

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
California

[Note: This draft addresses high level drafting proposed by Sites JPA to address issues associated with initial public negotiations between the Parties. Sites JPA is continuing to review the draft provided including for (1) consistency with the B&O Contract and other Project documents (2) Authorized Deferred Use; (3)How/when to address uncertainties of federal funding shortfalls.

PARTNERSHIP AGREEMENT  
BETWEEN THE UNITED STATES  
AND THE SITES PROJECT AUTHORITY  
PROVIDING FOR  
FEDERAL PARTICIPATION IN  
THE SITES PROJECT

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1           THIS AGREEMENT, effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“Effective  
2   Date”) in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory  
3   thereof or supplementary thereto, including but not limited to, the Act of August 4, 1939 (53  
4   Stat. 1187; 43 U.S.C. Part 485), Sections 4007(c), 4007(e), 4007(f), and 4007(g) of the Water  
5   Infrastructure Improvements for the Nation Act (“WIIN Act”) of December 16, 2016 (Public  
6   Law 114-322, 130 Stat. 1865) between THE UNITED STATES OF AMERICA acting by and  
7   through the Bureau of Reclamation, hereinafter referred to as the “Contracting Officer” or  
8   “Reclamation”, and the SITES PROJECT AUTHORITY, hereinafter referred to as the  
9   “Authority” or the “Sites Authority”, duly organized, existing, and acting pursuant to the laws of  
10   California. The United States and the Authority are referred to collectively as the “Parties,” and  
11   individually as a “Party.”

12           WITNESSETH, that:

**EXPLANATORY RECITALS**

[1<sup>st</sup>] WHEREAS, § 4007(g) of the WIIN Act authorizes the Secretary of the Interior, acting through the Commissioner, to partner or enter into an agreement regarding the water storage projects identified in § 103(d)(1) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361; 118 Stat. 1684) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects; and

[2<sup>nd</sup>] WHEREAS, the Sites Reservoir was identified in § 103(d)(1) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361; 118 Stat. 1684); and

[3<sup>rd</sup>] WHEREAS, the Sites Project Authority, previously known as the Sites Joint Powers Authority, was formed as a California joint powers authority operating under and by virtue of Section 6500 et seq., of the California Government Code and formed in accordance with the Sites Project Authority Joint Exercise of Powers Agreement, as such agreement may be modified from time to time, with the primary purpose of ~~pursuing the development and construction of~~ designing, constructing, owning, operating and maintaining the Sites Reservoir Project, a State-led storage project; and

[4<sup>th</sup>] WHEREAS, Reclamation completed the North-of-the-Delta Offstream Storage – Sites Feasibility Report (“Feasibility Report”) in December 2020 and the North-of-the-Delta Offstream Storage Investigation Feasibility Report Addendum in January 2023, which ~~÷ 1)~~ determined the potential Federal and non-Federal interest in the selected alternative; and

[5<sup>th</sup>] WHEREAS, § 4007(e) of the WIIN Act provides, “subject to compliance with State water rights laws, the right to use the capacity of a State-led storage project for which the

Secretary of the Interior has entered into an agreement under this subsection shall be allocated in such manner as may be mutually agreed to by the Secretary of the Interior and each other party to the agreement.”; and

[6<sup>th</sup>] WHEREAS, pursuant to § 4007(f)(1) of the WIIN Act, the California Water Commission determined that the State-led Sites Reservoir Storage Project is consistent with the California Water Quality, Supply, and Infrastructure Improvement Act ~~and will provide the public ecosystem benefits for which the State of California is providing funding~~; and

[7<sup>th</sup>] WHEREAS, on November 2, 2023, the Authority and Reclamation released a joint Final Environmental Impact Report/Final Environmental Impact Statement, hereinafter “FEIR/FEIS” for the Project; and the Authority certified the FEIR/FEIS and adopted the Project with Board Resolution 2023-02; and on [DATE], Reclamation signed its Record of Decision for the construction and operation of the Sites Project; ~~and~~

[8<sup>th</sup>] WHEREAS, the Sites Authority intends to enter into contracts with State and local agencies pursuant to which the State and local agencies will receive certain benefits (including water service) and have certain obligations related to the Sites Project. These include the (i) State and Federal Operations Agreement; (ii) Public Benefits Agreements with State Agencies; (iii) Proposition 1 Water Storage Investment Program Contract with the California Water Commission; and (iv) Benefits and Obligations Contract. In performing its obligations under this Agreement, the Sites Authority shall comply with the terms of such agreements; and

[9<sup>th</sup>] WHEREAS, the Sites Authority intends to enter into contracts with agencies to convey water related to and from the Project. In performing its obligations under this Agreement, the Sites Authority shall comply with the terms of such agreements.

NOW, THEREFORE, it is agreed by and between the Parties hereto as follows:

**DEFINITIONS**

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the following term:

(a) “Anadromous Fish Benefits” shall mean the Sites Water ~~that Reclamation manages~~ in Reclamation’s Storage Allocation in Sites Reservoir that is managed to meet Reclamation’s current or future environmental compliance obligations.

(b) “Acquirer” shall mean DWR, acting as acquirer of Sites Water from the Project in accordance with California Water Code Section 11575 and/or other applicable law on behalf of the SWP Participants and otherwise responsible for performing the functions set out in Benefits and Obligations Contract on behalf of the SWP Participants.

(c) ~~(b)~~ “Authorized Deferred Use” shall mean the use of excess capacity in the Tehama-Colusa Canal (“TCC”), as identified in the Feasibility Report, to convey Sites Water from the Red Bluff Pumping Plant to Sites Reservoir, as outlined in Exhibit C; such excess capacity is available as a result of Public Law 90-65 which provided that sufficient extra capacity and elevation in the TCC be provided to enable future water service to Yolo, Solano, Lake, and Napa Counties for irrigation and other purposes, and to treat the cost of providing such extra capacity as a deferred obligation.

(d) “Base Facilities” shall mean the Project Facilities or other facilities available to all Storage Partners including those listed in the Project Specific Information in the Benefits and Obligations Contracts, as modified from time to time.

(e) “Base Facilities Capacity Interest” shall mean the undivided capacity right of each Storage Partner to store, convey and divert Sites Water in each of the Base Facilities granted by the Sites Authority and owned by the Storage Partner pursuant to the terms of the

Benefits and Obligations Contract and this Agreement, and in the pro-rata share set out for each Storage Partner in and subject to the Sites Water Right, applicable law and governmental approvals. **[Note: Remains subject to further internal policy discussions!]**

(f) “Benefits and Obligations Contract” shall mean the contract entered into and then in effect among the Authority, the Participants and the Acquirer.

(g) “Capacity Interest and Share” shall mean (i) in the case of the Base Facilities, the Base Facilities Capacity Interest; and (ii) in the case of the Downstream Facilities, the Downstream Facilities Capacity Share, or both of them as the context requires.

(h) ~~(e)~~ “Capital Improvements” shall mean any activity that extends the useful life of a property, plant or equipment asset, expands the capacity or efficiency of an asset, or otherwise upgrades an asset to serve needs different from, or significantly greater than, an asset’s current use, or as defined in the current version of the *Blue Book* entitled Federal Replacements, Units, Service Lives, Factors, or in accordance with Federal law and accounting standards, or any other regulations, policies, guidelines, or instructions adopted thereunder.

