, as well as all overhead, administration, risk and profit, subject to adjustment in the Contract Documents.

- B. Invoicing. Upon completion of each of the Tasks described in a Task Order for the applicable Services, Mitigation Contractor shall submit an itemized statement of Services and the compensation due pursuant to the Contract Documents. The itemized statement shall reflect the scope of Work performed by Mitigation Contractor in performing the applicable Services.
- C. Payment. Payment for the Services shall be made for all undisputed amounts within thirty (30) Days after Mitigation Contractor submits an itemized statement to Sites Authority for applicable Services actually completed and after Sites Authority's written approval of the Services, or the portion of the Services for which payment is to be made. Payment shall not constitute acceptance of any Services completed by Mitigation Contractor.
- D. Payment Disputes. Nothing contained in this Contract shall require Sites Authority to pay for any Services which are not performed in accordance with the terms and conditions of this Contract. If Sites Authority disputes in good faith any payment request for Services, Sites Authority shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide Mitigation Contractor with a written objection indicating the amount being disputed and the reasons then known to Sites Authority for the dispute. In the event that Mitigation Contractor disputes any amounts offset by Sites Authority, it shall provide Sites Authority with a written objection indicating the amount being disputed and the reasons then known to Mitigation Contractor. If Mitigation Contractor is unable to reach agreement with Sites Authority as to the payment dispute, Mitigation Contractor may elect to initiate dispute resolution procedures in accordance with the Contract Documents.

11.2 Payment of Compensation for Mitigation Phase Services Constituting Construction of Public Works.

Notwithstanding Section 11.1 above, to the extent required by Applicable Laws, with respect to any task under a Task Order for Mitigation Phase Services that constitutes construction of public works pursuant to Applicable laws (the "Public Works Mitigation Phase Services"), the agreed upon payment to Mitigation Contractor for such task as set forth in the applicable Task Order shall be subject to the payment procedures set forth in this Section 11.2.

- A. Security for Money Withheld. Pursuant to Section 22300 of the California Public Contract Code, with respect to any portions of the Mitigation Phase Services that constitute Public Works Mitigation Phase Services, Mitigation Contractor may request Sites Authority to make retention payments directly to an escrow agent or may substitute securities for any money withheld by Sites Authority to ensure performance under the Contract with respect to the Public Works Mitigation Phase Services. At the request and expense of Mitigation Contractor, with respect to any such Public Works Mitigation Phase Services, securities equivalent to the amount withheld shall be deposited with Sites Authority or with a state or federally chartered bank as the escrow agent who shall return such securities to Mitigation Contractor upon satisfactory completion of such Public Works Mitigation Phase Services. Deposit of such securities

with an escrow agent shall be subject to a written agreement substantially in the form provided in Section 22300 of the California Public Contract Code.

- B. Cost Breakdown. Mitigation Contractor shall furnish on forms approved by Sites Authority within ten (10) Days of the Task Order for any Public Works Mitigation Phase Services, a schedule of values allocating the entire cost of Public Works Mitigation Phase Services to the various portions of the applicable Work and prepared in such a form and supported by such data to substantiate its accuracy as the Sites Authority's Representative may require. This schedule of values, unless objected to by the Sites Authority's Representative, shall be used as a basis for reviewing Mitigation Contractor's applications for payment. Mitigation Contractor shall submit the schedule of values prior to submitting its first application for payment, and Sites Authority will not issue any payment until it receives and approves the schedule of values. Mitigation Contractor shall submit a separate schedule of values and application for payment for each separate Task Order that includes Public Works Mitigation Phase Services.
- C. Progress Estimates and Payment.
1. Application for Payment Submittal. By the tenth (10th) Day of the following calendar month, Mitigation Contractor shall submit to Sites Authority's Representative on forms approved by Sites Authority a written payment request for payment of the Work described in the Task Order for such Public Works Mitigation Phase Services, together with such supporting data as Sites Authority may request, which shall set forth in detail the value of the Work done for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Mitigation Contractor shall include any amount earned for authorized Change Orders. Mitigation Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work performed pursuant to the applicable Task Order.
 2. Application for Payment Contents. Mitigation Contractor shall submit with each application for payment:
 - a. An invoice that includes, without limitation, the total cost of the Public Works Mitigation Phase Services, total of additive and deductive Change Orders, total retention, and total Mitigation Contract GMP;
 - b. An updated schedule of values;
 - c. An updated CPM Schedule for the applicable Work; and
 - d. Conditional and unconditional release of liens from Subcontractors and Suppliers.
 3. Schedule of Values. Each application for payment shall be based on the most recent schedule of values submitted by Mitigation Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire cost of the Public Works Mitigation Phase Services among the various portions of the applicable Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as Sites Authority may require.

This schedule, unless objected to by Sites Authority, shall be used as a basis for reviewing Mitigation Contractor's applications for payment. Applications for payment shall show the percentage of completion of each portion of the applicable Work as of the end of the period covered by the application for payment. The percentage of completion shall be the percentage of that portion of the applicable Work which Mitigation Contractor has actually been completed.

4. Retention. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of Mitigation Contractor's payment request.
5. Withholdings. Sites Authority may withhold a sufficient amount or amounts of any payment or payments otherwise due to Mitigation Contractor, as in its judgment may be necessary to cover:
 - a. Payments which may be past due and payable for just claims against Mitigation Contractor or any Subcontractors for labor or materials furnished in and about the performance of work on the applicable Public Works Mitigation Phase Services under this Contract.
 - b. Defective Work not remedied.
 - c. Failure of Mitigation Contractor to make proper payments to Subcontractors, Suppliers or for labor.
 - d. Completion of the applicable Public Works Mitigation Phase Services if there is a reasonable doubt that the applicable Work can be completed for balance then unpaid.
 - e. Damage to another contractor or a third party.
 - f. Amounts which may be due Sites Authority for claims against Mitigation Contractor.
 - g. Failure to provide an updated CPM Schedule as required herein.
 - h. Failure to comply with Contract Documents.
 - i. Damages.
 - j. Legally permitted penalties.
6. Sites Authority may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (5)(a), (c), and (e) of this Article, which must be retained or applied in accordance with Applicable Laws. In so doing, Sites Authority shall be deemed the agent of Mitigation Contractor and any payment so made by Sites Authority shall be considered as a payment made under contract by Sites Authority to Mitigation Contractor and Sites Authority shall not be liable to Mitigation Contractor for such payments made in good faith. Such payments may be made without prior judicial

determination of claim or obligations. Sites Authority will render Mitigation Contractor a proper accounting of such funds disbursed on behalf of Mitigation Contractor.

7. Upon receipt, the Sites Authority's Representative shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Mitigation Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. Sites Authority will make the progress payment within 30 Days after the receipt of an undisputed and properly submitted payment request from Mitigation Contractor, provided that a release of liens and claims has been received from Mitigation Contractor pursuant to Civil Code section 8132.
 8. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of Sites Authority.
 9. Sites Authority shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payments.
- D. Payments to Subcontractors. Mitigation Contractor shall develop and implement procedures for submittal of applications for progress payments to Mitigation Contractor by Subcontractors in accordance with these General Conditions and the review, processing and disbursement of progress payments to Subcontractors, along with associated forms and reporting systems. Mitigation Contractor shall disburse progress payments due each Subcontractor within ten (10) Days of Mitigation Contractor's receipt of payment from Sites Authority, except to the extent that Mitigation Contractor's payment of such amount or any portion thereof is subject to withholdings for a stop payment notice, prevailing wage rate violations or other withholdings of payment(s) due Subcontractors under the terms of the subcontracts or by operation of law. Mitigation Contractor shall indemnify Sites Authority against any and all claims arising from or related to the failure of Mitigation Contractor to comply with the prompt payment requirements under the Public Contract Code.
- E. Final Acceptance and Payment.
1. Following Substantial Completion of the applicable Public Works Mitigation Phase Services, Mitigation Contractor shall submit to Sites Authority a detailed accounting as detailed in the Contract Documents.
 2. Unless Mitigation Contractor advises Sites Authority in writing prior to acceptance of the final five percent (5%) or the percentage specified in the Contract Documents where Sites Authority has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to Sites Authority of all claims and all liability to Mitigation Contractor for all things done or furnished in connection with this Work and for every act of negligence of Sites Authority and for all other claims relating to or arising out of this Work. If Mitigation Contractor advises Sites Authority in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due Mitigation Contractor, Sites Authority may pay the

undisputed amount contingent upon Mitigation Contractor furnishing a release of all undisputed claims against Sites Authority with the disputed claims in stated amounts being specifically excluded by Mitigation Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Mitigation Contractor or its sureties from the faithful Performance Bond, Payment Bond, or from any other obligation under this Contract.

