



Meeting: **Reservoir Committee & Authority Board's
Benefits & Obligations Contract Workshop**

May 08, 2026

Subject: **Issue Paper #3 – Additional Terms for Acquirer and SWP Participants**

Staff Recommendation:

Incorporate the most recent Benefits & Obligations (B&O) Contract revisions to effectuate and clarify the roles and responsibilities between the Authority, the California Department of Water Resources (DWR) and the State Water Contractor (SWC). Sites Participants electing to contract with DWR to acquire their Sites Water (referred to herein as SWP Participants), while ensuring that SWC Sites Participants not electing to contract with DWR are not subject to those modified provisions. The proposed revisions need to be considered in the context of all the B&O Contract terms, so incorporating the proposed changes would be subject to legal counsel finding the changes to be consistent with the Final B&O Contract as a whole.

Background:

The 2021 adopted Guiding Principles established that each Participant is responsible for using their individual authorities to ensure reliable cash flow to timely pay Project Costs. Through the course of B&O Contract development, a subset of Participants identified that they wish to contract with DWR to acquire Sites Water on their behalf. By statute, DWR has the authority to acquire water supplies for state water contractors. Serving in this capacity requires DWR to be a signatory to the B&O Contract along with the SWP Participants. Since August 2024, DWR as the Acquirer has been reflected in the B&O Contract. Recently, SWP Participants and DWR identified further B&O Contract revisions proposed to be incorporated into the B&O Contract to effectuate successful implementation of this approach. These revisions are intended to refine the contractual structure necessary to implement DWR's Role as Acquirer, rather than introduce a new participation framework.

Summary of Related Participant Comments:

Staff have been engaged with the SWP Participants and DWR as they have been working through their process of developing these materials. DWR, as the Acquirer, has been contemplated and included in several versions of the B&O Contract, so this is not a new issue. The finalized approach that has been proposed in the B&O Contract revisions and new Appendix X defines the division

of rights and responsibilities between DWR and the SWP Participants and the manner in which those responsibilities are administered under the B&O Contract.

Rationale for Staff Recommendation:

Staff's assessment is that incorporating these additional revisions into the B&O Contract as proposed does not modify the core rights of other Participants or State and Federal uses. The proposed changes clarify the administrative structure through which SWP Participant participation is implemented. The proposed changes are specific to the relationship of DWR and the SWP Participants. DWR will remain ex-officio in terms of the Authority's legislative body while SWP Participants remain on the Reservoir Management Board as voting members.

Staff view the following aspects of the proposed construct as materially different when compared to the Participants not contracting with DWR, however these differences do not materially or directly negatively affect the other Storage Partners, and they are necessary for the SWP Participants to achieve the desired arrangement with DWR:

1. Altered Dynamics for Capacity Transactions (Section 6.1) – SWP Participants are given a first tier right of first refusal for leases and sales and default among themselves before other Participants can exercise similar rights under the B&O Contract, consistent with the Appendix X structure. This serves to pool the SWP Participants under DWR which is similar to how Zone 3 is expected to operate in this regard.
2. DWR involvement in managing SWP Participant Capacity use (Section 7) – Each SWP Participant must coordinate with DWR and the Authority to establish annual operations and use for their share of capacity. Engaging with DWR in this way should ease timing and scheduling with DWR for the broader Storage Partner releases that need DWR coordination.
3. Default reallocation effects (Section 12.3) – Defaulted capacity to get allocated to SWP Participant shares, should they occur, would instead get added to the DWR pooled capacity and DWR would then allocate such capacity among SWP Participants in the manner they all agree to, or by default, in accordance with the terms of the B&O. This would not alter the allocation of defaulted capacity among the non-SWP Participants.
4. DWR has discretion to unilaterally terminate its role as the Acquirer (Section 14.1)-DWR can terminate its Acquirer role if it determines participation in the B&O Contract causes material adverse impacts to the SWP or SWP Contractors that are not SWP Participants. Should DWR

terminate, the SWP Participants would transition to direct Participants under the B&O Contract and assume their proportionate rights and obligations.