(i) ~~(d)~~ ~~“Conveyance Capacity~~CDFW” shall mean ~~the physical space in the Project’s downstream facilities to deliver Sites Water commensurate to investment in the Project~~California Department of Fish and Wildlife.

(j) ~~(e)~~ “Central Valley Project” or “CVP” shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation.

(k) “Completion” shall have the meaning given in the Benefits and Obligations Contract.

(l) “Delivery Point” shall mean Funks Reservoir or Terminal Regulating Reservoir locations, at which the Authority will make water supplies available to Reclamation outlined in Exhibit D to this Agreement.

(m) “Downstream Facilities” shall mean the Project Facilities or other facilities that are utilized by select Storage Partners listed in the Project Specific Information in the Benefits and Obligations Contract, as modified from time to time.

(n) “Downstream Facilities Capacity Share” shall mean a share expressed in percentage based on the ratio of each Storage Partner’s Base Facilities Capacity Interest to the sum of the total Base Facilities Capacity Interest of all Storage Partners with Downstream Facilities Capacity Share, specified in the Project Specific Information in the Benefits and Obligations Contract, as modified from time to time in accordance with this Agreement.

(o) “DWR” shall mean the State of California Department of Water Resources.

(p) “Fiscal Year” shall mean the period beginning on January 1 of each calendar year and ending on the last day of December of such calendar year, or any other accounting period hereafter selected and designated by the Sites Authority as the Fiscal Year of the Sites Authority.

(q) “Fixed O&M Costs” shall mean (1) all costs, calculated in accordance with generally accepted accounting principles, incurred by the Sites Authority (i) to administer, operate, maintain, power, repair, replace, and, to the extent that reserves are available, rehabilitate and improve, the Project, (ii) attributable to the conveyance and storage of water in the Project Facilities excluding pumping costs, carriage costs, and power interference costs; (iii) for the Sites Authority defense or other legal costs, including payment of claims, settlements or



judgments (iv) to meet regulatory requirements associated with the Project; including  
administrative and legal costs of the Sites Authority, overhead, insurance, taxes (if any), fees of  
auditors, accountants, attorneys or engineers and [insurance premiums], and including all other  
reasonable and necessary costs of the Sites Authority, or charges required to be paid by it to  
comply with the terms of the financing agreements or the Benefits and Obligations Contract; (v)  
to replenish operating reserves of the Project; and (2) amounts required for compliance with  
Sections 3.2 and 3.5 of the Master Resolution of the Sites Authority or any similar provisions  
thereof; but excluding in all cases (A) depreciation, replacement and obsolescence charges or  
reserves for such costs, (B) amortization of intangibles or other bookkeeping entries of a similar  
nature, (C) costs of capital additions, replacements, betterments, extensions or improvements to  
the Project, which under generally accepted accounting principles are chargeable to a capital  
account or to a reserve for depreciation and (D) [Sites financing costs, in each case incurred by  
the Sites Authority with respect to the Project. Fixed O&M Costs are incurred irrespective of the  
amount of water diverted, stored or released to the Participants]. Fixed O&M Costs include any  
and all costs and expense that are not Fixed Project Costs, Sites financing costs or Variable  
O&M Costs that may accrue to the Sites Authority after execution of the Benefits and  
Obligations Contract.

(r) “Fixed Project Costs” shall mean (i) development, design, construction  
and capital costs of the Project, and (ii) individual repair, replacement, rehabilitation,  
improvement, or regulatory compliance activities incurred after completion of the Project  
Facilities to the extent not covered by Fixed O&M Costs.

(s) “Force Majeure” shall mean events beyond the reasonable control of a  
Party, including strikes, riots, wars, fire, earthquakes, acts of God and/or unusual acts of nature,

acts in compliance with any law, regulation or order (whether valid or invalid) by the United States of America or any state thereof or any other domestic or foreign governmental body or instrument thereof having jurisdiction in the matter, in each case which directly, materially and adversely affects a Party's ability to perform its obligations under this Agreement.

(t) ~~(H)~~ “IL4 Water” shall mean Incremental Level 4 refuge water supply pursuant to the Central Valley Project Improvement Act, Title 34 of Public Law 102-575.

(u) ~~(g)~~ “In-kind Services” shall mean eligible time and effort, real and personal property, and goods and services, as defined by the ~~Department of the Interior~~ Authority. In-kind services may be applied to the cost-share, but the value of the in-kind contributions must be evaluated and documented as described in Article 4. Valuation of in-kind services shall be in accordance with 2 CFR Part 200.

(v) “O&M Costs” shall mean Fixed O&M Costs and Variable O&M Costs, or either of them, as the context requires.

(w) “Participants” shall have the meaning given to in the Benefits and Obligations Contract.

(x) ~~(H)~~ “Points of Acceptance” shall mean the locations at which the Authority will make water supplies available to Reclamation ~~outlined in Exhibit D to this agreement~~ for the purposes of the IL4 .

~~(i) “Points of Delivery” shall mean locations at which the Water Purveyor delivers water supplies made available by Reclamation to the refuges.~~

(y) ~~(i)~~ “Project Use Energy ~~(PUE)~~” shall mean the electrical capacity, energy, and associated ancillary service components required to provide the minimum electrical service

using the most economical methods needed to operate and/or maintain Reclamation-owned facilities in conformance with project authorization.

(z) “Public Benefit Agreements” shall mean the agreement between the Sites Authority and DWR; anticipated to be titled Proposition 1 Water Storage Investment Program Contract for Administration Of Public Flood Control/Recreation Benefits and the agreement between the Sites Authority and CDFW anticipated to be titled Proposition 1 Water Storage Investment Program Contract for Administration of Public Ecosystem Benefits, or each of them as the context requires.

(aa) “Secondary Delivery Point” shall mean a location other than the Delivery Points that Reclamation may request the assistance of the Sites Authority in conveyance of Reclamation’s Sites Water. Reclamation bears all costs (monetary or otherwise), the risk of loss, and any shortfalls or reduction beyond the Delivery Points.

(bb) ~~(k)~~ “Sites Authority” or “Authority” shall mean a California Joint Powers Authority operating under and by Section 6500 et seq., of the California Government Code and formed in accordance with the Sites Joint Powers Authority Agreement, as such agreement may be modified from time to time. The Sites Authority was established for the purpose of designing, constructing, owning, operating and maintaining the Project.

(cc) ~~(H)~~ “Sites Project” or “Project” or “Project Facilities” shall mean the Sites Reservoir Project, owned and operated by the Sites Authority, identified in § 103(d)(1) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361; 118 Stat. 1684) which has met the determinations required in § 4007(c)(2) of the WIIN Act and consists of the Project facilities and any facilities used by the Sites Authority to convey Sites Water to, or from, the Sites Owned Facilities in accordance with the partner agreements the partner facilities,

or any of them as the context requires, as outlined in Exhibit B of this Agreement~~, and the~~  
~~associated Sites Water.~~

(dd) ~~(m)~~ “Sites Reservoir” shall mean the 1.5 million acre-feet off-stream  
storage reservoir near Maxwell, California.