3. In case of termination of the Contract any unpaid balance shall be and become the sole and absolute property of Sites Authority to the extent necessary to repay Sites Authority any excess in the cost of the applicable Work above the Mitigation Contract GMP.
4. Final payment of the five percent (5%) retention shall be made no later than 60 Days after the date of Substantial Completion of the applicable Public Works Mitigation Phase Services, provided that a release of liens and claims has been received from Mitigation Contractor pursuant to Civil Code section 8136. In the event of a dispute between Sites Authority and Mitigation Contractor, Sites Authority may withhold from the final payment an amount not to exceed 150% of the disputed amount.
5. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Mitigation Contractor, Mitigation Contractor shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Mitigation Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.

ARTICLE 12 MISCELLANEOUS CONTRACT PROVISIONS

12.1 Patents.

- A. Mitigation Contractor shall hold and save Sites Authority, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Mitigation Contractor in the performance of this Contract.

12.2 Separate Contracts.

- A. Mitigation Contractor understands that this is not an exclusive contract and that Sites Authority shall have the right to negotiate with and enter into separate contracts with others providing the same or similar services as those provided by Mitigation Contractor as Sites Authority desires.

12.3 Document Retention & Examination.

- A. In accordance with Government Code section 8546.7, records of both Sites Authority and Mitigation Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment. Mitigation Contractor

shall make available to Sites Authority any of Mitigation Contractor's other documents related to the Project immediately upon request of Sites Authority. In addition to the State Auditor rights above, Sites Authority shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of Mitigation Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to Sites Authority, for a period of ten (10) years after final payment.

12.4 Notice.

- A. All notices shall be in writing and either served by personal delivery or mailed to the other Party. Written notice to Mitigation Contractor shall be addressed to Mitigation Contractor's principal place of business unless Mitigation Contractor designates another address in writing for service of notice. Notice to Sites Authority shall be addressed to Sites Authority as designated in the Contract unless Sites Authority designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

12.5 Notice of Third Party Claims.

- A. Pursuant to Public Contract Code section 9201, Sites Authority shall provide Mitigation Contractor with timely notification of the receipt of any third-party claims relating to the Contract. Sites Authority is entitled to recover reasonable costs incurred in providing such notification.

12.6 State License Board Notice.

- A. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

12.7 Assignment of Contract.

- A. Mitigation Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this Contract without the prior written consent of Sites Authority, which may be unreasonably withheld. Any assignment or change of Mitigation Contractor's name or legal entity without the written consent of Sites Authority shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

12.8 Change In Name And Nature Of Mitigation Contractor's Legal Entity.

- A. Should a change be contemplated in the name or nature of Mitigation Contractor's legal entity, Mitigation Contractor shall first notify Sites Authority in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Mitigation Contractor's name or nature will affect Sites Authority's rights under the Contract, including but not limited to the Performance Bonds and Payment Bonds.

12.9 Prohibited Interests.

- A. No Sites Authority official or representative who is authorized in such capacity and on behalf of Sites Authority to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in the Contract. Mitigation Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Contract.

12.10 Controlling Law.

- A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

12.11 Jurisdiction; Venue.

- A. Mitigation Contractor and any Subcontractor, Supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of Colusa County, California (or, if agreed to by the the Sites Authority and the Mitigation Contractor, the Superior Court of the county in which the Work that is the subject of such action or suit is being performed), and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

12.12 Cumulative Remedies.

- A. The duties and obligations imposed by these Contract Documents and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

12.13 Survival of Obligations.

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the Services of Mitigation Contractor.

12.14 Severability.

- A. If any provision of this Contract is found by a court of competent jurisdiction to be void, invalid or unenforceable, then the Parties agree that such invalidity or unenforceability shall have no effect whatsoever on the balance of this Contract.

12.15 Headings.

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

12.16 Assignment of Antitrust Actions.

- A. In accordance with §7103.5(b) of the California Public Contract Code, Mitigation Contractor and Subcontractors must conform to the following requirements:
 - 1. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Mitigation Contractor or Subcontractor offer and agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.
 - 2. This assignment must be made and become effective at the time the awarding body tenders to Mitigation Contractor, without further acknowledgment by the parties.

12.17 Other Legal Provisions.

- A. Notices. Mitigation Contractor shall give all notices and comply with Applicable Laws bearing on conduct of Work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Mitigation Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to Sites Authority, Mitigation Contractor shall bear all costs arising therefrom.
- B. ADA. Mitigation Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Mitigation Contractor shall comply

with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.

- C. Mined Material. Mitigation Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.
- D. Other Laws. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by Sites Authority, at no increase in the Mitigation Contract GMP or extension of Contract Time, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

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**ATTACHMENT 3
SPECIAL CONDITIONS**

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**ARTICLE 1
MODIFICATIONS TO GENERAL CONDITIONS
COST OF CONSTRUCTION WORK**

1.1 Key Subcontractors.

A. Mitigation Contractor has been selected to complete the Project in part because of the experience, expertise, training, education, and skill of Key Subcontractors listed in Mitigation Contractor’s SOQ or Mitigation Contractor’s RFP Proposal. Key Subcontractors shall perform the Work listed in Mitigation Contractor’s SOQ or Mitigation Contractor’s RFP Proposal. The following are Mitigation Contractor’s Key Subcontractors:

Key Subcontractor Name	Scope of Work

**ARTICLE 2
MODIFICATIONS TO GENERAL CONDITIONS
MITIGATION CONTRACTOR RESPONSIBILITIES**

2.1 Mitigation Contractor’s Representative.

A. Mitigation Contractor hereby designates [***INSERT NAME***], or his or her designee, to act as Mitigation Contractor’s Representative. Mitigation Contractor’s Representative shall have full authority to represent and act on behalf of Mitigation Contractor for all purposes under this Contract. Mitigation Contractor’s Representative shall supervise and direct all work on the Project, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work pursuant to this Contract. Mitigation Contractor may designate new and/or different individuals to act as Mitigation Contractor’s Representative from time to time upon written notice to the Sites Authority and the express written consent of Sites Authority, which such consent may be withheld by Sites Authority. If, for whatever reason, Mitigation Contractor’s Representative is replaced and this section is not revised, or no such representative is designated, Mitigation Contractor’s Representative shall be read as applying to Mitigation Contractor.

2.2 Sites Authority’s Representative.

A. Sites Authority hereby designates [***INSERT NAME***] or his or her designee, as the person to act as Sites Authority’s Representative. Sites Authority’s Representative shall be authorized to act as liaison between Sites Authority and Mitigation Contractor in the administration of this Contract and all work on the Project. Sites Authority’s Representative shall have the power to act on behalf of Sites Authority for all purposes under this Contract. Sites Authority may designate new and/or different individuals to act as Sites Authority’s Representative from time to time upon written notice to Mitigation Contractor. If, for whatever reason, Sites Authority’s Representative is

replaced and this section is not revised, or no such representative is designated, Sites Authority's Representative shall be read as applying to Sites Authority.