5. Amendments to the Appendix X (Section 16) – As proposed, the Appendix X would establish a unique amendment process that would exclude non SWP Participants from direct decision making on any future amendments to Appendix X. However, DWR has subsequently notified the Authority they wish to have further internal discussions and is proposing that final language on this point be part of the final legal review.

Overall, the proposed revisions do not alter the fundamental allocation of costs, benefits, or governance established in the B&O Contract, but serve to clarify the structure necessary to implement SWP participation through DWR.

Contract and Sections Affected:

Various revisions throughout the B&O Contract are necessary to reflect assignment of rights and responsibilities among DWR and the SWP Participants. The proposed edits include ministerial refinements as well as targeted substantive clarifications. SWP Participants remain B&O signatories, but their rights and obligations are applied through Appendix X, which modifies certain provisions and channels certain performance through DWR.

Addition of Appendix X – Additional Terms for the Acquirer and SWP Participants.

Attachments:

Attachment A: Proposed Appendix X – Additional Terms For the Acquirer and SWP Participants

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APPENDIX X

TO THE SITES RESERVOIR BENEFITS & OBLIGATIONS CONTRACT

ADDITIONAL TERMS FOR THE ACQUIRER AND SWP PARTICIPANTS

1. Purpose of Appendix

- 1.1 Certain Participants are State Water Project contractors (“SWP Contractors”) that are parties to State Water Project Water Supply Contracts with DWR (referred to herein plurally as “Water Supply Contracts” or singularly as “Water Supply Contract”). DWR determined that it would (i) acquire certain capacity rights in the Sites Reservoir Project, including the associated water supply, from the Sites Authority, as such acquisition is required and necessary for the purposes of the State Water Resources Development System, and (ii) offer shares in its acquired Capacity Interest and Share and associated water supply to interested SWP Contractors to meet their local needs and supplement their existing State Water Project supply. SWP Contractors obtaining shares of DWR’s Capacity Interest and Share from DWR are referred to herein as “SWP Participants”.
- 1.2 DWR and the SWP Participants have executed amendments to their respective Water Supply Contracts that address the rights and responsibilities of DWR and the SWP Participants related to DWR’s acquisition from the Sites Authority of capacity rights in the Sites Reservoir Project and associated water supply and deliveries of such acquired water supply to the SWP Participants, and requiring the SWP Participants to pay all DWR costs associated with such acquisition and delivery pursuant to the terms of their respective Water Supply Contracts.
- 1.3 This Appendix sets forth the terms and conditions for DWR’s role in the Contract as the Acquirer to meet the needs of the SWP Participants and establishes certain special provisions applicable to the SWP Participants’ rights, obligations, and liabilities under the Contract. The SWP Participants are a subset of signatories to the Contract, including specifically this Appendix X, because SWP Participants have elected to participate in the Sites Reservoir Project by obtaining shares of DWR’s Capacity Interest and Share and receiving the associated water supply from DWR pursuant to the terms of their Water Supply Contracts. Upon occurrence of certain conditions set forth in paragraphs 13 and 14 of this Appendix, the SWP Participants may become subject to the uniform contractual provisions applicable to all Participants under the Contract, at the same percentage of total Sites Reservoir Project available capacity committed to herein as a shareholder in DWR’s acquired Capacity Interest and Share, as may be modified over time consistent with this Contract and the SWP Participants’ Water Supply Contracts.
- 1.4 Notwithstanding anything to the contrary in any other provisions of the Contract, this Appendix X shall apply to DWR as the Acquirer and each SWP

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Participant's rights, obligations and liabilities under the Contract, and to the corresponding rights, obligations and liabilities of the Sites Authority. If there is a conflict between the provisions of this Appendix X and any other provision of the Contract, this Appendix X shall prevail.

- 1.5 Unless defined differently herein, all acronyms, abbreviations and terms used in this Appendix X have the meanings given in the Contract.