(ee) “Sites Water” shall mean the water that is appropriated under the Sites  
Water Right.

(ff) ~~(n)~~ “Sites Water Right” shall mean the water ~~provided and right~~ obtained  
and owned by the Sites Authority ~~under for~~ the ~~Authority’s~~ Project water right [Order XXXX].

(gg) “State” shall mean the State of California, including DWR, the California  
Water Commission, CDFW, and all other applicable departments and agencies thereof.

(hh) “State and Federal Contracts” shall mean the Public Benefit Agreements  
and this Agreement, or each of them as the context requires.

(ii) “State and Federal Operations Agreement” shall mean the  
[Sites/DWR/Reclamation Coordinated Operations Agreement], dated \_\_\_, [2025], as such State  
and Federal Operations Agreement may be modified from time to time.

(jj) “State Water Project” shall mean the State Water Resources Development  
System as defined in Section 12931 of the California Water Code.

(kk) ~~(o)~~ “Storage ~~Capacity~~ Allocation” shall mean the ~~physical space in Sites~~  
~~Reservoir and accompanying~~ maximum actual capacity allocated to a Storage Partner for storing  
Sites Water ~~commensurate with Federal investment~~ in the Project Facilities, measured and  
determined from time to time.

(ll) ~~(p)~~ “Storage Partner” shall mean ~~any investor in the Project.~~ the  
governmental agencies, water organizations and others who have funded and received a Storage

Allocation in Sites Reservoir and the resulting water supply or water supply related benefits from the Project. Storage Partners could include Participants, the State, and Reclamation.

(mm) ~~(q) “Substantial Completion~~SWP Participants” shall mean ~~the project has been fully constructed and Reclamation is able to derive the benefits outlined in the Feasibility Report and further defined in this Agreement associated with the Project. those Participants listed in the Project Specific Information in the Benefits and Obligations Contract, which have elected to pay Project costs through the Acquirer in connection with the State Water Project.~~

~~(r) “Water Purveyor” shall mean contractors with which Reclamation has agreements to convey water to refuges.~~

(nn) “Variable O&M Costs” shall mean the operation, maintenance, power (including pumping), carriage costs, power interference costs, replacement and other costs, including O&M Costs and costs and expenses, including funding of reserves in accordance with the Sites Authority Policies, to the Sites Authority under the Benefits and Obligations Contract and wheeling costs [on a per Acre-foot basis] to account for the use of partner facilities, and incurred by the Sites Authority in connection with the Project in an amount which is dependent upon and varies with the amount of Sites Water diverted, stored or released from the Project Facilities to the Participants.

## **TERM OF AGREEMENT**

2. This Agreement is effective on the date hereinabove written, hereinafter Effective Date, and will continue in perpetuity for so long as each of the Parties continue to have their obligations under this Agreement or until terminated.

(a) The Parties may mutually agree to terminate this Agreement ~~along with~~  
~~associated agreements necessary for implementation of the Project~~; in which case, the Parties  
will meet and confer to come to mutual agreement regarding termination. The Parties agree that  
the Parties shall meet and confer to come to mutual agreement regarding termination if the  
Authority does not receive fully executed Benefits and Obligations Contracts from all anticipated  
Participants or a fully executed Proposition 1 Water Storage Investment Program Contract.

~~(b) Repayment: Pursuant to Reclamation law, Reclamation may be required to~~  
~~recover costs it incurs resulting from participation in the Project.~~

(b) ~~(e)~~ The United States and the Authority shall jointly ~~shall~~ review this  
Agreement, which review shall be performed at least every five (5) years. A more frequent  
review will occur if determined to be appropriate by the Parties ~~to measure success based off~~  
~~project milestones and~~. The review shall compare the relative success which each Party has had  
in meeting its objectives, including, but not limited to, those objectives in the Spend Plan in  
Exhibit A.

(c) ~~(d)~~ This Agreement may be modified or amended upon written mutual  
agreement of the Parties. Exhibits to this Agreement may be modified upon mutual agreement  
without amendment to this Agreement. The Parties will meet and confer and come to mutual  
agreement to update Exhibits as needed.

### **FEDERAL PARTICIPATION IN THE SITES PROJECT**

3. ~~Water Infrastructure Improvements for the Nation Act § 4007 gives~~ Pursuant to §  
4007 WIIN Act, Reclamation has the authority to participate up to twenty-five (25) percent in  
State-led storage projects.

(a) Consistent with XX section [whatever section references payment],  
Reclamation is committing to pay for and the Sites Authority hereby grants, and Reclamation  
shall own a [a sixteen (16) percent Base Facilities Capacity Interest] I accordance with this  
Agreement. . *Provided however*, Sites Water originating from Funks Creek and its tributaries,  
Stone Corral Creek and its tributaries, and the watershed of Sites Reservoir shall be allocated  
consistent with the Colusa County/Sites Authority Memorandum of Understanding and this  
Agreement incorporates in the Colusa County / Sites Authority MOU in its entirety by reference.  
*Provided further*, that Reclamation bears the risk of loss, shortfall or reduction in Sites Water.

(b) The Sites Authority shall allocate to each Storage Partner who requests to  
participate in the funding and use of Downstream Facilities, a Downstream Facilities Capacity  
Share in the amounts described in Exhibit [ ] and otherwise in accordance with this Agreement.

(c) ~~(a) Reclamation will receive, at minimum, a sixteen (16) percent Storage~~  
~~Capacity share, associated developed Sites Water, and Conveyance Capacity~~intends to achieve  
operational flexibility, IL4 Refuge supplies, and Anadromous Fish Benefits as identified in the  
November 2022 North of Delta Off-stream Storage Investigation Feasibility Report Addendum  
(Addendum)- with its participation in the Project and shall make reasonable and beneficial use  
of Sites Water consistent with all applicable law. Reclamation agrees to timely provide any  
information regarding its use of Sites Water that the Sites Authority may need to comply with  
applicable law.

(d) Reclamation agrees to timely provide requests for Sites Water to be stored  
in Reclamation's Storage Allocation and Sites Water to be released from Reclamation's Storage  
Allocation to the Delivery Points. The Authority agrees to take reasonable actions, consistent  
with law and this Agreement, to achieve Reclamation's storage and release requests to the

Delivery Points. At Reclamation’s request and cost, including water loss and risk of loss or shortfall, the Authority will take reasonable actions to convey Reclamation’s Sites Water to a Secondary Delivery Point.

(e) ~~(b)~~ Reclamation will have the right ~~of first refusal to further invest in the Project, prior to the Authority offering the space to other entities,~~to secure the Capacity Interest, or portion thereof, made available by a defaulted Participant in accordance with Article 14-  
subject to Reclamation making its determination within 60 days of the Authority offering such capacity and demonstrating reasonable assurance to the satisfaction of the Authority, of availability of previously appropriated funds to pay for such Capacity Interest.

(f) Reclamation agrees to execute contracts on a schedule to support project implementation with the Authority following standard terms and conditions covering the following items:

(1) Delivery of IL4 refuge water supplies to locations north and south of the delta export facilities as designated by the Authority, including, to the extent feasible, utilizing Reclamation’s existing agreements with DWR to convey IL4 Refuge water originating as Sites Water through the Banks Pumping Plant.