2.3 Designated Key Personnel.

A. Mitigation Contractor has been selected to complete the Project in part because of the experience, expertise, training, education and skill of key individuals. The Key Personnel shall perform the roles and responsibilities of the applicable title. The following individuals are Mitigation Contractor's Key Personnel, none of whom can be replaced unless approved by Sites Authority as provided herein: [ADJUST AS NECESSARY CONSISTENT WITH KEY PERSONNEL REQUIRED IN THE RFQ/RFP AND/OR SOQ/PROPOSAL]

Key Personnel Role	Key Personnel Name
Project Director	
Project Manager	
Cost Estimator	
Superintendent	
Quality Assurance Manager	
Pre-construction Manager	
Public Outreach Manager	
Safety Manager	
Project Controls Lead (Scheduler and Lead Cost Estimator	
[Environmental Mitigation Manager]	
Environmental Compliance Manager	

2.4 Removal of Key Personnel.

A. Mitigation Contractor acknowledges the quality and qualifications of the Key Personnel were important and material factors in Sites Authority's selection of Mitigation Contractor for the Project. Mitigation Contractor and Sites Authority agree that the services of the Key Personnel are a material term of the Contract Documents. Mitigation Contractor will not remove any of its Key Personnel from their respective role on this Project without the express written consent of Sites Authority. If, for any reason except for death, disability, or voluntary departure by person from employment, an individual identified as Key Personnel ceases to perform the duties of a Key Personnel, Sites Authority may terminate the Contract for material breach by Mitigation Contractor.

2.5 Replacing Key Personnel.

A. Any Key Personnel change shall be proposed to Sites Authority with reasonable advance notice for its review and approval. Upon written notice by Sites Authority to Mitigation Contractor, Mitigation Contractor shall replace Key Personnel within 60 Days if Key Personnel fails to perform to the sole satisfaction of Sites Authority. Any replacement of Key Personnel shall meet the qualifications in the RFQ for the applicable role and Sites Authority shall have the sole discretion to determine whether

the Key Personnel replacement is qualified. If the Key Personnel replacement is not qualified, as determined in the sole discretion of Sites Authority, Mitigation Contractor shall propose a new Key Personnel replacement to Sites Authority. Mitigation Contractor shall be responsible for any and all costs related to replacing any Key Personnel, including any costs to acquaint themselves with the Project. Key Personnel for any Key Subcontractor are subject to all conditions in these Contract Documents.

ARTICLE 3 PROJECT SPECIFIC REQUIREMENTS

3.1 Allocation of Local Taxes.

- A. To the full extent permitted by law, it is the intent of Sites Authority to require Mitigation Contractor to participate in jobsite sub-permit reporting through the California Department of Tax and Fee Administration (“CDTFA”) to maximize local taxes collected on behalf of the counties for work on the Project occurring within each county. Mitigation Contractor will work cooperatively with Sites Authority to implement these requirements.
- B. In accordance with all relevant State laws and CDTFA regulations, Mitigation Contractor shall prior to commencement of any construction activity on the Project, (a) obtain all necessary sales/use tax jobsite sub-permit(s) from CDTFA; (b) comply with all associated reporting requirements; and (c) otherwise designate a location on the Project as the place of use of materials and/or sale of fixtures used in the construction of the Project. Such designation shall be with the objective of having the full local tax portion of the sales/use tax distributed directly to the applicable jurisdiction of the jobsite. Mitigation Contractor shall prior to commencement of any construction activity on the Project provide Sites Authority with either a copy of its sub-permit that shows its CDTFA account number or a signed statement that sales and use tax does not apply to its portion of the Project. Furthermore, Mitigation Contractor shall require all Subcontractors, Suppliers, and other entities providing materials and/or fixtures in connection with the Project with a contract valued at \$5,000,000 or more to comply with the aforementioned requirements, so as to assist Sites Authority in optimizing its local tax revenue allowable under California law.
- C. To assist Sites Authority in its efforts and ensure that the full amount of such local sales/use tax is allocated to the applicable county, Mitigation Contractor shall provide Sites Authority with a quarterly spreadsheet, which shall include a list of all Subcontractors and Suppliers with contracts in excess of \$5,000,000, a description of all applicable work, and the dollar value of such subcontracts. Sites Authority may use the information provided to contact each Subcontractor or Supplier to determine who may qualify for a jobsite sub-permit through CDTFA to allocate the local tax to the jurisdiction of the jobsite. Sites Authority may also use the information to contact each Subcontractor or Supplier to determine if qualifying sales of \$500,000 or more subject to use tax are properly directly allocated to the place of use when applicable.
- D. Upon request of Sites Authority, Mitigation Contractor and all Subcontractors, Suppliers, and other entities providing materials and/or fixtures in connection with the Project will make purchase records available for review by Sites Authority, or its agents, to verify that allocation of all eligible sales and use tax payments are recorded in accordance with this provision.

- E. In accordance with the General Conditions and payment of compensation for Mitigation Phase Services, Sites Authority may withhold a sufficient amount or amounts of any payment or payments otherwise due to Mitigation Contractor, as in its judgment may be necessary to cover Mitigation Contractor's failure to comply with this Article.

3.2 Limitations on Liability.

- A. Mitigation Contractor's aggregate liability to Sites Authority with respect to damages arising out of the performance or unexcused non-performance of any Work performed on the Project shall not exceed [INSERT AMOUNT] of the Mitigation Contract GMP. This limitation on liability shall not affect the Mitigation Contractor's obligation to provide insurance pursuant to the Contract Documents. This limitation of liability excludes:
1. Defense and indemnification obligations required of the Mitigation Contractor;
 2. Costs, liabilities, damages, or obligations arising from the gross negligence, reckless conduct, willful acts or omissions, intentional misconduct, fraud, illegal, or unlawful acts, willful injury to person or property, or violation of Applicable Law, whether based on contract, tort (including negligence), strict liability, or any other legal theory, by the Mitigation Contractor or any of its employees, consultants, Subcontractors, or Suppliers, or anyone working directly or indirectly for whom such parties may be liable;
 3. Fines, penalties, and other charges assessed by applicable governmental authorities, which are attributable to Mitigation Contractor;
 4. Claims covered by insurance required of the Mitigation Contractor by the Contract Documents to the extent there are insurance proceeds available;
 5. Mitigation Contractor's liability for damages expressly provided for in the Contract Documents, including without limitation statutory damages imposed by the Sites Authority or damages imposed by third parties with jurisdiction over the Project; and
 6. Mitigation Contractor's warranties and guarantees under the Contract Documents, including, but not limited to, latent construction defects
 7. Mitigation Contractor's reimbursement obligations under Section 8.3.B of the General Conditions.

3.3 Waiver of Consequential Damages.

- A. Under no circumstances shall Sites Authority be liable to Mitigation Contractor for any indirect, incidental, consequential, exemplary, punitive or special damages arising from performing or failing to perform any obligation under this Contract, whether such liability arises in contract (including breach, express or implied warranty, or indemnity), tort (including fault, negligence or strict liability), or otherwise, including, but not limited to, any loss of profits, loss of bonding capacity, loss of other contracts, loss of revenue or of overhead, loss of opportunity or goodwill.