2. Election to Become a SWP Participant

- 2.1 By signing below, (i) each SWP Participant elects to have DWR, as the Acquirer, acquire certain capacity rights and associated water supply, as set forth in the Project Specific Information, from the Sites Reservoir Project to meet the needs of that SWP Participant pursuant to that SWP Participant's Water Supply Contract and as set forth in Section 1.3.1 of the Contract and this Appendix X, (ii) DWR agrees to fulfill the role of the Acquirer under the Contract to meet the needs of each SWP Participant, and (iii) the Sites Authority acknowledges and agrees with the special provisions applicable to the Acquirer and SWP Participants pursuant to this Appendix, and further agrees to comply with the State's general terms and conditions set forth in paragraph 18 of this Appendix.

- 2.2 A SWP Participant shall have the right to withdraw its election to be a SWP Participant by submitting a written notice to the Acquirer and the Sites Authority, specifying the effective date of such withdrawal. Such withdrawal shall be subject to the provisions in paragraph 13 of this Appendix.

- 2.3 After the Effective Date of the Contract, any other Participant that is a SWP Contractor holding a Water Supply Contract with DWR may elect to become a SWP Participant by signing this Appendix, subject to the Acquirer's and the Sites Authority's written approval, and after the execution of a Water Supply Contract amendment substantially similar to the Water Supply Contract amendments described in paragraph 1.2 of this Appendix.

3. Term

This Appendix X shall take effect upon the Effective Date of the Contract and shall remain in effect for as long as at least one SWP Participant retains contractual rights to a share of the Acquirer's Capacity Interest and Share and associated water supply pursuant to this Appendix.

4. Applicability of Contract Provisions to SWP Participants

All Contract provisions applicable to a Participant or Participants shall apply to a SWP Participant, unless specifically provided otherwise in this Appendix or unless inconsistent with the provisions in this Appendix.

5. Acquirer's Capacity Interest and Share

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- 5.1 Notwithstanding anything to the contrary in Section 3.5 or any other provision of the Contract, the Sites Authority hereby grants to the Acquirer, and the Acquirer shall hold, in Acquirer's name, a Base Facilities Capacity Interest (referred to herein as "Acquirer's Base Facilities Capacity Interest"), for the benefit of the SWP Participants, as described in the Project Specific Information and otherwise in accordance with this Appendix. The Acquirer hereby designates shares of the Acquirer's Base Facilities Capacity Interest and associated Storage Allocation for the benefit of each SWP Participant in the amounts described in the Project Specific Information.
 - 5.2 Notwithstanding anything to the contrary in Section 3.6 or any other provision of the Contract, the Sites Authority hereby grants to the Acquirer, and the Acquirer shall hold, in Acquirer's name, a Downstream Facilities Capacity Share (referred to herein as "Acquirer's Downstream Facilities Capacity Share"), for the benefit of those SWP Participants that desire to participate in funding and use of Downstream Facilities, as described in the Project Specific Information and otherwise in accordance with this Appendix. The Acquirer hereby designates shares of the Acquirer's Downstream Facilities Capacity Share for the benefit of each SWP Participant in the amounts described in the Project Specific Information.
 - 5.3 As applicable to each SWP Participant, any reference in the Contract, including any Appendices, to (i) a Participant's or Storage Partner's Base Facilities Capacity Interest shall mean that SWP Participant's share of the Acquirer's Base Facilities Capacity Interest, (ii) a Participant's or Storage Partner's Storage Allocation shall mean the Storage Allocation associated with that SWP Participant's share of the Acquirer's Base Facilities Capacity Interest, (iii) a Participant's or Storage Partner's Downstream Facilities Capacity Share shall mean that SWP Participant's share of the Acquirer's Downstream Facilities Capacity Share, (iv) a Participant's or Storage Partner's Capacity Interest and Share shall mean that SWP Participant's share of the Acquirer's Capacity Interest and Share, and (v) a Participant's Sites Water shall mean that SWP Participant's share of the Acquirer's Sites Water.
6. Leasing, Sale or Purchase of Capacity Interest and Share
- 6.1 A SWP Participant, in coordination with the Acquirer, may negotiate a lease or sale of that SWP Participant's share of the Acquirer's Base Facilities Capacity Interest and/or Downstream Facilities Capacity Share to another Storage Partner or non-Storage Partner pursuant to Section 8 of the Contract; provided that where a SWP Participant proposes to lease or sell such Capacity Interest and Share to another entity that is not a SWP Participant, the other SWP Participants shall have a "right of first refusal" with respect to the lease or sale of such Capacity Interest and Share on the terms provided in the Lease Offer Notice or Sale Offer Notice, as applicable, before other Participants may exercise their "right of first refusal" pursuant to Section 8 of the Contract. In the event that more than one SWP Participants wish to exercise their "right of first refusal" pursuant to this paragraph, the Capacity Interest and Share offered for lease or sale shall be apportioned pro rata based on these SWP Participants'