(2) Long Term Warren Act Contract covering the use of all federal facilities necessary for conveying Sites water to all Storage Partners

(3) Land lease agreement allowing use of any Federally Owned property needed to locate and build Sites Project facilities.



(4) Provision of non-potable water service for the duration of  
construction at project worksites conveniently served from existing  
Federal facilities

**COSTS ASSOCIATED WITH THE SITES PROJECT**

4. All Project costs associated with this Agreement shall be compliant with Federal law.

~~(a) Upon the determination of Substantial Completion of construction of the Sites Project, Reclamation and the Authority will meet and confer to complete a final accounting of the Sites Project and the associated benefits within 180 days to determine and mutually agree upon final investment in the Project and the allocation of Storage Capacity and Conveyance Capacity to Reclamation. If an extension is desired by either Party, the Parties will meet and confer to determine a reasonable time frame. The final Storage Capacity and Conveyance Capacity attributable to Reclamation's final investment will be documented in Exhibit E to this Agreement and will be monitored throughout the duration of this Agreement on a quarterly basis in accordance with Article 4 (g).~~

(a) ~~(b) The Authority's and~~ Reclamation's costs prior to the Effective Date of this Agreement will be ~~credited~~evaluated in the sole discretion of the Authority for possible crediting in Exhibit A to ~~each Party's~~Reclamation's share of costs associated with the Sites Project in accordance with Article 4.

(b) ~~(e)~~ If the Parties identify costs that are not defined in this Agreement but believe they should be allowable, the Parties will meet and confer to come to mutual agreement

on such costs. After mutual agreement in writing, the parties will label these costs as allowable without amendment to this Agreement

(c) ~~(d)~~ Allowable costs include, but are not limited to:

(i) Costs ~~associated with upfront Federal~~ incurred with prior authorization of the Authority and in all cases the Authority, in its sole discretion, shall determine whether costs are considered to be part of the federal investment toward the Project include but are not limited to:

(1) Planning Costs: Certain planning level investigations were necessary and may continue to be necessary prior to commencement of construction. ~~Such planning investigations will be consistent with Reclamation's Directives and Standards.~~

(2) Environmental Compliance Costs: Either Party may fund respective environmental compliance and activities associated with this Agreement. These activities may include, but are not limited to, contracts for technical assistance in environmental mitigation, funding of environmental mitigation commitments, and any actions that ensure necessary compliance with the laws and regulations applicable to either Party.

(3) Cultural Resource Management Costs: Either Party may fund cultural studies, investigations, and mitigation needs consistent with this Agreement. ~~Reclamation will be the lead Federal agency for all necessary activities pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended.~~

(4) Permitting Costs: Additional permitting actions ~~prior to construction of the Sites Project and~~ prior to declaring the Sites Project Substantially Complete may be required. The ~~Parties~~ Authority will ~~jointly~~ determine, as appropriate, the appropriate Party to obtain any necessary permit(s) and if Reclamation is involved, the Parties will mutually

agree upon the appropriate share of costs for the permitting actions to be considered federal investment in the Project.

(5) Administrative Costs: Include, unless otherwise defined by contracts and as determined by the Authority: project management, construction management, accounting and administrative management, legal support and review, operations coordination, travel, general meetings related to the Sites Project, contract/agreement technical meetings and negotiations, and other supportive services and activities necessary for the construction and operation of the Sites Project prior to the determination of ~~Substantial~~ Completion.

~~Reclamation's administrative and management costs associated with the Sites Project will be considered part of the overall Federal investment into the Sites Project. Reclamation will provide an estimate of the administrative costs for the Sites Project in the Spend Plan which will be mutually agreed upon with the Authority. The Authority will reserve sufficient funding to pay for its administrative costs for the non-Federal share of the Sites Project.~~

(6) Design and Review Costs: ~~Reclamation's design and review costs associated with the Sites Project will be considered part of the overall Federal investment into~~ The Authority is owner and operator of the Sites Project. ~~Reclamation will provide an estimate of the design and review costs for the Sites Project, if requested. Either Party may pay for part or all of various design costs for the Sites Project. The Authority will be designer of record for the Sites Project. There may be the need for modifications during construction that may require further design work. If a Party's~~ If Reclamation's benefits are believed to be materially impacted by a change in the design, it ~~will~~ may be considered material, consistent with the similar terms and conditions in the Benefits and Obligations Contract. Material changes ~~in the design will require the Parties to meet and confer on the best course of~~

~~action and to determine if the additional cost is beneficial to the project and allowable.~~will be addressed within the governance of the Project and Reclamation's involvement in such governance is described in Exhibit H.

(7) Construction Costs: The Authority will ~~serve as the procurement lead for~~procure the construction ~~contract~~contractors and will manage ~~the primary~~ construction ~~contract~~contracts with respect to the Sites Project. ~~All costs for this contract will be funded directly by the Authority or with funds contributed by Reclamation to the Authority. If a Party's~~If Reclamation's benefits are believed to be materially impacted by a change in the construction contract, it ~~will~~may be considered material consistent with the similar terms and conditions in the Benefits and Obligations Contract. Material changes ~~in the construction contract will require the Parties to meet and confer on the best course of action and to determine if the additional cost is beneficial to the project and allowable.~~will be addressed within the governance of the Project and Reclamation's involvement in such governance is described in Exhibit H.

~~(8) Authorized Deferred Use: Reclamation's investment in the Sites Reservoir Project includes the Authorized Deferred Use for the Tehama-Colusa Canal of \$54,400,000 as an in-kind contribution. The Tehama-Colusa Canal was sized to provide sufficient extra capacity and elevation to enable future water service to Yolo, Solano, Lake and Napa Counties for irrigation and other purposes, and to treat the cost of providing such extra capacity as a deferred obligation.~~

(8) Reclamation's Involvement in Project Oversight as part of the Project Governance Structure: The parties agree that Exhibit H describes Reclamation

involvement in Project Governance. No other rights or duties are authorized to Reclamation under this agreement unless specified herein.