- B. Subject to Section 3.3.C of the Special Conditions immediately below, Mitigation Contractor shall have no liability to Sites Authority for any type of special, consequential or incidental damages arising out of or connected with Mitigation Contractor's performance of the Work in excess of [INSERT AMOUNT], which limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the Work under this Contract, and negligence or strict liability of Mitigation Contractor.
- C. Notwithstanding the foregoing, the limit of liability set forth in Section 3.3.B of the Special Conditions immediately above shall not, however, apply to, limit or preclude recovery of all damages, regardless of the nature of those damages, related to:
1. Mitigation Contractor's obligation to pay damages as set forth in the Contract Documents, including without limitation Contractor's reimbursement obligations under Section 8.3.B of the General Conditions.
 2. Damages caused by Mitigation Contractor's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts.
 3. Mitigation Contractor's obligations to indemnify and defend the Sites Authority and other indemnified parties as set forth in the General Conditions.
 4. Mitigation Contractor's liability for any type of damage to the extent such damage is covered and paid by insurance required to be provided by or for Mitigation Contractor as specified in the Contract Documents.
 5. Personal injury or death occurring during performance of the Work.
 6. Punitive or treble damages.
 7. Mitigation Contractor's liability for damages expressly provided for in the Contract Documents, including without limitation statutory damages imposed by the Sites Authority or damages imposed by third parties with jurisdiction over the Project.
 8. Mitigation Contractor's warranties and guarantees under the Contract Documents, along with any resulting damage.

ATTACHMENT 4A
PAYMENT SCHEDULE FOR PLANNING/EARLY IMPLEMENTATION PHASE SERVICES

[THE FOLLOWING WILL NEED TO BE UPDATED TO CORRELATE WITH THE RFP AND COMPLETED UPON AWARD OF CONTRACT TO MITIGATION CONTRACTOR]

TASK A: “Mitigation Framework Memorandum”

Upon satisfactory completion of Planning/Early Implementation Phase Task A (“Mitigation Framework Memorandum”), Sites Authority shall pay Mitigation Contractor a fixed fee in the amount of [***INSERT AMOUNT***].

TASK B: “Potential Purchase of Credits”

Upon the acquisition by the Sites Authority of Bank Credits from third-party owned and operated banks that have been approved for purchase by the Sites Authority where Mitigation Contractor has served as the representative of the Sites Authority with respect to such purchase as described in Task B, Sites Authority shall pay Mitigation Contractor an amount equal to [[AMOUNT TO BE INSERTED] percent (____%)] of the purchase price for such Bank Credits.

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**ATTACHMENT 4B
PAYMENT SCHEDULE FOR MITIGATION PHASE SERVICES**

THE FOLLOWING WILL NEED TO BE UPDATED TO CORRELATE WITH THE RFP AND COMPLETED UPON AWARD OF CONTRACT TO MITIGATION CONTRACTOR.

THE PAYMENT SCHEDULE REFLECTED IN THIS ATTACHMENT 4B WILL BE DEVELOPED THROUGH THE RFP PROCESS WILL INCLUDE PROPOSED PROGRESS PAYMENTS TIED TO COMPLETION OF THE SEPARATE TASKS DESCRIBED IN EACH MITIGATION PHASE TASK ORDER, BASED UPON THE PERCENTAGE OF COMPLETION WITH APPROPRIATE RETAINERS, WHERE THE PROGRESS PAYMENTS WILL APPLY TOWARD THE TOTAL PAYMENT REQUIREMENT FOR THE APPLICABLE MITIGATION TASK ORDER (i.e., BASED ON PRICE PER MITIGATION ACRE AS DESCRIBED BELOW).

THE PAYMENT SCHEDULE WILL BE CONSISTENT WITH THE FOLLOWING:

- 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;
- 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 ³ 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 ⁴ 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 ⁵ 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)

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

³ Examples of “Land Cover Mitigation” types include Annual Grasslands and Blue Oak Woodland.
⁴ Examples of “Species Mitigation” types include Burrowing Owl and Western Spadefoot.
⁵ Examples of “Terrestrial Aquatic Mitigation” types include Wetlands and Intermittent Stream.

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 payment schedule developed through the RFP process will also include the following:
 - Any agreed upon annual price adjustments with respect to the Mitigation Price Per Acre.
 - Price adjustments with respect to the Mitigation Price Per Acre for compensatory mitigation provided on real property already owned by the Sites Authority.]

**ATTACHMENT 5
SAMPLE TASK ORDER FOR PLANNING/EARLY IMPLEMENTATION PHASE SERVICES
FORM**

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Task Order FOR PLANNING/EARLY IMPLEMENTATION PHASE SERVICES

Task Order No. [REDACTED]

Project: [REDACTED]	Date of Contract: [REDACTED]
Contract: [REDACTED]	Task Order Effective Date: [REDACTED]

This Task Order is made in accordance with and subject to the terms and conditions set forth in the Contract entered into by and between the Sites Project Authority (“Sites Authority”) and [REDACTED] (“Mitigation Contractor”) for the Project. Capitalized terms not defined in this Task Order shall have meaning given to them in the Contract.

1. DESCRIPTION OF PLANNING/EARLY IMPLEMENTATION PHASE SERVICES.

Mitigation Contractor is hereby authorized to perform the Planning/Early Implementation Phase Services, subject to the provisions of the Contract Documents and this Task Order, identified in Exhibit “A” to this Task Order and incorporated herein by reference (the “Task Order No. [REDACTED] Services”).

2. SCHEDULE OF SERVICES.

The Task Order No. [REDACTED] Services are to be completed by [REDACTED], subject to an extension of time as provided in the Contract Documents.

3. COMPENSATION.

Sites Authority shall pay Mitigation Contractor an amount equal to [REDACTED] for performance of the Task Order No. [REDACTED] Services based on the work satisfactorily performed and approved by Sites Authority pursuant to the Contract Documents (“Task Order No. [REDACTED] Services Fee”). The basis for the Task Order No. [REDACTED] Services Fee is further detailed in Exhibit “B” to this Task Order and incorporated herein by reference.

Mitigation Contractor hereby agrees that it will provide all equipment, furnish all materials, and perform all services for the Task Order No. [REDACTED] Services in accordance with the Contract Documents and will accept as full payment therefore the Task Order No. [REDACTED] Services Fee.

4. INCORPORATION.

This Task Order is subject to all terms and conditions of the Contract Documents. This Task Order and the exhibits hereto are hereby incorporated into the Contract as though fully set forth therein.

**SIGNATURE PAGE TO TASK ORDER NO. [] BY AND BETWEEN SITES PROJECT
AUTHORITY AND [***INSERT***]**

IN WITNESS WHEREOF, the Parties hereby execute this Task Order No. [] as of the Task Order Effective Date.

SITES PROJECT AUTHORITY

[*INSERT NAME OF MITIGATION CONTRACTOR***]**

By: _____
[INSERT NAME]
[INSERT TITLE]

[IF CORPORATION, TWO SIGNATURES, PRESIDENT OR VICE PRESIDENT AND SECRETARY OR TREASURER REQUIRED]

By: _____

ATTEST:

Its: _____

By: _____
[INSERT NAME]

Printed _____ Name: _____

[DELETE THE FOLLOWING SIGNATURE LINE IF NOT REQUIRED]

By: _____

APPROVED AS TO FORM:

Its: _____

By: _____
[INSERT NAME]

Printed _____ Name: _____

EXHIBIT "A"

TASK ORDER SCOPE OF PLANNING/EARLY IMPLEMENTATION PHASE SERVICES

[INSERT]

DRAFT

EXHIBIT "B"

**TASK ORDER COMPENSATION FORM PLANNING/EARLY IMPLEMENTATION PHASE
SERVICES**

[INSERT]

DRAFT

**ATTACHMENT 6
SAMPLE TASK ORDER FOR MITIGATION PHASE SERVICES FORM**

DRAFT

Task Order FOR MITIGATION PHASE SERVICES

Task Order No. [REDACTED]

Project: [REDACTED]	Date of Contract: [REDACTED]
Contract: [REDACTED]	Task Order Effective Date: [REDACTED]

This Task Order is made in accordance with and subject to the terms and conditions set forth in the Contract entered into by and between the Sites Project Authority (“Sites Authority”) and [REDACTED] (“Mitigation Contractor”) for the Project. Capitalized terms not defined in this Task Order shall have meaning given to them in the Contract.