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shares of the Acquirer's Base Facilities Capacity Interest or Downstream Facilities Capacity Share, as applicable, unless these SWP Participants agree otherwise.

- 6.2 A SWP Participant, in coordination with the Acquirer, may negotiate a lease or purchase of another Participant's Base Facilities Capacity Interest and/or Downstream Facilities Capacity Share, pursuant to Section 8 of the Contract. Upon written request from such SWP Participant to DWR and the Sites Authority, such leased or purchased Capacity Interest and Share shall be added to the Acquirer's Base Facilities Capacity Interest and Downstream Facilities Capacity Share, as applicable, and shall be held by the Acquirer pursuant to the terms of this Appendix for the benefit of the leasing or purchasing SWP Participant.
 - 6.3 Any leasing, sale or purchase of a Capacity Interest and Share, or portions thereof, by a SWP Participant shall be coordinated with the Acquirer and shall be subject to the Acquirer's approval pursuant to the terms and conditions of the SWP Participants' respective Water Supply Contracts. A SWP Participant shall be responsible for coordination with the Acquirer, obtaining any necessary approvals from the Acquirer, and otherwise ensuring compliance with that SWP Participant's Water Supply Contract before entering into any sale, lease or purchase of a Capacity Interest and Share pursuant to the Contract. A SWP Participant shall be responsible for providing required notices of the final lease or sale to the Sites Authority pursuant to Section 8 of the Contract, and the Sites Authority shall update the Project Specific Information accordingly upon receipt of such notice.
 - 6.4 A SWP Participant leasing its share of the Acquirer's Base Facilities Capacity Interest and/or Downstream Facilities Capacity Share, or a portion thereof, to another entity shall remain liable and responsible for all obligations to the Acquirer associated with such Capacity Interest and Share under the Contract and under that SWP Participant's Water Supply Contract and shall not be relieved of any such obligations as a result of such lease. A SWP Participant selling its share of the Acquirer's Base Facilities Capacity Interest and/or Downstream Facilities Capacity Share, or a portion thereof, shall remain liable and responsible for all obligations to the Acquirer associated with such Capacity and Share under the Contract and under that SWP Participant's Water Supply Contract and shall not be relieved of any such obligations as a result of such sale until such time as the purchaser of such Capacity Interest and Share assumes any and all payment responsibilities and other obligations associated with such purchased Capacity Interest and Share, as required by the Contract.
7. Allocation, Storage and Release of Water
- 7.1 Notwithstanding anything to the contrary in Section 4.4 or any other provision of the Contract, when the Sites Authority allocates Sites Water in Sites Reservoir to Storage Partners pursuant to Section 4.4 of the Contract, the Sites Authority shall allocate to the Acquirer the Sites Water based on the Acquirer's

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Base Facilities Capacity Interest up to the associated Storage Allocation. The Acquirer shall distribute its allocated Sites Water to the SWP Participants based on each SWP Participant's share of the Acquirer's Base Facilities Capacity Interest and in accordance with each SWP Participant's Water Supply Contract.