(9) Authorized Deferred Use: [Subject to discussion]

(ii) Expected Future Costs Associated with Federal Participation in the Project include, but are not limited to:

(1) ~~Operation, Maintenance, & Replacement (OM&R)~~O & M Costs: The Authority will be responsible for ~~OM~~O~~&R~~M of the Sites Project. The Authority will identify the annual ~~OM~~O~~&R~~M ~~costs~~Costs attributable to ~~Reclamation's operational flexibility and Anadromous Fish Benefits~~Reclamation. Reclamation will ~~address~~pay for the attributable portion ~~of those costs subject to appropriations and the Contracting Officer's determination. Reclamation's portion of the OM&R costs will be consistent with the Addendum within 30 days of receiving an invoice. If Reclamation fails to pay, the Sites Authority may give notice of suspension or termination of the Reclamation's:~~

~~(2) In-kind Services: To facilitate continued Project operations, Reclamation's In-kind Services will count toward Reclamation's contribution to ongoing expected future costs associated with Federal participation in the Project.~~

a. right to involvement in the governance of the Project as described in Exhibit H;

b. Capacity Interest and Share, such Participant's interest in Water and such Participant's right to convey Water; and / or

c. right to the services obligated to be provided by the Sites Authority relating to the operation of the Sites Project, as provided in the Sites Operations Plan,

which notice shall be effective within 30 days after receipt unless such termination or suspension shall be enjoined, stayed or otherwise delayed by judicial action. In the event of a suspension under this Section, the suspension shall remain in effect until the default has been cured to the reasonable satisfaction of the Sites Authority, and notice of such cure and termination of the suspension has been provided to Reclamation.

d. ~~a-~~IL4 Water Costs: While the Authority is responsible for delivering water supply to the ~~Points of Acceptance~~ Delivery Point, Reclamation's costs for wheeling water from the [Points of Acceptance ~~to the Points of Delivery~~ Delivery Points] to the respective CVPIA refuges shall be considered ~~an~~ costs to be directly paid by Reclamation and are not In-kind ~~Service~~ Services.

(d) ~~(e)~~ Non-allowable Costs include, but are not limited to:

(i) Any interest or fees related to financing activity of the Sites Authority and their Storage Partners shall not be paid by Reclamation, unless such costs are associated with delayed payment or non-payment by Reclamation.

(ii) The ~~Authority~~ Project is not ~~currently~~ part of the Central Valley Project, and as such, will not receive Project Use Energy. If legislation is passed or it is otherwise determined that the ~~Authority~~ Project is subject to Project Use Energy in the future, the Parties will meet and confer and come to mutual agreement on the handling of these costs. After mutual agreement in writing, the Parties will label these costs as allowable without amendment to this Agreement.

(e) ~~(f)~~ Within ~~180~~ 30 days of this Agreement's execution, Reclamation and the Authority will develop Exhibit A, a spend plan containing mutually agreeable terms for

Reclamation to commit funding under § 4007 of the WIIN Act and to track costs and account for funds expended. Exhibit A may be modified by mutual agreement without amendment to this Agreement.

(i) Reclamation shall deposit cash with the Sites Authority (each, a "Self-Funding Cash Payment"), in the amount and by the timings specified in the spend plan..

(ii) The Sites Authority will deposit each Self-Funding Cash Payment in an individual account or accounts for Reclamation established and held by the Sites Authority separate and apart from the Sites Authority's other funds and accounts, and shall apply such amount, including the investment earnings thereon, to pay Reclamation's share of the cost of the applicable Fixed Project Costs in accordance with the terms of this Agreement. Such accounts and any investments shall be held in compliance with applicable law.

(iii) Reclamation hereby represents, warrants, and covenants that such Self-Funding Cash Payments shall and will be delivered to the Sites Authority free and clear of any prior lien.

(f) ~~(g)~~ Reclamation and the Authority will establish, at a minimum, quarterly check-ins to monitor actual expenditures related to the Sites Project ~~relative to the Parties' respective expectations~~, and to discuss other items, including but not limited to, funding and any additional agreements. If there is a deficiency in expenditures under Exhibit A, the Parties will meet and confer to agree upon a schedule to remedy the deficiency. ~~If the Authority fails to resolve a deficiency within the agreed-upon schedule, then Reclamation may seek termination or other remedies prescribed in this Agreement.~~

(g) To the extent power, energy, or other services are generated by Project Facilities, sales of such power, energy and all other services will be managed by the Sites

Authority. Any revenues received by the Sites Authority for the sale or other disposition of power, energy or other services shall be used to offset Variable O&M Costs, and to the extent that such revenues exceed Variable O&M Costs in a Fiscal Year, any remaining revenues will be used to offset Fixed O&M Costs. Any such revenues will be allocated by the Sites Authority to Storage Partners in proportion to the amount of Water released on behalf of the Storage Partners during the Fiscal Year. The Parties acknowledge and agree that the release of Water has a higher priority than the generation of power by Project Facilities and power generation is not guaranteed to Storage Partners with the release of Water.

**LEASE OR SALE OF ~~STORAGE CAPACITY, CONVEYANCE CAPACITY~~ INTEREST AND SHARE, AND SITES WATER**

5. Reclamation shall have ~~right of first refusal in the~~ rights to purchase defaulted Storage Partners' Base Facilities Capacity Interest and/or Downstream Facilities Capacity Share or lease of other Storage Partners', Storage ~~Capacity and Conveyance Capacity in the Project, in accordance with Article 14~~ Allocation. Reclamation may elect to lease its Storage ~~Capacity and Conveyance Capacity~~ Allocation, and the Authority will assist Reclamation to the extent practicable.

**OPERATION OF SITES RESERVOIR**

6. The Sites Authority will operate and maintain the Sites ~~Reservoir~~ Project facilities in good faith and in accordance with all applicable agreements, law, environmental requirements, and water rights, ~~and with approval from the Bureau of Reclamation's Central Valley Operations office.~~ The Sites Authority will protect the Sites Water Right and will manage, control, and protect Sites Water in accordance with all applicable laws and regulations.



(a) Sites Reservoir will be operated in a manner that ~~is mutually beneficial to all Parties and~~ avoids harm to the Central Valley Project, ~~its contractors, its~~ and the water rights, ~~and its facilities.~~ held by Reclamation for the Central Valley Project.

(b) The Project provides water supply and water supply related environmental benefits, including water quality benefits, as well as flood control, recreation, and power generation benefits. The Parties agree to take reasonable steps to optimize the diversion and beneficial use of Sites Water. The diversion of Sites Water to storage will take priority over the release of water. The Project will be operated so as to maximize the water supply and water supply related environmental benefits while continuing to provide the flood control and recreational benefits. The Authority may temporarily discontinue or reduce the conveyance of Sites Water to, and release of Sites Water from, the Project Facilities in various emergency and non-emergency situations to protect life and property.

(c) ~~(b)~~ The Authority will ~~care for~~ operate and ~~OM&R~~ maintain the Project in full compliance with the terms of this Agreement and in such a manner that the Project remains in good and efficient condition, subject to exercise of discretion to fund and carry out Capital Improvements.

~~(e) Necessary repairs of the Project will be made promptly by the Authority. In case of unusual conditions or serious deficiencies in the OM&R of the Project threatening or causing interruption of water service, the Contracting Officer may issue to the Authority a special written notice of those necessary repairs.~~

~~(i) Reclamation's deliveries will take priority over any other Storage Partner in the Sites Project to provide the Central Valley Project operational flexibility and Anadromous Fish Benefits to ensure commitments are met.~~

~~(ii) Reclamation's share of Sites Water diversions will be commensurate with Storage Capacity.~~

(d) Necessary repairs of the Project will be made by the Authority as required by the Sites Operations Plan.

(e) Subject to Section (f) below, the Sites Authority or Reclamation may request Capital Improvements to provide an added benefit to the Project ("Capital Modifications"). Such Capital Modifications shall be subject to approval by the Sites Authority as required by the Benefits & Obligations Contract. The Sites Authority will prepare and distribute a document detailing the anticipated Project costs and benefits of the proposed Capital Improvements.