1. DESCRIPTION OF MITIGATION PHASE SERVICES.

Mitigation Contractor is hereby authorized to perform the Planning/Early Implementation Phase Services, subject to the provisions of the Contract Documents and this Task Order, identified in Exhibit “A” to this Task Order and incorporated herein by reference (the “Task Order No. [REDACTED] Services”).

2. SCHEDULE OF SERVICES.

The Task Order No. [REDACTED] Services are to be completed by [REDACTED], subject to an extension of time as provided in the Contract Documents.

3. COMPENSATION.

Sites Authority shall pay Mitigation Contractor an amount equal to [REDACTED] for performance of the Task Order No. [REDACTED] Services based on the work satisfactorily performed and approved by Sites Authority pursuant to the Contract Documents (“Task Order No. [REDACTED] Services Fee”). The basis for the Task Order No. [REDACTED] Services Fee is further detailed in Exhibit “B” to this Task Order and incorporated herein by reference.

Mitigation Contractor hereby agrees that it will provide all equipment, furnish all materials, and perform all services for the Task Order No. [REDACTED] Services in accordance with the Contract Documents and will accept as full payment therefore the Task Order No. [REDACTED] Services Fee.

4. INCORPORATION.

This Task Order is subject to all terms and conditions of the Contract Documents. This Task Order and the exhibits hereto are hereby incorporated into the Contract as though fully set forth therein.

**SIGNATURE PAGE TO TASK ORDER NO. BY AND BETWEEN SITES PROJECT
AUTHORITY AND [***INSERT***]**

IN WITNESS WHEREOF, the Parties hereby execute this Task Order No. [] as of the Task Order Effective Date.

SITES PROJECT AUTHORITY

[*INSERT NAME OF MITIGATION CONTRACTOR***]**

By: _____
[INSERT NAME]
[INSERT TITLE]

[IF CORPORATION, TWO SIGNATURES, PRESIDENT OR VICE PRESIDENT AND SECRETARY OR TREASURER REQUIRED]

ATTEST:

By: _____

Its: _____

By: _____
[INSERT NAME]

Printed Name: _____

[DELETE THE FOLLOWING SIGNATURE LINE IF NOT REQUIRED]

By: _____

APPROVED AS TO FORM:

Its: _____

Printed Name: _____

By: _____
[INSERT NAME]

EXHIBIT "A"

TASK ORDER SCOPE FORM MITIGATION PHASE SERVICES

**[INSERT. INCLUDE ANY MINIMUM COMPENSATORY MITIGATION ACREGE PURCHASE
COMMITMENT APPLICABLE TO TASK ORDER.]**

DRAFT

EXHIBIT "B"

TASK ORDER COMPENSATION FOR MITIGATION PHASE SERVICES

[INSERT]

DRAFT

**ATTACHMENT 7
PERFORMANCE BOND; PAYMENT BOND**

[Begins on the Following Page]

DRAFT

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, Sites Project Authority (“Sites Authority”) has awarded to [***INSERT NAME***], (“Mitigation Contractor”) an agreement to perform the Mitigation Phase [] Services (hereinafter referred to as the “Mitigation Phase [] Project”).

WHEREAS, the work to be performed by Mitigation Contractor is more particularly set forth in the Contract Documents for the Mitigation Phase [] Project dated [***INSERT NAME***], (hereinafter referred to as “Contract Documents”), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, Mitigation Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, Sites Authority and [***INSERT NAME***] as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto Sites Authority in the sum of [] dollars, (\$ []), said sum being not less than one hundred percent (100%) of the total amount of the estimated Contract for the Mitigation Phase [] Project (the “Secured Amount”), for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if Mitigation Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations; and shall indemnify and save harmless Sites Authority, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney’s fees, incurred by Sites Authority in enforcing such obligation.

The obligations of Surety hereunder shall continue so long as any obligation of Mitigation Contractor remains with respect to the Mitigation Phase [] Project. Nothing herein shall limit Sites Authority’s rights or Mitigation Contractor or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Mitigation Contractor shall be, and is declared by Sites Authority to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at Sites Authority's option:

- (1) Take over and complete the Mitigation Phase [REDACTED] Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Mitigation Phase [REDACTED] Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such Bidder, the Surety and Sites Authority, and make available as work progresses sufficient funds to pay the cost of completion of the Mitigation Phase [REDACTED] Project, less the balance of the Secured Amount, including other costs and damages for which Surety may be liable. The term "balance of the Secured Amount" as used in this paragraph shall mean the Secured Amount, less any amount previously paid by Sites Authority to Mitigation Contractor for the Mitigation Phase [REDACTED] Project and any other set offs pursuant to the Contract Documents.
- (3) Permit Sites Authority to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Mitigation Contract GMP, including other costs and damages for which Surety may be liable. The term "balance of the Mitigation Contract GMP" as used in this paragraph shall mean the total amount payable to Mitigation Contractor by Sites Authority under the Contract and any modification thereto, less any amount previously paid by Sites Authority to Mitigation Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that Sites Authority may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by Mitigation Contractor.

Surety shall not utilize Mitigation Contractor in completing the Project nor shall Surety accept a Bid from Mitigation Contractor for completion of the Mitigation Phase [REDACTED] Project if Sites Authority, when declaring Mitigation Contractor in default, notifies Surety of Sites Authority's objection to Mitigation Contractor's further participation in the completion of the Mitigation Phase [REDACTED] Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Mitigation Phase [REDACTED] Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Mitigation Phase [REDACTED] Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day
of _____, 20__.

MITIGATION CONTRACTOR

By: _____
President

Surety

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium
charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or
Representative for service of
process in California, if different
from above) _____

(Telephone number of Surety and
Agent or Representative for service
of process in California) _____

**NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company
must be attached hereto.**

PAYMENT BOND (LABOR AND MATERIALS)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Sites Project Authority (“Sites Authority”) has awarded to [***INSERT NAME***], (“Principal”) a contract (“Contract”) to perform the Mitigation Phase [] Services (hereinafter referred to as the “Mitigation Phase [] Project”).

WHEREAS, said Principal is required to furnish a bond in connection with said Contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and [***INSERT NAME***] as Surety, are held and firmly bound unto Sites Authority in the penal sum of [] dollars (\$ []) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the Work contracted to be done with respect to the Mitigation Phase [] Project, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed with respect to the Mitigation Phase [] Project under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of Mitigation Contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such Work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by Sites Authority in such suit, including reasonable attorneys’ fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such Contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond

and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of Contract between the owner or Sites Authority and original Mitigation Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____ 20____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal, if corporation)

Principal

By: _____
President

(Seal of Surety)

Surety

By: _____
Attorney-in-Fact

(Attached Attorney-In-Fact Certificate and Required Acknowledgements)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

**ATTACHMENT 8
MITIGATION CONTRACTOR CERTIFICATIONS FROM RFQ AND RFP**

[Attached Behind]

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**ATTACHMENT 9
FUNDING REQUIREMENTS**

[Begins on the Following Page]

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GENERAL FUNDING REQUIREMENTS.

1.1 Summary.

- A. Funding for this Contract has been provided in full or in part by grant funding from the United States Department of the Interior through the Bureau of Reclamation ("Reclamation").
- B. The Financial Assistance Agreement between Sites Authority and Reclamation for the Sites Reservoir Project (R23AC00468) is incorporated into this Contract by reference and is on file at Sites Authority's principal office and will be made available to interested parties upon request.
- C. [THIS WILL BE UPDATED AGREEMENT IS REACH ON A FUNDING AGREEMENT] Sites Authority anticipates receiving funding from the California Water Commission through the Water Quality, Supply, and Infrastructure Improvement Act of 2014 ("CWC Funding"). Mitigation Contractor agrees to comply with all terms and conditions of CWC Funding.
- D. Mitigation Contractor acknowledges that Sites Authority is actively seeking additional funding to complete the Project and may continue seeking funding following commencement of the Project. Mitigation Contractor shall cooperate in Sites Authority's efforts to obtain funding. To the extent any additional funding is acquired, Mitigation Contractor agrees to comply with all terms and conditions of such funding.