- 7.2 A SWP Participant may use its share of the Acquirer's Capacity Interest for the storage of its share of the Acquirer's allocated Sites Water or for storage of its Other Water pursuant to the terms of the Contract.
- 7.3 Each SWP Participant shall be responsible for scheduling releases of its share of the Acquirer's Sites Water or Other Water from the Sites Reservoir pursuant to the Contract, in coordination with the Acquirer. The Sites Authority shall maintain accurate records of the amount of Water released on behalf of each SWP Participant. Conveyance of released Sites Water or Other Water to the SWP Participants beyond the Delivery Points shall be governed by the SWP Participants' respective Water Supply Contracts and/or other agreements with the Acquirer.

8. Sites Water Sales and Exchanges

A SWP Participant, in coordination with the Acquirer, may sell or Exchange its share of the Acquirer's Sites Water to other Storage Partners or other entities pursuant to Section 8.3 of the Contract. Any such sales or exchanges of Sites Water by a SWP Participant shall be coordinated with the Acquirer and shall be subject to the Acquirer's approval pursuant to the terms and conditions of the SWP Participants' respective Water Supply Contracts. A SWP Participant shall be responsible for coordination with the Acquirer, obtaining any necessary approvals from the Acquirer, and otherwise ensuring compliance with its Water Supply Contract before entering into any sale or Exchange of Sites Water pursuant to the Contract.

9. Payment of Project Costs

- 9.1 The Acquirer agrees to pay to the Sites Authority the Project Costs under the Contract on behalf of each SWP Participant, provided that the Acquirer's financial obligations under the Contract shall be limited to and payable solely from the funding the Acquirer receives from the SWP Participants in payment of that portion of their State Water Project annual charges traceable to this Contract, as determined by DWR. Nothing in the Contract shall be interpreted as requiring the Acquirer to spend any money from any other sources in the performance of its obligations under this Contract.
- 9.2 As applicable to each SWP Participant, where Section 6 or any other provision of the Contract requires a Participant to make a payment of Project Costs to the Sites Authority or describes a Participant's funding obligation under the Contract, the Acquirer shall be responsible for making the payment or providing the funding to the Sites Authority associated with each SWP Participant's share of the Acquirer's Capacity Interest and Share. The full extent of the Acquirer's financial obligations under the Contract shall be to make such payments to the

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Sites Authority from the funds received from each SWP Participant pursuant to the terms of each SWP Participant's Water Supply Contract and traceable to this Contract, including this Appendix X.

- 9.3 As applicable to each SWP Participant, where Section 6 or any other provision of the Contract requires the Sites Authority to make payments or disburse proceeds to a Participant, the Sites Authority shall make such payments or disburse proceeds to the Acquirer to be credited or otherwise accounted for by the Acquirer pursuant to that SWP Participant's Water Supply Contract.
 - 9.4 When the Sites Authority provides an estimated statement of anticipated Project Costs to the Acquirer pursuant to Section 6.2 of the Contract, such statement shall identify anticipated Project Costs associated with each SWP Participant's share of the Acquirer's Capacity Interest and Share. When the Sites Authority provides a Billing Statement to the Acquirer pursuant to Section 6.3 of the Contract, such Billing Statement shall identify the relevant Project Costs associated with each SWP Participant's share of the Acquirer's Capacity Interest and Share.
10. Communications and Sharing of Information
- 10.1 As applicable to the SWP Participants, where the Contract requires or allows the Sites Authority to provide a Participant with any notices, demands, reports, plans, requests, schedules, updates, forms, documents, or other communications, the Sites Authority shall provide to the Acquirer a copy of any such communication related to that SWP Participant at or around the same time as that communication is provided to the SWP Participant.
 - 10.2 As applicable to the SWP Participants, where the Contract requires or allows a Participant to provide the Sites Authority with any notices, demands, reports, plans, requests, schedules, updates, forms, documents, or other communications, that SWP Participant shall provide to the Acquirer a copy of any such communication at or around the same time as that communication is provided to the Sites Authority.
 - 10.3 As applicable to the SWP Participants, where the Contract provides a Participant with rights to access or inspect the Sites Owned Facilities or any records kept by the Sites Authority, the Acquirer shall have the same access and inspection rights.
11. Sites Reservoir Project Governance
- 11.1 The SWP Participants shall have a right to participate in the Reservoir Management Board or other Sites Reservoir Project governance to the same extent as other Participants in accordance with the Contract, the JPA Agreement and the Sites Authority Bylaws. The SWP Participants' rights to participate in the Sites Reservoir Project governance shall be based on each SWP Participant's share of the Acquirer's Base Facilities Capacity Interest.