(f) Reclamation may not opt out of necessary Capital Modifications required to maintain initial Project functions and that provide benefits initially contemplated for the Project.

(g) In the event that proposed Capital Modifications are not approved in by the Sites Authority, Storage Partners may elect to continue with the Capital Modifications. Those Project costs and benefits associated with such Capital Modifications shall be allocated only to the subset of Participants electing to proceed with the capital improvements in accordance with an agreement among the Sites Authority and such Participants. .

(h) ~~(iii)~~ The Authority will deliver Sites Water to the Points of Acceptance to meet the Project's IL4 Water obligations pursuant to the State of California investment, without any cost to as described in Exhibit D. Reclamation shall deliver Sites Water to meet the Project's IL4 Water obligations pursuant to the State of California investment at Reclamation's cost, as described in Exhibit D.

(i) ~~(iv)~~ The Parties, along with ~~the California Department of Water Resources, will enter into Exhibit G prior to the operation of the Project and~~ DWR, will identify coordination processes for Sites Water diversions ~~and releases,~~ releases, measurement, and exchanges and reach written consensus prior to executing this Agreement that the documented processes sufficiently ensure the three parties interest can be achieved. The Parties, along with DWR will consider changes necessary to represent conditions at the time of Completion and execute such three party agreement prior to Completion.

(i) ~~(v)~~ The Central Valley Operations office will maintain its operational independence on operations of the Central Valley Project. ~~Ne~~ Neither Party shall operate in such a manner that may be arbitrary or capricious and intentionally harms another Party's benefits.

(j) ~~(vi)~~ The Authority will be responsible for providing power to operate and maintain ~~the~~ Sites Reservoir and to convey Sites Water to the Delivery Points.

(k) The Authority makes no representation, warranty or guarantee of the quality of Sites Water delivered under this Contract.

## **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

7. Reclamation will serve as the ESA Section 7 consultation lead for ~~Construction and Operation~~ the initial construction and water-related operation of Sites Reservoir. ~~During construction and initial phases of the project, the Sites Authority will operate the Project in such a way that will result in agreed upon benefits to both parties. As such, environmental compliance needs may change or require additional documentation such as updated incidental take statements.~~ Reclamation and the Authority will meet and confer on future Project activities to determine the most appropriate ESA consultation approach and lead agency consistent with law and regulation.

(a) The ~~parties~~Parties agree that Reclamation will consult on the operation of the Sites Project as ESA Section 7 lead, treating the operation of ~~the Sites Reservoir as a specific division of the CVP~~Project as a distinct component related to the Long Term Operations of the State and Federal Projects. Reclamation ~~would~~agrees to seek an incidental take statement specific to effects from the operation of ~~the Sites Reservoir~~Project.

(b) It is the understanding of the Parties that any future reconsultation on the ~~CVP~~operations of the Central Valley Project after an initial incidental take statement for the operations of the Sites Project does not automatically require a change to the ~~specific~~-Sites Project ~~division. Both~~incidental take statement and/or a reconsultation on the Sites Project. The Parties agree to meet and confer before any such reconsultation implicates the operation of Sites Reservoir or the terms and conditions for the operation of Sites Reservoir seeking a change to the Sites Project incidental take statement and/or a reconsultation on the Sites Project to jointly review, among other things, the information before each agency, potential approaches, and possible outcomes. In any consultation that has the potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the Authority to maintain and maximize the anticipated benefits of the Sites Project ~~without~~while avoiding harm to the CVP. ~~If it is determined~~ and other Storage Partners. If the Parties mutually determine that reconsultation on the Sites Project is required, ~~it~~the specific changes contemplated for the Sites Project must meet one of the following criteria in accordance with the Endangered Species Act, Title 50 CFR § 402.16(a) as amended and the Parties will cooperate in the preparation and negotiation of the reconsultation and the resulting revised incidental take statement specific to the Sites Project.

(c) The Parties agree to move expeditiously, meet and confer as necessary, and have staff resources dedicated to ensuring the Project's ESA Section 7 construction compliance is implemented without delay throughout the duration of construction.

8. Reclamation has completed compliance with Section 106 of the National Historic Preservation Act of 1966, as amended for the construction of the Sites Project. Reclamation shall designate the Sites Authority as its authorized representative under Section 106. The Parties agree to move expeditiously, meet and confer as necessary, and have staff resources dedicated to ensuring the Project's Section 106 construction compliance is implemented without delay throughout the duration of construction.

9. Reclamation has completed compliance with the National Environmental Policy Act of 1969, as amended for the construction and operations of the Sites Project. The Parties agree to move expeditiously, meet and confer as necessary, and have staff resources dedicated to ensuring that any changes to the Project's NEPA compliance is implemented without delay throughout the duration of construction.

#### **EXCUSED PERFORMANCE**

10. Upon the occurrence of an event of Force Majeure, (a) the Sites Authority shall be excused from its obligations under this Agreement for the period during which it is unable to comply with such obligations as a result of such event of Force Majeure, and (b) Reclamation shall be excused from their obligations under this Agreement for the period during which they are unable to comply with such obligations as a result of the event of Force Majeure, other than the payment of Project costs described in this Agreement, which obligations are not subject to reduction or abatement.

(b) Any excuse of obligations in accordance with this 10 is subject to the proviso that, upon obtaining knowledge of an event of Force Majeure, such Party: (a) promptly notifies the Sites Authority and/or the other Party of the event of Force Majeure; (b) provides reasonable details and updates relating to such event of Force Majeure; and (c) implements mitigation measures to the extent commercially reasonable.

## **DEFAULT; DISPUTE RESOLUTION**

### 11. Default

#### (a) Written Demand

(i) If Reclamation fails to (i) make any capital payment in full when due under this Agreement or (ii) perform any other obligation under this Agreement, the Sites Authority shall make written demand upon Reclamation. If a failure described in this Section is not remedied within 30 days from the date of such demand, such failure shall constitute a default at the expiration of such period; provided that if a failure described in this Section cannot be remedied within 30 days from the date of such demand but Reclamation commences remedial action within such 30-day period and diligently pursues the remedy of such default until the remedy is complete and (B) such failure is remedied within 90 days from the date of the initial demand, such failure shall not constitute a default under this Agreement.

(ii) Upon failure of the Sites Authority to perform any obligation of the Sites Authority under this Agreement, Reclamation may make written demand upon the Sites Authority. If such failure is not remedied within 30 days from the date of such demand, such failure shall constitute a default at the expiration of such period.

(iii) In addition to any default resulting from breach by the Sites Authority or Reclamation of any agreement, condition, covenant or term of this Agreement, if

the Sites Authority or Reclamation files any petition or institutes any proceedings under any law, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such law, either as a bankrupt, as an insolvent, as a debtor or in any similar capacity, wherein and whereby the Sites Authority or Reclamation asks or seeks or prays to be adjudicated as bankrupt, or is to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or if the Sites Authority or Reclamation shall make a general or any assignment for the benefit of its creditors, then, in each and every such case, the Sites Authority or Reclamation, as applicable, shall be deemed to be in default under this Agreement.

(b) Suspension or Termination of Rights; Continuing Obligations

(i) Irrespective of such suspension or termination, Reclamation shall remain liable to the Sites Authority to pay the full amount of Project costs allocated to Reclamation in accordance with Section XXX; provided that the Sites Authority shall act reasonably and in good faith to mitigate any damages caused by Reclamation's default.

(c) Disposition of Defaulting Participant's Capacity Interest and Share, Interest in Water and Right to Convey Water

(i) Upon a default and the termination of Reclamation's Capacity Interest and Share in accordance with Section (b)(i)(2) above, the Sites Authority shall use its best efforts to facilitate a sale, for Reclamation's account, of all or a portion of Reclamation's Capacity Interest and Share, interest in water and right to convey water (the "Defaulted Interests") for all or a portion of the remainder of the term of this Agreement.

(ii) The other non-defaulting Storage Partners holding a Capacity Interest and Share in the same Project Facilities (the Base Facilities and/or the Downstream Facilities, as applicable) shall have a "right of first offer" to assume all or a portion of Reclamation's Defaulted Interests and Reclamation's related obligations under this Agreement, at a price mutually agreed between Reclamation and the Storage Partner purchasing all or a portion of Reclamation's Defaulted Interests. In the event that more than one non-defaulting Storage Partners wish to acquire the Defaulted Interests on the same terms, the Defaulted Interests shall be apportioned pro rata based on the non-defaulting Storage Partner's applicable Capacity Interest and Share in each of the Base Facilities and/or Downstream Facilities unless the non-defaulting Storage Partners agree otherwise.

(iii) Subject to Section (iv) below, in the event that the Sites Authority is unable to facilitate a sale of all of Reclamation's Capacity Interest and Share, interest in water and right to convey water to other non-defaulting Storage Partners in accordance with Section (ii) above, the Sites Authority may make such Defaulted Interests available to entities other than the non-defaulting Participants, and may enter into an agreement with such entities for the purchase of all or a portion of Reclamation's Defaulted Interests and the assumption of the related obligations under this Agreement.

(iv) If any Project obligation under a financing agreement is outstanding (but only to the extent required under such financing agreement), any sale of Reclamation's Capacity Interest and Share to entities other than the non-defaulting Storage Partners shall be subject to the terms of such financing agreement, including the right of the applicable lender to consent to such sale, if any.



(v) Notwithstanding any other provisions of this Agreement, and to the extent applicable, the Sites Authority shall not facilitate a sale of any portion of Reclamation's Defaulted Interests, directly or indirectly, in any manner that would adversely affect the exclusion from gross income of interest on any Sites financing for federal income tax purposes.

(vi) In the event that the Sites Authority is unable to enter into an agreement with entities for the purchase of all or a portion of Reclamation's Defaulted Interest and the assumption of the related obligations under this Agreement under Section (iii) above, the Defaulted Interests shall be apportioned pro rata as set out in the Benefits & Obligations Contract.

(vii) Notwithstanding that all or any portion of Reclamation's Capacity Interest and Share, interest in water and right to convey water is so sold, Reclamation shall remain liable to the Sites Authority to pay the full amount of its share of costs under this Agreement as if such sale has not been made, except that such liability shall be discharged to the extent that the Sites Authority shall receive payment from the buyer thereof for that share of costs.

(d) Enforcement of Remedies

(i) In addition to the other remedies set forth in this Section 10, upon the occurrence of an event of default in accordance with this Agreement, any Party shall be entitled to proceed to protect and enforce the rights vested in such Party by this Agreement by such appropriate judicial proceeding as such Party shall deem most effectual, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained herein or to enforce any other legal or equitable right vested in such Party by this Agreement or by law. The provisions of this Agreement and the duties of each Party, their

respective boards, officers or employees shall be enforceable by the other Parties by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, with the losing Party paying all costs and attorney fees of the prevailing Party.

(ii) Without limiting the generality of the foregoing, the Sites Authority or Reclamation, as applicable, shall have the right to bring the following actions:

(1) Accounting. By action or suit in equity to require the Sites Authority Board or Reclamation, its officers and employees and its assignee to account as the trustee of an express trust.

(2) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Sites Authority or Reclamation, as applicable.

(3) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce its rights against the other Party hereto (and its board, officers and employees) and to compel the other Party hereto to perform and carry out its duties and obligations under the law and its covenants and agreements as provided herein.

(e) Waiver

(i) The waiver by any Party of any breach by any other Party of any agreement, condition, covenant or term under this Agreement shall not operate as a waiver as to any subsequent breach of the same or any other agreement, condition, covenant or term under this Agreement.

12. ~~8.~~ Should any dispute arise concerning any provision(s) of this Agreement, or the Parties' rights and obligations thereunder, the United States and the Authority shall meet and

confer in an attempt to resolve the dispute. Prior to commencing any legal action, or Reclamation referring any matter to the Department of Justice, the Party shall provide to the other Party thirty (30) days' written notice of the intent to take such action; *Provided, That* such notice shall not be required where a delay in commencing an action would prejudice the interests of the Party that intends to file suit. During the thirty (30)-day notice period, the Parties shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Sites Authority or the United States may have.

~~(a) Reclamation shall have no responsibility to participate in or resolve disputes between the Authority and any of the Storage Partners regarding this Agreement.~~

(a) ~~(b)~~ If the Sites Authority seeks to resolve a dispute with a Storage Partner, such resolution cannot ~~impact Reclamation's investment or benefits~~ violate the terms of this Agreement without Reclamation's consent.

## **OPINIONS AND DETERMINATIONS**

13. ~~9.~~ Where the terms of this Agreement provide for actions to be based upon the opinion or determination of either Party to this Agreement, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either Party shall be provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or

determination implementing a specific provision of Federal law embodied in statute or regulation.

(a) The Contracting Officer shall have the right to make determinations necessary to administer this Agreement that are consistent with the provisions of this Agreement, the laws of the United States, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with the Authority to the extent reasonably practicable.

(b) Nothing in this Agreement, or performance hereunder, constitutes a waiver of the Parties' respective positions, opinions, or interpretations of California water rights law, whatever they may be, in circumstances where there is no mutual agreement, as applicable herein, for the use of the Sites Reservoir.

#### **WATER MEASUREMENT**

14. ~~10. All~~ The Sites Authority shall measure or cause to be measured, all Sites Water pursuant to this Agreement ~~shall be measured and recorded with equipment furnished, installed, operated, and maintained by the Authority~~ at the point(s) of delivery or diversion established pursuant to Exhibit D.

(a) Within 1 year after ~~Substantial~~ Completion, the Authority shall ensure that, the water measuring devices are installed and ~~acceptable to the Contracting Officer. The Authority shall be responsible for installing, operating, maintaining, and repairing all such measuring devices at no cost to the United States~~ properly. The equipment and methods used to make such measurement shall be in accordance with sound engineering practices. ~~Upon request of the Contracting Officer, the accuracy of such measurements will be investigated by the Sites Authority and any errors appearing therein will be corrected.~~

(b) The ~~right of ingress to and egress from all point(s) of delivery or~~  
~~diversion is hereby granted to all authorized employees of the United States.~~ Sites Authority and  
Reclamation each agree that Reclamation shall be allowed, at reasonable times and upon  
reasonable prior notice, and at the Reclamation's expense, to enter onto the Sites Facilities for  
reasonable purposes (including dam safety), in accordance with the Sites Authority's reasonable  
safety regulations and policies and subject to applicable law and governmental approvals.

### **SEVERABILITY**

15. ~~11.~~ In the event that any one or more of the provisions contained herein is, for any  
reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or  
unenforceability will not affect any other provisions of this Agreement, but this Agreement is to  
be construed as if such invalid, illegal or unenforceable provisions had never been contained  
herein, unless the deletion of such provision or provisions would result in such a material change  
so as to cause the fundamental benefits afforded the Parties by this Agreement to become  
unavailable or materially altered.

### **HOLD HARMLESS**

16. ~~12.~~ The Authority shall indemnify, defend, and hold harmless the United States,  
its officers, agents, and employees from and against any and all claims, damages, losses,  
liabilities, and expenses arising out of or resulting from the United States' work under this  
agreement, or the design, operation, or maintenance of the Sites Project, provided the claims,  
damages, losses, liabilities, or expenses are not the result of any willful or negligent acts or  
omissions on the part of the United States. The Authority will not assert that Reclamation, its  
Director, officers, agents or employees, are liable for damages of any nature whatsoever arising

out of any actions or omissions by the Authority, its directors, officers, agents or employees, related to the Authority's performance of this Agreement, where such liability is caused by an act, error or omission of the Authority, its director, officers, agents or employees.

17. Reclamation shall indemnify, defend, and hold harmless the Sites Authority, its officers, agents, and employees from and against any and all claims, damages, losses, liabilities, and expenses arising out of or resulting from the United States' control, carriage, handling, use, disposal, or distribution of Sites Water beyond the Delivery Point, except for any damage or claim arising in connection with (i) acts or omissions of the Sites Authority or any of its directors, officers, employees, agents, and assigns with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Sites Authority or any of its directors, officers, employees, agents, and assigns; (iii) negligence of the Sites Authority or directors, officers, employees, agents, and assigns; (iv) damage or claims resulting from a malfunction of a Project Facility.

#### **NOTICES**

18. ~~13.~~ Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Sites Project Authority, 122 Old Highway 99 West, Maxwell, CA 95955.

#### **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

19. ~~14.~~ The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Authority from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

803 **OFFICIALS NOT TO BENEFIT**

804 20. ~~15.~~ No Member of or Delegate to the Congress, Resident Commissioner, or  
805 official of the Authority shall benefit from this Agreement other than as a water user or  
806 landowner in the same manner as other water users or landowners.

807 **ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED**

808 21. ~~16.~~(a) The provisions of this Agreement shall apply to and bind the successors  
809 and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or  
810 interest therein by either Party shall be valid until approved in writing by the other Party.

811 (b) Reclamation shall not unreasonably withhold its consent to an assignment  
812 of the Authority's rights and obligations under this Agreement to a third party.

813 **BOOKS, RECORDS, AND REPORTS**

814 22. ~~17.~~The Authority shall establish and maintain accounts and other books and  
815 records pertaining to administration of the terms and conditions of this Agreement, including the  
816 Authority's financial transactions; water supply data; project operation, maintenance, and  
817 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop  
818 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting  
819 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on  
820 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and  
821 regulations, each Party to this Agreement shall have the right during office hours to examine and  
822 make copies of the other Party's books and records relating to matters covered by this  
823 Agreement.

824 **COMPLIANCE WITH LAWS**

825 23. ~~18.~~(a) The Parties agree that the ~~delivery of irrigation water or~~ use of Federal  
826 facilities pursuant to this Agreement is subject to Federal reclamation law, ~~including but not~~  
827 ~~limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa, et seq.), as amended and~~  
828 ~~supplemented,~~ and the rules and regulations promulgated by the Secretary of the Interior under  
829 Federal reclamation law.

830 (b) The Contracting Officer shall have the right to make determinations  
831 necessary to administer this Agreement that are consistent with its expressed and implied  
832 provisions, the laws of the United States and the rules and regulations promulgated by the  
833 Secretary of the Interior. Such determinations shall be made in consultation with the Authority.

(c) In protecting the interests of the United States, Reclamation's contracts and its contracting process must comply with all applicable Federal, state, tribal, and local laws. The Authority shall comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this contract. These laws may include environmental, civil rights, and cultural resources protection laws, among others, as well as laws that may be later enacted. ~~Reclamation's water-related contracts will be drafted in a manner that allows Reclamation to take actions necessary to comply with all applicable laws.~~

#### **COMPLIANCE WITH CIVIL RIGHTS**

24. ~~19.~~(a) The Authority shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Agreement, the Authority agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Authority makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Authority by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Authority recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

(d) Complaints of discrimination against the Authority shall be investigated by the Contracting Officer's Office of Civil Rights.



**MEDIUM FOR TRANSMITTING PAYMENTS**

25. ~~20.~~(a) All payments from the Authority to the United States under this Agreement shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(b) Upon execution of the Agreement, the Authority shall furnish the Contracting Officer with the Authority's taxpayer's identification number (TIN). The purpose for requiring the Authority's TIN is for collecting and reporting any delinquent amounts arising out of the Authority's relationship with the United States.

**COUNTERPARTS; ELECTRONIC EXECUTION**

26. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures may be delivered by facsimile transmission or by e-mail in a portable document format (e.g. "pdf," "tif," "jpg" or "DocuSign") or other electronic format and the signatures on such copies shall be deemed to be effective and valid as original signatures.

**AGREEMENT DRAFTING CONSIDERATIONS**

27. ~~21.~~This Agreement has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains. The double-spaced Articles of this Agreement have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles. Single-spaced articles are standard articles pursuant to Reclamation policy.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

(SEAL)

THE UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Regional Director  
Interior Region 10: California-Great Basin

893 Bureau of Reclamation

894 SITES WATER AUTHORITY

895 By: \_\_\_\_\_  
896 Chair, Board of Directors

897 Attest:

898 \_\_\_\_\_  
899

900

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| <b>Summary report:</b><br><b>Litera Compare for Word 11.9.1.1 Document comparison done on</b><br><b>9/18/2025 5:40:08 PM</b> |     |
| <b>Style name:</b> Default Style   |     |
| <b>Intelligent Table Comparison:</b> Active  |     |
| <b>Original filename:</b> 2025-08-14 Sites Partnership Agreement - Reclamation Exhibit 1 - Final.docx                        |     |
| <b>Modified filename:</b> 2025-09-18 (Clean) Sites Partnership Agreement - Sites Edits.docx                                  |     |
| <b>Changes:</b>  |     |
| <u>Add</u>   | 377 |
| <del>Delete</del>  | 201 |
| <del>Move From</del>   | 7   |
| <u>Move To</u>   | 7   |
| <u>Table Insert</u>  | 0   |
| <del>Table Delete</del>  | 0   |
| <u>Table moves to</u>  | 0   |
| <del>Table moves from</del>  | 0   |
| Embedded Graphics (Visio, ChemDraw, Images etc.)   | 0   |
| Embedded Excel   | 0   |
| Format changes   | 0   |
| <b>Total Changes:</b>  | 592 |