1.2 Compliance Required.

- A. Mitigation Contractor shall comply, and assist Sites Authority in complying, with all duties, requirements, and obligations in and arising out of the Reclamation Financial Assistance Agreements and CWC Funding.
- B. Mitigation Contractor shall also comply with all applicable funding requirements including, but not limited to, the following, all of which are expressly incorporated herein by reference:
 - 1. 2 CFR Subtitle A, Chapter II, Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
 - 2. Federal Funding Requirements attached hereto as Exhibit "A"
 - 3. Bureau of Reclamation Funding Requirements attached hereto as Exhibit "B"
 - 4. Davis-Bacon Provisions attached hereto as Exhibit "C"
 - 5. Davis-Bacon Rates attached hereto as Exhibit "D"
- C. Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in this Contract. With respect to any conflict between these Funding Requirement and the Contract Documents and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

EXHIBIT "A"
FEDERAL FUNDING REQUIREMENTS

**REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200
– CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL
AWARDS (2 C.F.R. § 200.327)**

1.1 Appendix II to Part 200 (A) – Remedies.

- A. The Parties shall comply with the administrative, contractual, or legal remedies in the Contract Documents when Mitigation Contractor violates or breaches the Contract terms and shall comply with the applicable sanctions and penalties as appropriate in the Contract Documents.

1.2 Appendix II to Part 200 (B) – Termination for Cause/Convenience.

- A. The Parties shall comply with the termination for cause provision and the termination for convenience provision in the Contract Documents.

1.3 Appendix II to Part 200 (C) – Equal Employment Opportunity.

- A. Since the Contract meets the definition of a "federal assisted construction contract" in 41 CFR § 60-1.3, Mitigation Contractor agrees as follows during the performance of the Contract:
 - 1. Mitigation Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Mitigation Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Mitigation Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - 2. Mitigation Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Mitigation Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - 3. Mitigation Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such

disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Mitigation Contractor's legal duty to furnish information.

4. Mitigation Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Mitigation Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 5. Mitigation Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 6. Mitigation Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 7. In the event of Mitigation Contractor's noncompliance with the nondiscrimination clauses of Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Mitigation Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 8. Mitigation Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Mitigation Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
- B. Provided, however, that in the event Mitigation Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Mitigation Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- C. Sites Authority further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if Sites Authority so participating is a state or local government, the above equal opportunity clause is not applicable to any

agency, instrumentality or subdivision of such government which does not participate in work on or under the Construction Contract.

- D. Sites Authority agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Mitigation Contractor and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- E. Sites Authority further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Sites Authority agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part the grant (contract, loan, insurance, guarantee) for this project; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

1.4 Appendix II to Part 200 (D), (E) – Davis-Bacon Act; Contract Work Hours and Safety Standards Act:

- A. Mitigation Contractor shall comply with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis- Bacon Act, the Contract Work Hours and Safety Standards Act, the Copeland Anti-Kickback Act), which are included in this Contract Documents.

1.5 Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:

- A. This provision is not applicable to the Contract.

1.6 Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act:

- A. Mitigation Contractor shall comply with the following:
 - 1. Pursuant to the Clean Air Act, (1) Mitigation Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*, (2) Mitigation Contractor agrees to report each violation to Sites Authority and understands and agrees that Sites Authority will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection District Regional

Office, and (3) Mitigation Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

2. Pursuant to the Federal Water Pollution Control Act, (1) Mitigation Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, (2) Mitigation Contractor agrees to report each violation to Sites Authority and understands and agrees that Sites Authority will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Mitigation Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

1.7 Appendix II to Part 200 (H) – Debarment and Suspension:

- A. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Mitigation Contractor is required to verify that none of Mitigation Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. Mitigation Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by Sites Authority. If it is later determined that Mitigation Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Sites Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. Mitigation Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the Contract. Mitigation Contractor further agrees to include a provision requiring such compliance in its subcontracts.
- E. Mitigation Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Mitigation Contractor also agrees to verify that all subcontractors performing work under this Contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Mitigation Contractor further agrees to notify Sites Authority in writing immediately if Mitigation Contractor or its subcontractors are not in compliance during the term of this Contract.

1.8 Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act:

- A. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with

obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

1.9 Appendix II to Part 200 (J) – §200.323 Procurement of Recovered Materials:

- A. Mitigation Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- B. In the performance of this Contract, Mitigation Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.
- C. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- D. Mitigation Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

1.10 Appendix II to Part 200 (K) – §200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:

- A. Mitigation Contractor shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Contract. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - 2. Telecommunications or video surveillance services provided by such entities or using such equipment.

3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

B. See Public Law 115-232, section 889 for additional information.

1.11 Appendix II to Part 200 (L) – §200.322 Domestic Preferences for Procurement:

A. Mitigation Contractor shall, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts.

B. For purposes of this section:

1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. “Manufactured products” means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

1.12 2 C.F.R. § 200.321:

A. When subcontracting Work, Mitigation Contractor shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to ensure that small businesses, minority businesses, women’s business enterprises, and labor surplus area firms⁶ are used when possible.

B. Affirmative steps shall include the following:

1. These business types are included on solicitation lists;
2. These business types are solicited whenever they are deemed eligible as potential sources;
3. When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum participation by these business types;⁷
4. Establishing delivery schedules, where the requirement permits, that encourage participation by these business types; and

⁶ If the Contract is funded by a Federal award issued to Sites Authority on or after October 1, 2024, these businesses types shall also include veteran-owned businesses.

⁷ If the Contract is funded by a Federal award issued to Sites Authority on or after October 1, 2024, the sentence shall be replaced with the following: “Dividing procurement transactions into separate procurements to permit maximum participation by these business types.”

5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- C. Mitigation Contractor shall submit evidence of compliance with the foregoing affirmative steps when requested by Sites Authority.

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EXHIBIT "B"
BUREAU OF RECLAMATION FUNDING REQUIREMENTS

COMPLIANCE WITH BUREAU OF RECLAMATION FUNDING REQUIREMENTS

Mitigation Contractor shall comply with applicable funding requirement from the Reclamation Financial Assistance Agreements including, but not limited to, the following:

1.1 Inspection.

- A. Reclamation has the right to inspect and evaluate the work performed or being performed under this Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of Mitigation Contractor, Mitigation Contractor shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

1.2 Debarment and Suspension (2 CFR 1400).

- A. The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Contract. By entering into this Contract, Contactor agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all subcontracts.

1.3 Drug Free Workplace (2 CFR 182 and 1401).

- A. The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this Contract. By entering into this Contract, Mitigation Contractor agrees to comply with 2 CFR 182.

1.4 Assurances and Certifications Incorporated by Reference.

- A. Mitigation Contractor shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. Mitigation Contractor shall comply with civil rights laws including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.
- B. Such assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the

Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

1.5 Covenant Against Contingent Fees.

A. Mitigation Contractor warrants that no person or agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by Mitigation Contractor for the purpose of securing agreements or business. For breach or violation of this warranty, Sites Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

1.6 Trafficking Victims Protection Act of 2000 (2 CFR 175.15).

A. You as Mitigation Contractor, your employees, subcontractors, and subcontractors' employees may not engage in severe forms of trafficking in persons during the period of time that the Contract is in effect; procure a commercial sex act during the period of time that the Contract is in effect; or use forced labor in the performance of the Contract under the Contract.

B. For purposes of this Article:

1. "Employee" means either:

- a. An individual employed by Mitigation Contractor who is engaged in the performance of the project; or
- b. Another person engaged in the performance of the project and not compensated by Mitigation Contractor including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

a. Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

b. Includes:

(i) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

(ii) A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102)

1.7 New Restrictions on Lobbying (43 CFR 18)

- A. Mitigation Contractor agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:
 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Mitigation Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or amendment of any Federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 3. Mitigation Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

1.8 Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government While Driving.