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- 11.2 The Acquirer shall not be a member of the Reservoir Management Board. Nothing in this Appendix shall affect DWR's statutory authority as an ex-officio member of the Sites Authority under California Water Code Section 79759.

12. Delinquency and Default

12.1 If a SWP Participant fails to make a timely payment for Project Costs to the Acquirer pursuant to the terms of that SWP Participant's Water Supply Contract, the Acquirer may offer to the other SWP Participants an opportunity to assume all or a portion of such delinquent SWP Participant's share of the Acquirer's Capacity Interest and Share and related obligations under the Contract, including this Appendix X, at a price and on the terms mutually agreed between the delinquent SWP Participant and the other SWP Participant(s) willing to assume all or a portion of the delinquent SWP Participant's share of the Acquirer's Capacity Interest and Share, and subject to Section 8.2 of the Contract.

12.2 If the Acquirer fails to make a payment to the Sites Authority when due, as described in Section 10.1.1 of the Contract, and such failure was caused by a failure of a SWP Participant to make a required payment to the Acquirer pursuant to the terms of that SWP Participant's Water Supply Contract, such failure of the Acquirer to make a payment shall not be a liability or Default of the Acquirer, but shall constitute the applicable SWP Participant's Default under Section 10.1.1 of the Contract that may only be cured by a direct payment from such SWP Participant to the Sites Authority. If the Acquirer fails to make a payment to the Sites Authority when due, as described in Section 10.1.1 of the Contract, and such failure was not caused by any action or omission by the SWP Participant, then Acquirer shall take all steps necessary to make the payment at no cost or detriment to the SWP Participant.

12.3 In the event that the Sites Authority apportions a Defaulted Interest of any Participant to the remaining non-defaulting Participants pursuant to Section 10.3.6 of the Contract, a portion of such Defaulted Interest associated with each SWP Participant's share of the Acquirer's Base Facilities Capacity Interest and Downstream Facilities Capacity Share shall be added to the Acquirer's Capacity Interest and Share held by the Acquirer pursuant to the terms of this Appendix for the benefit of the affected SWP Participant.

13. Cessation of Appendix's Applicability to a SWP Participant

13.1 Upon occurrence of any of the following events and subject to the process below, this Appendix shall no longer apply to the affected SWP Participant:

- a) A SWP Participant's Water Supply Contract terminates for any reason.
- b) A SWP Participant submits a written notice to the Acquirer and the Sites Authority pursuant to paragraph 2.2 of this Appendix withdrawing its election to be a SWP Participant.