- A. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 1, 2009), Mitigation Contractor must adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

1.9 Recipient Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower rights.

- A. This Contract and employees working on this Contract will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee

whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).

- B. Mitigation Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.

1.10 Data Availability.

- A. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- B. Mitigation Contractor shall make the data produced under this Contract available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
 - 1. The scientific data relied upon;
 - 2. The analysis relied upon; and
 - 3. The methodology, including models, used to gather and analyze data.

1.11 Prohibition on Providing Funds to the Enemy.

- A. Mitigation Contractor must:
 - 1. Exercise due diligence to ensure that none of the funds, including supplies and services, received under this Contract are provided directly or indirectly (including through subcontracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through [2 CFR 180.300](#) prior to issuing a subaward or contract and;
 - 2. Terminate or void in whole or in part any subcontract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subcontract.
- B. Mitigation Contractor may include the substance of this clause, including paragraph (a) of this clause, in subcontracts that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.
- C. Sites Authority has the authority to terminate or void this Contract, in whole or in part, if Sites Authority becomes aware that Mitigation Contractor failed to exercise due diligence as required by paragraph (A) of this clause or if Sites Authority becomes

aware that any funds received under this Contract have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

1.12 Additional Access to Mitigation Contractor Records.

- A. In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of Mitigation Contractor and its subcontractors to the extent necessary to ensure that funds, including supplies and services, available under this Contract are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations. The substance of this clause is required to be included in subcontracts under this Contract that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

1.13 Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment.

- A. Mitigation Contractor is prohibited from using government funds to enter contracts (or extend or renew contracts) with entities that use covered telecommunications equipment or services as described in section 889 of the 2019 National Defense Authorization Act. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services.

1.14 Department of Interior Standard Award Terms and Conditions.

- A. The Department of the Interior (“DOI”) Standard Award Terms and Conditions found at: <https://www.doi.gov/sites/doi.gov/files/doi-award-terms-and-conditions-version-3-effective-june-1-2023.pdf> are hereby incorporated by reference as though set forth in full text. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on this Contract. Mitigation Contractor’s acceptance of this Contract carries with it the responsibility to be aware of and comply with all DOI terms and conditions applicable to this Contract. Mitigation Contractor is responsible for ensuring their Subcontractors are aware of and comply with applicable statutes, regulations, and agency requirements.

EXHIBIT "C"
DAVIS BACON PROVISIONS

1.15 Davis-Bacon Provisions.

Mitigation Contractor shall comply with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Copeland Anti-Kickback Act), which are incorporated into the Contract by this reference. This includes, but is not limited to, the following provisions:

A. Minimum wages.

1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Mitigation Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d)(i)(4) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in section (d)(iv). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (d)(i)(2) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Mitigation Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

- (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- b. If Mitigation Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - c. In the event Mitigation Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (d)(i)(2) (b) or (c) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 2. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Mitigation Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - 3. If Mitigation Contractor does not make payments to a trustee or other third person, Mitigation Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of Mitigation Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Mitigation Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. Withholding.

1. Sites Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Mitigation Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Mitigation Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, Sites Authority may, after written notice to Mitigation Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and basic records.

1. Payrolls and basic records relating thereto shall be maintained by Mitigation Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Mitigation Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
 - a. Mitigation Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Bureau of Reclamation if the agency is a party to the contract, but if the agency is not such a party, Mitigation Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Bureau of Reclamation. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying

number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Mitigation Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the Contract, but if the agency is not such a party, Mitigation Contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), Mitigation Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Mitigation Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- d. The falsification of any of the above certifications may subject Mitigation Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

2. The Mitigation Contractor or subcontractor shall make the records required under paragraph (c)(iii)(1) of this section available for inspection, copying, or transcription by authorized representatives of Sites Authority or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Mitigation Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to Mitigation Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and trainees.

1. Apprentices.

- a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Mitigation Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Mitigation Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Mitigation Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office,

withdraws approval of an apprenticeship program, Mitigation Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees.

- a. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Mitigation Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3. Equal employment opportunity.

- a. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- E. Compliance with Copeland Act requirements. The Mitigation Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
- F. Subcontracts. The Mitigation Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as Sites Authority may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

The Mitigation Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

- G. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- H. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- I. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between Mitigation Contractor (or any of its subcontractors) and Sites Authority, the U.S. Department of Labor, or the employees or their representatives.
- J. Certification of eligibility.
 - 1. By entering into this Contract, Mitigation Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in Mitigation Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - 2. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - 3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
 - a. Contract Work Hours and Safety Standards Act
 - (i) Overtime Requirements. No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (i) of this Section Mitigation Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such Sites Authority or to such territory), for liquidated damages. Such liquidated damages shall be

computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (i) of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (i) of this Section.

- (iii) Withholding for unpaid wages and liquidated damages. Sites Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Mitigation Contractor or subcontractor under any such contract or any other Federal contract with Mitigation Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Mitigation Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Mitigation Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (ii) of this section.
- (iv) Subcontracts. Mitigation Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (iv) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Mitigation Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (i) through (iv) of this Section.

EXHIBIT "D"
DAVIS BACON PROVISIONS

[INSERT APPLICABLE FEDERAL PREVAILING WAGE RATES FOR THE PROJECT, THE ENTIRE PACKAGE OF RATES MUST BE PHYSICALLY INSERTED PRIOR TO EXECUTION]

DRAFT

Attachment B

RFQ Forms

**Form A
Transmittal Letter**

TRANSMITTAL LETTER
(To be typed on Respondent's Letterhead)

[Date]

Sites Project Authority

Re: Statement of Qualifications for the Sites Reservoir Project Terrestrial
Compensatory Mitigation Contract (Compensatory Mitigation Contract)

_____ (the "Respondent") hereby submits its Statement of Qualifications ("SOQ") in response to the Request for Qualifications ("RFQ") for the Sites Reservoir Project Compensatory Mitigation Contract issued by the Sites Project Authority (the "Sites Authority") on February 13, 2026.

As a duly authorized representative of the Respondent, I hereby certify, represent and warrant as follows in connection with the SOQ:

1. The Respondent acknowledges receipt of the RFQ and the following addenda:

No.

Date

2. The submittal of the SOQ has been duly authorized by, and in all respects is binding upon, the Respondent. The Certificate of Authorization submitted as Attachment 1 to this Transmittal Letter evidences my authority to submit the SOQ and bind the Respondent.

3. The Respondent has completely reviewed and understands and agrees to be bound by the requirements of the RFQ.

4. The Respondent has read the rights and procurement conditions of the Sites Authority in Section 4.7 of the RFQ.

5. The firms that will be members of the Respondent's Project team, including all Key Subcontractors, include as follows (describe role for each member):

6. All information and statements contained in the SOQ are current, correct and complete, and are made with full knowledge that the Sites Authority will rely on such information and statements in short-listing the Respondents.

7. The SOQ has been prepared and is submitted without collusion, fraud or any other action taken in restraint of free and open competition for the services contemplated by the RFQ.

8. The Respondent will comply with any applicable state and federal equal opportunity and affirmative action requirements associated with the funding of this Project.

9. The Respondent is not currently suspended or debarred from doing business with any governmental entity.

10. No person or selling agency has been employed or retained to solicit the award of the Contract under an arrangement for a commission, percentage, brokerage or contingency fee or on any other success fee basis, except bona fide employees of the Respondent.

11. The Respondent's contact person who will serve as the interface between the Sites Authority and the Respondent is:

Name:
Title:
Address:
Phone:
Fax:
Email:

Name of Respondent

Name of Designated Signatory

Signature

Title

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

Subscribed and sworn to (or affirmed) before me on this ___ day of _____,
20___, by _____, proved to me on the basis of
satisfactory evidence to be the person(s) who appeared before me.

Signature: _____ (Seal)

ATTACHMENT 1 TO FORM A

CERTIFICATE OF AUTHORIZATION*

I, _____ a resident of _____ in the State of _____ DO
HEREBY CERTIFY that I am the Clerk/Secretary of _____ a
[corporation/limited liability company/partnership] duly organized and existing under and
by virtue of the laws of the State of _____; that I have custody of the
records of the [corporation/limited liability company/partnership]; and that as of the date
of this certification, _____ holds the title of _____ of the
[corporation/limited liability company/partnership], and is authorized to execute and
deliver in the name and on behalf of the [corporation/limited liability company/partnership]
the Statement of Qualifications submitted by the [corporation/limited liability
company/partnership] in response to the Request for Qualifications for the Sites Reservoir
Project Terrestrial Compensatory Mitigation Contract issued by the Sites Project Authority
on February 13, 2026 and all documents, letters, certificates and other instruments which
have been executed by such authorized person on behalf of the [corporation/limited
liability company/partnership] in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of
the corporation this _____ day of _____ 2026.

(Affix Seal Here)

Form B
Insurance Company
Letter of Intent Regarding Required Insurance
(To be typed on Insurance Company's Letterhead)*

Sites Project Authority
procurement@sitesproject.org
RFQ NO. 26-01

Re: Sites Reservoir Project Terrestrial Compensatory Mitigation Contract – Letter of Intent to Insure

Dear [____],

_____ (the “Respondent”) has submitted its Statement of Qualifications (the “SOQ”) in response to the Request for Qualifications (the “RFQ”) for the Sites Reservoir Project Terrestrial Compensatory Mitigation Contract issued by the Sites Project Authority (the “Sites Authority”) on February 13, 2026, as amended, pursuant to which the Respondent is seeking to be invited to submit a proposal to a subsequent Request for Proposal and be selected to enter into a Compensatory Mitigation Contract with the Sites Authority.

We have reviewed the Respondent’s SOQ and the RFQ. Based on this review, Respondent is able to secure the following types of insurance within the limits and deductibles indicated and consistent with the exceptions noted below.

We hereby certify that we intend to provide, consistent with these exceptions, all insurance as described in the RFQ in the event that the Respondent is selected for final negotiations and execution of the Compensatory Mitigation Contract by the Sites Authority.

Name of Insurance Company

Name of Designated Signatory

Signature

Title

*This letter of intent may be provided by an insurance company or an insurance broker. References to “Insurance Company” in this form shall be changed to “Insurance Broker” if provided by an insurance broker.

Form C

**Surety Letter of Intent Regarding
Performance and Payment Bonds**

(To be typed on Surety’s Letterhead)

Sites Project Authority
procurement@sitesproject.org
RFQ NO. 26-01

Re: Sites Reservoir Project Terrestrial Compensatory Mitigation Contract – Letter of Intent to Issue Security

Dear [____],

_____ (the “Respondent”) has submitted its Statement of Qualifications (the “SOQ”) in response to the Request for Qualifications (the “RFQ”) for the Sites Reservoir Project Terrestrial Compensatory Mitigation Contract (the “Contract”), issued by the Sites Project Authority (the “Sites Authority”) on February 13, 2026, as amended, pursuant to which the Respondent is seeking to be invited to submit a proposal to a subsequent Request for Proposal and be selected to enter into a Compensatory Mitigation Contract (the “Contract”) with the Sites Authority.

We have reviewed the Respondent’s SOQ and the RFQ. We hereby certify that, subject to our review of the terms of the final Compensatory Mitigation Contract, we intend to issue on behalf of the Respondent, as security for the performance of the Respondent’s obligations under the Compensatory Mitigation Contract, a Performance Bond and a Payment Bond for the benefit of the Sites Authority, in the event that the Respondent is selected for final negotiations and execution of the Contract. While we understand that the Guaranteed Maximum Price and the contract amount for each Task Order has not yet been determined, there will be Performance Bond and Payment Bonds that are issued with respect to each Task Order that will each be in an amount equal to the contract amount for each Task Order.

Our consideration regarding issuance of bonds following our review of the final Compensatory Mitigation Contract should Respondent be selected will be a matter solely between Respondent and ourselves, and we assume no liability to third parties or to you by issuance of this letter.

Name of Surety

Name of Designated Signatory

Signature

Title

FORM E
NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____ of _____, the party making the foregoing SOQ.

The SOQ is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The SOQ is genuine and not collusive or sham. The Respondent has not directly or indirectly induced or solicited any other respondent to put in a false or sham SOQ. The Respondent has not directly or indirectly colluded, conspired, connived, or agreed with any respondent or anyone else to put in a sham SOQ, or to refrain from responding. The Respondent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Respondent or any other respondent, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other respondent. All statements contained in the SOQ are true. The Respondent has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham SOQ and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Respondent: _____

Print Name: _____

Signature: _____

Title: _____

FORM F
EXECUTIVE ORDER N-6-22 CERTIFICATION

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with Sites Authority funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with Sites Authority funded by State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The Respondent hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the Respondent is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Respondent. This certification is made under the laws of the State of California.

Respondent: _____

Print Name: _____

Signature: _____

Title: _____

FORM G
ANTI-LOBBYING CERTIFICATION

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Respondent: _____

Print Name: _____

Signature: _____

Title: _____

FORM H
DEBARMENT AND SUSPENSION CERTIFICATION

Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532

Respondent certifies that it and its principals, and shall obtain certifications from its subcontractors that they and their principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- (b) Have not within a three (3) year period preceding this procurement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
- (e) Suspension and debarment information can be accessed at <http://www.sam.gov>. Respondent represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this contract.
- (f) Respondent acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of any contract entered into pursuant to this procurement, or pursuance of legal remedies, including suspension and debarment.

Respondent: _____

Print Name: _____

Signature: _____

Title: _____

FORM I
SKILLED AND TRAINED WORKFORCE CERTIFICATION

The undersigned does hereby certify to the Sites Project Authority (“Sites Authority”) as follows: Public Contract Code section 20928 *et seq.* provide that a contracting entity (“Respondent”) shall not be short-listed for the Sites Reservoir Project Terrestrial Compensatory Mitigation Contract (“Compensatory Mitigation Contract”) project unless Respondent provides an enforceable commitment to Sites Authority that the Respondent and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the Compensatory Mitigation Contract that falls within an apprenticeable occupation in the building and construction trades.

A “skilled and trained workforce” means a workforce that meets all of the following conditions:

1. All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.
2. At least 60 percent of the skilled journeypersons employed to perform work on the Compensatory Mitigation Contract by Respondent and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards (“Chief”) pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.
3. For an apprenticeable occupation in which no apprenticeship program had been approved by the Chief prior to January 1, 1995, up to one-half of the graduation percentage requirements of Section 2 above may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief’s approval of an apprenticeship program for that occupation in the county in which the Compensatory Mitigation Contract project is located.

Respondent has reviewed the skilled and trained workforce requirements under Public Contract Code section 20928 *et seq.* (as it may be amended from time to time), including the foregoing requirements, and shall comply with the skilled and trained workforce requirements.

The skilled and trained workforce requirement shall not apply if Respondent enters into a project labor agreement that will bind itself and all its subcontractors who perform construction work on the Compensatory Mitigation Contract. The Sites Authority has adopted a Construction Workforce Policy that establishes an overall framework for the project labor agreement, if applicable, as well as local workforce utilization goals.

Any person executing this certification on behalf of a Respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this certification on behalf of the Respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this certification is executed on _____ [date], at _____ [city], _____ [state].

Name of Respondent _____

Signature _____

Name _____

Title _____

Form J
Suggested Material Comments to the Preliminary Draft Compensatory Mitigation Contract

	Describe the proposed Preliminary Draft Compensatory Mitigation Contract modification, citing the section or subsection.	Describe the rationale for the proposed change:
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

1. Respondent may add as many rows to this form as necessary to describe proposed comments and changes.
2. Respondent shall include the completed Form J in Appendix F of in its SOQ (if submitting).