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- c) A SWP Participant fails to provide sufficient funds to the Acquirer to make payments to the Sites Authority for Project Costs under Section 6 of the Contract, which failure results in a Default under Section 10.1.1 of the Contract.
 - 13.2 Upon occurrence of an event in paragraph 13.1 of this Appendix X, (i) this Appendix shall no longer apply to the affected SWP Participant, (ii) such affected SWP Participant shall become subject to all provisions of the Contract applicable to Participants that are not SWP Participants, and (iii) any interests, rights or obligations held by the Acquirer for the benefit of the affected SWP Participant pursuant to the Contract, including this Appendix, shall transfer to the affected SWP Participant. The Acquirer shall provide a written notice to the Sites Authority and the SWP Participants specifying the grounds for and effective date of cessation of this Appendix's applicability to the affected SWP Participant, and the Sites Authority shall update the Project Specific Information and any other relevant records accordingly.
 - 13.3 If a SWP Participant sells its entire share of the Acquirer's Capacity Interest and Share to another entity, this Appendix X shall no longer apply to the selling SWP Participant. If the purchasing entity is a SWP Participant, the selling SWP Participant's share of the Acquirer's Capacity Interest can be included in the Acquirer's Capacity Interest and Share upon request of such purchasing SWP Participant, as described in paragraph 6.2 of this Appendix. If the purchasing entity is not a SWP Participant, the Acquirer's Capacity Interest and Share shall be reduced accordingly and the Acquirer shall no longer be responsible for any obligations associated with such sold share.
14. Termination of the Acquirer's Participation in the Contract
- 14.1 The Acquirer shall have the right to terminate its participation in the Contract if the Acquirer reasonably determines that its participation in the Contract causes material adverse impacts to the State Water Project or the State Water Project contractors that are not SWP Participants. Before terminating its participation in the Contract, the Acquirer shall meet with the SWP Participants and the Sites Authority and attempt in good faith to develop measures that would avoid or mitigate the material adverse impacts to the State Water Project or the State Water Project contractors that are not SWP Participants. If there are no reasonable measures that can avoid or mitigate such material adverse impacts, as determined by the Acquirer, the Acquirer shall have the right to fully terminate its participation in the Contract.
 - 14.2 Upon termination of the Acquirer's participation in the Contract, (i) this Appendix X shall terminate, (ii) the SWP Participants shall become subject to all provisions of the Contract applicable to Participants that are not SWP Participants, and (iii) any interests, rights or obligations held by the Acquirer for the benefit of the SWP Participants pursuant to the Contract, including this Appendix, shall transfer to these SWP Participants as Participants. The Acquirer shall provide a written notice to the Sites Authority and the SWP Participants specifying the grounds for and effective date of the termination of

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the Acquirer's participation in the Contract, and the Sites Authority shall update the Project Specific Information and any other relevant records accordingly.

15. Liability and Indemnification

Each SWP Participant agrees to defend and hold DWR, and its officers, employees, and agents harmless from any direct or indirect loss, liability, lawsuit, cause of action, judgment or claim, and shall indemnify DWR, and its officers, employees, and agents from all lawsuits, costs, damages, judgments, attorneys' fees, and liabilities that DWR, its officers, employees, and agents incur as a result of DWR's participation in the Contract as the Acquirer, except to the extent resulting from the sole negligence or willful misconduct of DWR. The SWP Participants' liability pursuant to this paragraph shall be joint and several unless the liability arises out of an individual SWP Participant's own action or omission, in which case that SWP Participant will be solely liable.

16. Amendments of Appendix

This Appendix can be amended or modified by a written agreement of the Sites Authority, the Acquirer, and at least two thirds of the SWP Participants. This Appendix may be amended or modified without the need to amend the Contract. Upon an amendment of this Appendix, the Sites Authority shall provide a copy of the amended Appendix to all Participants.

17. Dispute Resolution

Any disputes between the Acquirer and the SWP Participant(s) arising in connection with the Contract or this Appendix, and not involving the Sites Authority or other Participants, shall not be subject to the Dispute Resolution Process under the Contract, but shall be governed by the SWP Participants' respective Water Supply Contracts.

18. State General Terms and Conditions

The Sites Authority will comply with the State of California Standard Clauses set forth below.

18.1 ASSIGNMENT: This Contract is not assignable by the Sites Authority, either in whole or in part, without the consent of DWR in the form of a formal written amendment.

18.2 AUDIT: The Sites Authority agrees that DWR, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract. The Sites Authority agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Sites Authority agrees to allow the auditor(s) access to such records during normal business hours and to allow

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interviews of any employees who might reasonably have information related to such records.

- 18.3 **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, the Sites Authority and its subcontractors shall not deny the Contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Sites Authority shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The Sites Authority and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5). The Sites Authority shall permit access by representatives of the Department of Fair Employment and Housing and DWR upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or DWR shall require to ascertain compliance with this clause. The Sites Authority and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.) The Sites Authority shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 18.4 **CHILD SUPPORT COMPLIANCE ACT:** The Sites Authority acknowledges in accordance with Public Contract Code 7110, that:
- (a) The Sites Authority recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - (b) The Sites Authority, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 18.5 **DRUG-FREE WORKPLACE REQUIREMENTS:**

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The Sites Authority will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- (b) Establish a Drug-Free Awareness Program to inform employees about:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs;
 - and, (iv) penalties that may be imposed upon employees for drug abuse violations.
- (c) Every employee who works on the Contract will:
 - (i) receive a copy of the drug-free workplace policy statement;
 - and (ii) agree to abide by the terms of the statement as a condition of employment on the Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both and the Sites Authority may be ineligible for award of any future State agreements if DWR determines that any of the following has occurred: the Sites Authority has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

18.6 CONFLICT OF INTEREST:

The Sites Authority needs to be aware of the following provisions regarding current or former state employees. If the Sites Authority has any questions on the status of any person rendering services or involved with the Contract, DWR must be contacted immediately for clarification.

(a) Current State Employees (Pub. Contract Code §10410):

- 1. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

(b) Former State Employees (Pub. Contract Code §10411):

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1. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
2. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If the Sites Authority violates any provisions of this Section 18.6, such action by the Sites Authority shall render this Contract void. (Pub. Contract Code §10420.) Members of boards and commissions are exempt from this Section 18.6 if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

- 18.7 LABOR CODE/WORKERS' COMPENSATION: The Sites Authority needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and the Sites Authority affirms to comply with such provisions before commencing the performance of the work of this Contract. (Labor Code Section 3700)
- 18.8 AMERICANS WITH DISABILITIES ACT: The Sites Authority assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
- 18.9 AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Sites Authority shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
- 18.10 GENERATIVE AI DISCLOSURE OBLIGATIONS:
- (a) The following terms are in addition to the defined terms and shall apply to the Contract:
- “Generative AI (GenAI)” means an artificial intelligence system that can generate derived synthetic content, including text, images, video, and

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audio that emulates the structure and characteristics of the system's training data. (Gov. Code § 11549.64.)

- (b) The Sites Authority shall immediately notify DWR in writing if it: (1) intends to provide GenAI as a deliverable under the Contract; or (2) intends to utilize GenAI, including GenAI from third parties, to complete all or a portion of any deliverable that materially impacts: (i) functionality of a State system, (ii) risk to the State, or (iii) Contract performance. For avoidance of doubt, the term “materially impacts” shall have the meaning set forth in State Administrative Manual (SAM) § 4986.2 Definitions for GenAI.
- (c) Notification shall be provided to the DWR designee identified in this Contract.
- (d) At the direction of DWR, the Sites Authority shall discontinue the provision to DWR of any previously unreported GenAI that results in a material impact to the functionality of a State system, risk to the State, or Contract performance, as determined by DWR.
- (e) If the use of previously undisclosed GenAI is approved by DWR, then the Sites Authority will update the deliverable description, and the Parties will amend this paragraph 18.10 accordingly, which may include incorporating the GenAI special provisions, at no additional cost to the State.
- (f) DWR, at its sole discretion, may consider the Sites Authority’s failure to disclose or discontinue the provision or use of GenAI as described above, to constitute a material breach of Contract when such failure results in a material impact to the functionality of the State system, risk to the State, or Contract performance. DWR is entitled to seek any and all remedies available to it under law as a result of such breach, including but not limited to termination of the Contract.



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SITES PROJECT AUTHORITY

By: _____
Name:
Title:
Date:

STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Name:
Title:
Date:

[INSERT SWP PARTICIPANT]

By: _____
Name:
Title:
Date:

[INSERT SWP PARTICIPANT]

By: _____
Name:
Title:
Date:

[INSERT SWP PARTICIPANT]

By: _____
Name:
Title:
Date:



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[INSERT SWP PARTICIPANT]

By: _____
Name:
Title:
Date:

[INSERT SWP PARTICIPANT]

By: _____
Name:
Title:
Date:

[INSERT SWP PARTICIPANT]

By: _____
Name:
Title:
Date: