

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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Exhibit A: Spend Plan

Exhibit B: Sites Project Information and Facilities

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Exhibit D: List of Sites Authority Obligations

Exhibit E: Final Capacity Interest

Exhibit F: Excess Capacity Contract

Exhibit G: Authority Reclamation Agreement Between the Department of Water Resources of the State of California, The United States Bureau of Reclamation, and The Sites Project Authority to Coordinate in the Operations Agreement of the Sites Reservoir Project

Exhibit H: Reclamation Involvement in Governance

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PARTNERSHIP AGREEMENT
BETWEEN THE UNITED STATES
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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:

13

EXPLANATORY RECITALS

14 [1st] WHEREAS, § 4007(g) of the WIIN Act authorizes the Secretary of the Interior,
15 acting through the Commissioner, to partner or enter into an agreement regarding the water
16 storage projects identified in § 103(d)(1) of the Water Supply, Reliability, and Environmental
17 Improvement Act (Public Law 108-361; 118 Stat. 1684) with local joint powers authorities
18 formed pursuant to [California](#) State law by irrigation districts and other local water districts and
19 local governments within the applicable hydrologic region, to advance those projects; and

20 [2nd] WHEREAS, the Sites [ReservoirProject](#) was identified in § 103(d)(1) of the Water
21 Supply, Reliability, and Environmental Improvement Act (Public Law 108-361; 118 Stat. 1684);
22 and

23 [3rd] WHEREAS, the Sites Project Authority, previously known as the Sites Joint
24 Powers Authority, was formed as a California joint powers authority operating under and by
25 virtue of Section 6500 et seq., of the California Government Code and formed in accordance
26 with the Sites Project Authority Joint Exercise of Powers Agreement, as such agreement may be
27 modified from time to time, with the primary purpose of designing, constructing, owning,
28 operating and maintaining the Sites [Reservoir](#) Project, a State-led storage project; and

29 [4th] WHEREAS, Reclamation completed the North-of-the-Delta Offstream Storage –
30 Sites Feasibility Report (“Feasibility Report”[2020](#)) in December 2020 and the North-of-the-Delta
31 Offstream Storage Investigation Feasibility Report Addendum in January 2023, which
32 determined the potential Federal and non-Federal interest in the selected alternative; and

33 [5th] WHEREAS, § 4007(e) of the WIIN Act provides, “subject to compliance with
34 State water rights laws, the right to use the capacity of a State-led storage project for which the
35 Secretary of the Interior has entered into an agreement under this subsection shall be allocated in

36 such manner as may be mutually agreed to by the Secretary of the Interior and each other party
37 to the agreement.”; and

38 [6th] WHEREAS, pursuant to § 4007(f)(1) of the WIIN Act, the California Water
39 Commission determined that the State-led Sites ~~Reservoir Storage~~ Project is consistent with the
40 California Water Quality, Supply, and Infrastructure Improvement Act; and

41 [7th] WHEREAS, on November 2, 2023, the Authority and Reclamation released a
42 joint Final Environmental Impact Report/Final Environmental Impact Statement, hereinafter
43 “FEIR/FEIS”^{”,”} for the Project; and the Authority certified the FEIR/FEIS and adopted the
44 Project with Board Resolution 2023-02; and on [DATE], Reclamation signed its Record of
45 Decision for the construction and operation of the Sites Project; and _____

46 [8th] WHEREAS, the Sites Authority intends to enter into contracts with State and
47 local agencies pursuant to which the State and local agencies will receive certain benefits
48 (including water service) and have certain obligations related to the Sites Project. These include
49 ~~the~~ (i) Exhibit G: Agreement Between the Department of Water Resources of the State of
50 California, the United States Bureau of Reclamation, and Federal~~the~~ Sites Project Authority to
51 Coordinate in the Operations Agreement of the Sites Reservoir Project; (ii) Public Benefits
52 Agreements with California State Agencies; (iii) Proposition 1 Water Storage Investment
53 Program Contract with the California Water Commission; and (iv) Benefits and Obligations
54 Contract. ~~In performing its obligations under this Agreement, the Sites Authority shall comply~~
55 ~~with the terms of such agreements~~; and

56 [9th] WHEREAS, the Sites Authority intends to enter into contracts with agencies to
57 ~~convey water related to and from the Project. In performing its obligations under this~~
58 ~~Agreement, the Sites Authority shall comply with the terms of such agreements.~~

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

60 **DEFINITIONS**

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

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

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

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

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

80 (e) “Base Facilities Capacity Interest” shall mean the undivided capacity right
81 of each Storage Partner to store, convey and divert Sites Water in each of the Base Facilities

82 ~~granted by the Sites Authority and owned by the Storage Partner pursuant to the terms of the~~
83 ~~Benefits and Obligations Contract and this Agreement, and in the pro rata share set out for each~~
84 ~~Storage Partner in and subject to the Sites Water Right, applicable law and governmental~~
85 ~~approvals.~~ **[Note: Remains subject to further internal policy discussions]**

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

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

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

97 (i) ~~“CDFW” shall mean California Department of Fish and Wildlife.~~

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

101 (d) ~~“Completion” shall have mean the meaning given determination by the~~
102 ~~Sites Authority Board and the Reservoir Management Board that the Sites Project Facilities are~~
103 ~~complete for the purposes of providing water service, including water storage, intake, outlet, and~~
104 ~~conveyance, to Storage Partners.~~

(k)(e) “Conveyance Capacity” shall mean a Storage Partner’s physical space in the Benefits and Obligations Contract.Sites Project Facilities infrastructure commensurate with Sites Project Facilities Capacity Interest.

111 (m)(g) "Downstream Federal Facilities" shall mean ~~the Project Facilities or other~~
112 ~~all~~ facilities ~~that are utilized~~owned by ~~select Storage Partners~~the United States, including those
113 listed in ~~the Project Specific Information in the Benefits and Obligations Contract~~Exhibit C, as
114 modified from time to time.

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

120 (e) "DWR" shall mean the State of California Department of Water
121 Resources.

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

126 (q) — “Fixed O&M Costs” shall mean (1) all costs, calculated in accordance
127 with ~~generally accepted accounting principles~~ Generally Accepted Accounting Principles,

128 incurred by the Sites Authority ~~(i)~~ to administer, operate, maintain, power, repair, replace, and, to
129 the extent that reserves are available, rehabilitate and improve, the Project, ~~(ii) attributable to the~~
130 ~~conveyance and storage of water in the Project Facilities excluding pumping costs, carriage~~
131 ~~costs, and power interference costs; (iii) for the Sites Authority defense or other legal costs,~~
132 ~~including payment of claims, settlements or judgments (iv) to meet regulatory requirements~~
133 ~~associated with the Project; including administrative and legal costs of the Sites Authority,~~
134 ~~overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and~~
135 ~~[insurance premiums], and including all other reasonable and necessary costs of the Sites~~
136 ~~Authority, or charges required to be paid by it to comply with the terms of the financing~~
137 ~~agreements or the Benefits and Obligations Contract; (v) to replenish operating reserves of the~~
138 ~~Project; and (2) amounts required for compliance with Sections 3.2 and 3.5 of the Master~~
139 ~~Resolution of the Sites Authority or any similar provisions thereof; but excluding in all cases (A)~~
140 ~~depreciation, replacement and obsolescence charges or reserves for such costs, (B) amortization~~
141 ~~of intangibles or other bookkeeping entries of a similar nature, (C) costs of capital additions,~~
142 ~~replacements, betterments, extensions or improvements to the Project, which under generally~~
143 ~~accepted accounting principles are chargeable to a capital account or to a reserve for depreciation~~
144 ~~and (D) [Sites financing costs, in each case incurred by the Sites Authority with respect to the~~
145 ~~Project. Fixed O&M Costs are incurred irrespective of the amount of water diverted, stored or~~
146 ~~released to the Participants]. Fixed O&M Costs include any and all costs and expense that are not~~
147 ~~Fixed Project Costs, Sites financing costs or Variable O&M Costs that may accrue to the Sites~~
148 ~~Authority after execution of the Benefits and Obligations Contract.~~

149 ~~(r)(h) “Fixed Project Costs” shall mean (i) development, design, construction~~
150 ~~and capital costs of the Project, and (ii) individual repair, replacement, rehabilitation,~~

151 ~~improvement, or regulatory compliance activities incurred after completion of the Project~~

152 ~~Facilities to the extent not covered by Fixed O&M Costs.~~

153 (s)(i) “Force Majeure” shall mean events beyond the reasonable control of a
154 Party, including strikes, riots, wars, fire, earthquakes, acts of God and/or unusual acts of nature,
155 acts in compliance with any law, regulation or order (whether valid or invalid) by the United
156 States of America or any state thereof or any other domestic or foreign governmental body or
157 instrument thereof having jurisdiction in the matter, in each case which directly, materially and
158 adversely affects a Party’s ability to perform its obligations under this Agreement.

159 (j) “Generally Accepted Accounting Principles” shall mean such accepted
160 accounting practice as conforms at the time to generally accepted accounting principles to public
161 agencies in the United States of America, consistently applied.

162 (k) “Good Industry Practice” shall mean the exercise of the degree of skill,
163 diligence, prudence and foresight which would reasonably and ordinarily be expected from a
164 skilled and experienced designer, engineer, constructor, supplier, operator or maintenance
165 provider, as applicable, operating in the United States under the same or similar circumstances
166 and conditions, seeking in good faith to comply with its contractual obligations, this Contract and
167 all Applicable Law and Governmental Approvals in conformance with applicable professional
168 engineering principles, construction, operations and maintenance practices generally accepted as
169 standards of the industry in the State.

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

172 (u)(m) “In-kind Services” shall mean eligible time and effort, real and personal
173 property, and goods and services, as defined by the Authority.Department of the Interior. In-kind

174 services may be applied to the cost-share, but the value of the in-kind contributions must be
175 evaluated and documented as described in Article 4. Valuation of in-kind services shall be in
176 accordance with 2 CFR Part 200.

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

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

181 (o) “Refuge Water Points of Acceptance” shall mean ~~the~~ locations at which
182 the Authority will make water supplies available to Reclamation for ~~the purposes~~delivery to
183 refuges as outlined in Exhibit D to this Agreement.

184 ~~(*)~~(p) “Refuge Water Points of the IL4-Delivery” shall mean locations at which
185 the Water Purveyor delivers water supplies made available by Reclamation to the refuges.

186 (y)(q) “Project Use Energy” shall mean the electrical capacity, energy, and
187 associated ancillary service components required to provide the minimum electrical service using
188 the most economical methods needed to operate and/or maintain Reclamation-owned facilities in
189 conformance with project authorization.

190 (r) “Public Benefit AgreementsSites Project Facilities” shall mean ~~the~~
191 agreement betweenall facilities constructed by the Sites Authority and DWR; anticipatedfor the
192 benefit of the Sites Project. Sites Project Facilities are listed in Exhibit B.

193 ~~(z)~~(s) “Sites Project Facilities Capacity Interest” shall mean the undivided
194 capacity right of each Storage Partner to be titled Proposition 1the Sites Project Facilities and
195 associated Sites Water Storage Investment Program Contract for Administration Of Public Flood
196 Control/Recreation Benefits and the agreement betweengranted by the Sites Authority and

197 ~~CDFW anticipated to be titled Proposition 1 Water owned by the Storage Investment Program~~
198 ~~Contract for Administration of Public Ecosystem Benefits, or each of them as the context~~
199 ~~requires. Partner commensurate with investment.~~

200 ~~(aa)(t) “Secondary Delivery Point” shall mean a location other than the Delivery~~
201 ~~Points that the Colusa Basin Drain, at which the Authority will make water supplies available to~~
202 ~~Reclamation may request the assistance of the Sites Authority in conveyance of Reclamation’s~~
203 ~~Sites Water. Reclamation bears all costs (monetary or otherwise), the risk of loss, and any~~
204 ~~shortfalls or reduction beyond the Delivery Points, outlined in Exhibit D to this Agreement.~~

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

210 ~~(ee)(v) “Sites Project” or “Project” or “Project Facilities” shall mean the Sites~~
211 ~~Reservoir Project, owned Facilities managed and operated by the Sites Authority, and any~~
212 ~~facilities used by the Sites Authority to convey Sites Water to, or from, the Sites Owned Project~~
213 Facilities ~~in accordance with the partner agreements the partner facilities, or any of them as the~~
214 ~~context requires, as are~~ outlined in Exhibit B ~~of~~ to this Agreement.

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

217 ~~(ee)(x) “Sites Water” shall mean the water that is appropriated

diverted

 under the~~
218 Sites Water Right.

219 ~~(ff)(y)~~ “Sites Water Right” shall mean the water right [Order XXXX] obtained
220 and owned by the Sites Authority for the Project ~~water right~~ [Order XXXX].

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

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

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

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

231 ~~(kk)(z)~~ “Storage Allocation” shall mean the maximum actual capacity allocated to
232 a Storage Partner for storing Partner’s physical space in Sites Reservoir and accompanying
233 Sites Water ~~in the commensurate with its Sites~~ Project Facilities, ~~measured and determined~~
234 ~~from time to time.~~ Capacity Interest.

235 ~~(ll)(aa)~~ “Storage Partner” shall mean the governmental agencies, water
236 organizations, and others who have funded and received a ~~Storage Allocation in Sites Reservoir~~
237 ~~and the resulting water supply or water supply related benefits from the Project.~~ Storage Partners
238 ~~could include Participants, the State, and Reclamation.~~ Sites Project Facilities Capacity Interest
239 ~~and the associated Sites Water.~~

(mm) “SWP Participants” shall mean those Participants listed in the Project

241 Specific Information in the Benefits and Obligations Contract, which have elected to pay Project
242 costs through the Acquirer in connection with the State Water Project.

TERM OF AGREEMENT

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

260 (a) The Parties may mutually agree to terminate this Agreement; , along with
261 any associated agreements necessary for implementation of the Project; in which case, the Parties
262 will meet and confer to come to mutual agreement regarding termination. The Parties agree that

263 ~~the Parties shall meet and confer to come to mutual agreement regarding termination if the~~
264 ~~Authority does not receive fully executed Benefits and Obligations Contracts from all anticipated~~
265 ~~Participants or a fully executed Proposition 1 Water Storage Investment Program Contract.~~

266 (b) The United States and the Authority shall jointly review this Agreement,
267 which review shall be performed at least every five (5) years. A more frequent review will occur
268 if determined to be appropriate by the Parties. The review shall compare the relative success
269 which each Party has had in meeting its objectives, as outlined in this Agreement and this
270 Agreement's exhibits, including, but not limited to, those objectives in the Spend Plan in Exhibit
271 A.

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

276 **FEDERAL PARTICIPATION IN THE SITES PROJECT**

277 3. Pursuant to ~~§4007~~ WIIN Act § 4007, Reclamation has the authority to participate
278 up to twenty-five (25) percent in State-led storage projects.

279 (a) ~~Consistent with XX section [whatever section references payment], Subject~~
280 to this Agreement, Reclamation is committing to pay for and the Sites Authority hereby grants,
281 ~~and~~ Reclamation ~~shall own~~ownership of a ~~a sixteen (16) percent Baseshare of Sites Project~~
282 Facilities Capacity Interest] ~~I accordance with this Agreement. . Provided however, and~~
283 ~~associated~~ Sites Water ~~originating from Funks Creek and its tributaries, Stone Corral Creek and~~
284 ~~its tributaries, and the watershed of Sites Reservoir shall be allocated consistent with the Colusa~~
285 ~~County/Sites Authority Memorandum of Understanding and this Agreement~~

286 ~~incorporates commensurate with Federal investment~~ in the ~~Colusa County~~ / Sites Authority
287 ~~MOU~~ Project.

288 (a) ~~With its participation~~ in its entirety by reference. *Provided further*, that the
289 ~~Project~~, Reclamation ~~bears the risk of loss, shortfall or reduction in~~ must receive Sites Water.

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

293 (c) ~~Reclamation intends to achieve for~~ operational flexibility, ~~HL4 Refuge~~
294 ~~supplies~~, and Anadromous Fish Benefits, as identified in the November 2022 North of Delta
295 Off-stream Storage Investigation Feasibility Report Addendum (Addendum) ~~with its~~
296 ~~participation in the Project~~, and shall make reasonable and beneficial use of Sites Water
297 consistent with all applicable law. ~~Reclamation agrees to timely provide any information~~
298 ~~regarding its use of Sites Water that the Sites Authority may need to comply with applicable law.~~

299 (d) ~~Reclamation agrees to timely provide requests for Sites Water to be stored~~
300 ~~in Reclamation's Storage Allocation and Sites Water to be released from Reclamation's Storage~~
301 ~~Allocation to the Delivery Points. The Authority agrees to take reasonable actions, consistent~~
302 ~~with law and this Agreement, to achieve Reclamation's storage and release requests to the~~
303 ~~Delivery Points. At Reclamation's request and cost, including water loss and risk of loss or~~
304 ~~shortfall, the Authority will take reasonable actions to convey Reclamation's Sites Water to a~~
305 ~~Secondary Delivery Point.~~

306 (e)(d) ~~Reclamation will have the right of first refusal to secure further investment in~~
307 ~~the Capacity Interest, or portion thereof, made available by a defaulted Participant in accordance~~
308 ~~with Article 14 subject to Reclamation making its determination within 60 days of Project, prior~~

309 ~~to the Authority offering such capacity and demonstrating reasonable assurance~~the space to ~~the~~
310 ~~satisfaction of the Authority, of availability of previously appropriated funds to pay for such~~
311 ~~Capacity Interest~~other entities subject to Article 16.

312 (f)(e) Reclamation ~~agreesintends~~ to execute contracts on a schedule to support
313 ~~project~~Project implementation with the Authority following standard terms and conditions
314 covering the following items:

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

320 (i) ~~Long Term Warren Act Contract~~Conveyance of IL4 refuge water
321 supplies from Refuge Water Points of Acceptance to Refuge Water Points of Delivery.

322 (2)(ii) ~~Excess Capacity Agreement~~ covering the use of all ~~facilities~~Federal Facilities necessary for conveying Sites ~~water~~Water to all Storage Partners.

324 (3)(iii) ~~Land lease agreement~~Use Authorization allowing use of any
325 Federally ~~Owned~~owned property needed to locate and build Sites Project ~~facilities~~Facilities.

326 (4)(iv) Provision of non-potable water service for the duration of
327 construction at ~~project~~Project worksites conveniently served from existing Federal
328 ~~facilities~~Facilities which shall be attributable to Reclamation's Federal investment in the Sites
329 Project.

330

COSTS ASSOCIATED WITH THE SITES PROJECT

331 4. All Project costs associated with this Agreement shall be compliant with Federal
332 law- and in line with Generally Accepted Accounting Principles. In accordance with 43 Code of
333 Federal Regulations Part 429, Section 429.17, Subpart D, the Reclamation Act of 1902, and the
334 Reclamation Project Act of 1939, the Contributed Funds Act of 1922, and the Anti-Deficiency
335 Act (31 U.S.C. § 1341 et seq.), the Authority is responsible for accounting for Reclamation's
336 estimated Sites Project costs and ultimately crediting, in full, the actual Sites Project costs
337 incurred by Reclamation to prepare, review and/or approve the Project.

338 (a) Upon the determination of Completion of construction of the Sites Project,
339 Reclamation and the Authority will meet and confer to complete a final accounting of the Sites
340 Project and the total Sites Project Facilities Capacity Interest within 180 days to determine and
341 mutually agree upon changes in final investment and commensurate Sites Project Facilities
342 Capacity Interest in the Project due to fluctuations of costs through construction. The final Sites
343 Project Facilities Capacity Interest attributable to Reclamation's final investment will be
344 documented in Exhibit E to this Agreement and will be monitored throughout the duration of this
345 Agreement on a quarterly basis in accordance with Article 4 (g). If an extension is desired by
346 either Party, the Parties will meet and confer to determine a reasonable time frame.

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

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

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

355 (e)(d) Allowable costs include, but are not limited to:

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

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

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

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

372 (4) Permitting Costs: Additional permitting actions prior to
373 declaringCompletion of the Sites Project Substantially Complete may be required. The
374 Authority will determine, as appropriate, the appropriate Party to obtain any necessary
375 permit(s), and if Reclamation is involved, the Parties will mutually agree upon the appropriate

376 share of costs for the permitting actions to be considered ~~federal~~Federal investment in the
377 Project.

378 (5) Administrative Costs: Include, unless otherwise defined by
379 contracts ~~and as determined by the Authority~~: project management, construction management,
380 accounting and administrative management, ~~legal support and review~~, operations coordination,
381 travel, general meetings related to the Sites Project, contract/agreement technical meetings and
382 negotiations, and other supportive services and activities necessary for the construction and
383 operation of the Sites Project prior to the determination of Completion. - Reclamation's
384 administrative and management costs associated with the Sites Project will be considered part of
385 the overall Federal investment into the Sites Project. Reclamation will provide an estimate of the
386 administrative costs for the Sites Project in the Spend Plan which will be mutually agreed upon
387 with the Authority. The Authority will reserve sufficient funding to pay for its administrative
388 costs for the non-Federal share of the Sites Project.

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

399 confer on the best course of action and Reclamation's involvement in such governance is
400 described in Exhibit H to determine if the additional cost is beneficial and allowable.

401 (7) Construction Costs: The Authority will procure the
402 construction contractors and will manage construction contracts with respect to the Sites Project.
403 If Reclamation's benefits are believed to be materially impacted by a change in the construction
404 contract, it may will be considered material-consistent with the similar terms and conditions in the
405 Benefits and Obligations Contract. Material changes will be addressed withinin the construction
406 contract will require the Parties to meet and confer on the governancebest course of action and to
407 determine if the additional cost is beneficial to the Project and Reclamation's involvement in
408 such governance is described in Exhibit H allowable.

409 (8) Reclamation's Involvement in Project Oversight as part of
410 the Project Governance Structure: The parties agree that Exhibit H describes Reclamation
411 involvement in Project Governance. No other rights or duties are authorized to Reclamation
412 under this agreement unless specified herein.

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

414 (ii) Expected Future Ongoing Costs Associated with Federal
415 Participation in the operation of the Sites Project include, including but are not limited to:

416 (1) O-&M Costs: The Authority will be responsible for O&M
417 of the Sites Project. The Authority will identify the annual O&M Costs attributable to
418 Reclamation. Reclamation's operational flexibility and Anadromous Fish Benefits. Reclamation
419 will pay for the attributable portion within 3090 days of receiving an invoice. If Reclamation
420 fails, subject to pay, the Sites Authority may give notice of suspension or termination of the
421 Reclamation's available appropriations.

422 a. ~~right to involvement in the governance of the~~
423 ~~Project as described in Exhibit H;~~
424 b.a. Fixed O&M Costs assigned annually to
425 Reclamation shall be proportionate to Sites Project Facilities Capacity Interest and Share, such
426 Participant's interest in Water and such Participant's right to convey Water; and / or
427 c. ~~right to the services obligated to be provided by the~~
428 ~~Sites Authority relating to the operation of the Sites Project, as provided in the Sites Operations~~
429 Plan,

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

436 b. Variable O&M Costs assigned annually to
437 Reclamation shall be proportionate to the use of Sites Project Facilities Capacity Interest
438 (2) Use of Reclamation's Conveyance Capacity: In the event a
439 Storage Partner utilizes Reclamation's Conveyance Capacity in the Dunnigan Pipeline, the
440 Authority will develop and charge a rate commensurate with Conveyance Capacity used. Such
441 rate will be applied to said Storage Partner and the funding will be credited to Reclamation's
442 O&M account.

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

446 ~~d.(4) IL4 Water Costs: While the Authority is responsible for~~
447 delivering water supply to the ~~Delivery Point~~Refuge Water Points of Acceptance, Reclamation's
448 costs for wheeling water from the ~~[Points of Acceptance/Delivery~~Refuge Water Points~~]~~of
449 Acceptance to the respective CVPIA refugesRefuge Water Points of Delivery shall be
450 considered ~~costs to be directly paid by Reclamation and are not In-kind Services~~an In-kind
451 Service.

452 ~~(d)(e)~~ Non-allowable Costs include, but are not limited to:
453 (i) Any interest or fees related to financing activity of the Sites
454 Authority and their Storage Partners shall not be paid by Reclamation, ~~unless such costs are~~
455 ~~associated with delayed payment or non-payment by Reclamation.~~
456 (ii) The Project is not part of the Central Valley Project, and as such,
457 will not receive Project Use Energy. ~~If legislation is passed or it is otherwise determined that the~~
458 ~~Project is subject to Project Use Energy in the future, the Parties will meet and confer and come~~
459 ~~to mutual agreement on the handling of these costs. After mutual agreement in writing, the~~
460 ~~Parties will label these costs as allowable without amendment to this Agreement.~~

461 ~~(e)(f)~~ Within 3090 days of this Agreement's execution, Reclamation and the
462 Authority will develop Exhibit A, a spend plan containing mutually agreeable terms for
463 Reclamation to commit funding under § 4007 of the WIIN Act and to track costs and account for
464 funds expended. Exhibit A may be modified by mutual agreement without amendment to this
465 Agreement.

466 (i) Reclamation shall deposit cash with the Sites Authority (each, a
467 "Self Funding Cash Payment"), in the amount and by the timings specified in the spend plan..
468 (ii)(b) The Sites Authority will deposit each Self Funding Cash Payment in an
469 individual account or accounts for Reclamation established and held by the Sites Authority
470 separate and apart from the Sites Authority's other funds and accounts, and shall apply such
471 amount, including the investment earnings thereon, to pay Reclamation's share of the cost of the
472 applicable Fixed Project Costs in accordance with the terms of this Agreement. Such accounts
473 and any investments shall be held in compliance with applicable law.

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

489 offset Fixed O&M Costs. Any such revenues will be allocated by the Sites Authority to ~~Storage~~
490 ~~PartnersReclamation~~ in proportion to the amount of ~~Sites~~ Water released on behalf of ~~the Storage~~
491 ~~PartnersReclamation~~ during the ~~Fiscal~~ Year. The Parties acknowledge and agree that the release
492 of ~~Sites~~ Water has a higher priority than the generation of power by Project Facilities and power
493 generation is not guaranteed to ~~Storage PartnersReclamation~~ with the release of ~~Sites~~ Water.

494 **LEASE OR SALE OF CAPACITY INTEREST AND SHARE, AND SITES WATER**

495 5. Reclamation shall have ~~rights to~~ ~~right of first refusal in the~~ purchase ~~of~~ defaulted
496 Storage Partners' ~~Base~~ ~~Sites~~ ~~Project~~ Facilities Capacity Interest ~~and/or Downstream Facilities~~
497 ~~Capacity Share, Sites~~ Water, or lease of other Storage Partners' ~~Storage Allocation~~ ~~Capacity and~~
498 ~~Conveyance Capacity in the Project, subject to Article 16.~~ Reclamation may elect to lease its
499 Storage ~~Allocation~~ ~~Capacity and Conveyance Capacity~~, and the Authority will assist Reclamation
500 to the extent practicable.

501 **OPERATION OF SITES RESERVOIRPROJECT FACILITIES**

502 6. The Sites Authority will operate and maintain the Sites Project ~~facilities~~ ~~Facilities~~
503 in good faith and in accordance with all applicable agreements, law, environmental requirements
504 and water rights. The Sites Authority will protect the Sites Water Right and will manage, control,
505 and protect Sites Water in good faith and in accordance with all applicable laws and regulations.

506 (a) Sites ~~Reservoir~~ ~~Project Facilities~~ will be operated in a manner that avoids
507 harm to the Central Valley Project ~~and the, its contractors, its~~ water rights ~~held by, and Federal~~
508 ~~Facilities.~~

509 (a)(b) Reclamation agrees to timely provide requests for Sites Water to be stored
510 in Reclamation's Storage Capacity and Sites Water to be released from Reclamation's Storage

511 Capacity to the Delivery Points. The Authority agrees to take reasonable actions, consistent with
512 law and this Agreement, to achieve Reclamation's storage and release requests to the Delivery
513 Points. At Reclamation's request and cost, including water loss and risk of loss or shortfall, the
514 Authority will take reasonable actions to convey Reclamation's Sites Water to a Secondary
515 Delivery Point.the Central Valley Project.

516 ~~(b)(c) The Project provides water supply and water supply related environmental~~
517 ~~benefits, including water quality benefits, as well as flood control, recreation, and power~~
518 ~~generation benefits. The Parties agree to take reasonable steps to optimize the diversion and~~
519 ~~beneficial use of Sites Water. The diversion of Sites Water to storage will take priority over the~~
520 ~~release of water. The Project will be operated so as to maximize the~~ The Authority will operate
521 the Project so as to maximize the water supply and water supply related environmental benefits
522 while continuing to provide the flood control and recreational benefits. The AuthorityThe
523 diversion of Sites Water to storage will take priority over the release of water except in cases of
524 severe flooding. The Authority, in good faith, may temporarily discontinue or reduce the
525 conveyance of Sites Water to, and release of Sites Water from, the Sites Project Facilities in
526 various emergency and non-emergency situations to protect life and property-as part of the
527 flood control benefit.

528 ~~(e)(d) The Authority will operate and maintain the Project in full compliance~~
529 with the terms of this Agreement and in such a manner that the Project remains in good and
530 efficient condition, subject to exercise of discretion to fund and carry out Capital Improvements.

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

534 (ii) Reclamation's share of Sites Water diversions and releases will be
535 commensurate with Storage Capacity Interest.

557 to the State of CaliforniaCalifornia's investment, as described in Exhibit D.without any cost to
558 Reclamationshall. Reclamation will deliver Sites Water to meetfrom the Project's IL4Refuge
559 Water obligations pursuantPoints of Acceptance to the State of California investment at
560 Reelamation's cost, as described in Exhibit D.Refuge Water Points of Delivery.

561 (i) The Parties, along with DWR, willthe California Department of
562 Water Resources, will execute Exhibit G to identify coordination processes for Sites Water
563 diversions, and releases, measurement, and exchanges and reach written consensus prior to
564 executing this Agreement that the documented processes sufficiently ensure the three parties
565 interest can be achieved. The Parties, along with DWRthe California Department of Water
566 Resources, will consider changes necessary to represent conditions at the time of Completion and
567 execute such three party agreement prior to Completionan amendment to Exhibit G as needed.

568 (ii) The Central Valley Operations officeReclamation agrees to timely
569 provide any information regarding its use of Sites Water that the Sites Authority needs to comply
570 with applicable law.

571 (i)(iii) Reclamation will maintain its operational independence on
572 operations of the Central Valley Project. Neither Party shall operate in such a manner that may
573 be arbitrary or capricious and intentionally harms another Party's benefits.

574 (j) — The Authority will be responsible for providing power to operate and
575 maintain the Sites ReservoirProject Facilities and to convey Sites Water to the Delivery Points.
576 (iv) The Authority makes no representation, warranty or guarantee,
577 Secondary Delivery Points, and Refuge Water Points of theAcceptance.

578 (k)(v) The quality of Sites Water delivered under this Contract- will be
579 compliant with all applicable Federal law, California state law (including the Sites Water Right),
580 and any other contracts or agreements between the Parties.

581 (j) The Sites Authority and Reclamation each agree that Reclamation shall be
582 allowed, at reasonable times and upon reasonable prior notice, and at Reclamation's expense, to
583 enter onto Sites Project Facilities for reasonable purposes in accordance with the Sites
584 Authority's reasonable safety regulations and policies and subject to applicable law and
585 governmental approvals.

586 ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE

587 Reclamation will serve as the ESA Section 7 consultation lead for the initial construction and
588 water-related operation of Sites **ENVIRONMENTAL AND CULTURAL COVERAGE AND**
589 **COMPLIANCE**

590 7. ~~Reclamation will serve as the ESA Section 7 consultation lead for the initial~~
591 ~~construction and water related operation of Sites Reservoir Project Facilities.~~ Reclamation and
592 the Authority will meet and confer on future Project activities to determine the most appropriate
593 ESA consultation approach and lead agency consistent with applicable law and regulation.

594 (a) The Parties agree that Reclamation will consult on the operation of the
595 Sites Project as ESA Section 7 lead, treating the operation of the Sites Project as a distinct
596 component related to the Long Term Operations of the State and Federal Projects. Reclamation
597 agrees intends to seek an incidental take statement specific to effects from the operation of the
598 Sites Project.

599 (b) It is the understanding of the Parties that any future reconsultation
600 reinitiation of consultation on the operations of the Central Valley Project after an initial

601 incidental take statement for the effects from the operations of the Sites Project does not
602 automatically require a change to the Sites Project incidental take statement and/or a
603 reconsultation/reinitiation of consultation on the Sites Project. The Parties agree to meet and
604 confer before seeking a change to the Sites Project incidental take statement and/or a
605 reconsultation/reinitiation of consultation on the Sites Project to jointly review, among other
606 things, the information before each agency, potential approaches, and possible outcomes. In any
607 consultation that has the potential to result in impacts to the Sites Project operations,
608 Reclamation will coordinate with the Authority, the United States Fish and Wildlife Service
609 (USFWS), and National Marine Fisheries Service (NMFS) to maintain and maximize the
610 anticipated benefits of the Sites Project while avoiding harm to the CVPand other Storage
611 Partners. If the Parties mutually determine that reconsultation/reinitiation of consultation on the
612 Sites Project is required, the specific changes contemplated for the Sites Project must meet one
613 of the following criteria in accordance with the Endangered Species Act, Title 50 CFR §
614 402.16(a) as amendedand; the Parties will cooperate in the preparation and negotiation of the
615 reconsultation/reinitiation of consultation and the resulting revised incidental take statement
616 specific to the Sites Project.

617 (e) — The Parties agree to move expeditiously, meet and confer as necessary;
618 and have staff resources dedicated to ensuringverify and ensure the Project's ESA Section 7
619 constructionenvironmental compliance during the life of the Project. The Authority is
620 implemented without delay throughout the duration of construction.

621 (c) Reclamation has completedresponsible for documenting environmental
622 compliance with the Mitigation, Monitoring and Reporting Plan and other environmental permits

623 (e.g., Clean Water Act, Endangered Species Act) and agrees to provide environmental
624 compliance documentation to Reclamation upon request.

625 8.(d) Through the development, execution, and implementation of a
626 Programmatic Agreement to address adverse effects to historic properties, Reclamation will
627 remain in compliance with Section 106 of the National Historic Preservation Act of 1966, as
628 amended- for the- construction of the Sites Project. ~~Reclamation shall designate the Sites~~
629 ~~Authority as its authorized representative under Section 106.~~ The Parties agree to ~~move~~
630 ~~expeditiously,~~ meet and confer as necessary, ~~and have staff resources dedicated to ensuring to~~
631 ~~ensure~~ the Project's Section 106 construction compliance is timely implemented ~~without delay~~
632 throughout the duration of construction.

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

EXCUSED PERFORMANCE

639 8. The Authority intends to enter into other agreements that will facilitate the
640 operations and construction of the Sites Project and in performing its obligations under such
641 agreements, the Sites Authority shall comply with the terms of this Agreement; and

642 10.(a) Upon the occurrence of an event of Force Majeure, (a) the Sites Authority
643 shall be excused from its obligations under this Agreement for the period during which it is unable
644 to comply with such obligations as a result of such event of Force Majeure; and (b) Reclamation
645 shall be excused from ~~their~~ its obligations under this Agreement for the period during which ~~they~~

646 ~~are it is~~ unable to comply with such obligations as a result of the event of Force Majeure, ~~other than~~
647 ~~the payment of Project costs described in this Agreement, which obligations are not subject to~~
648 ~~reduction or abatement.~~

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

654 **DEFAULT; FAILURE OF TIMELY PAYMENT**

655 9. Due to Reclamation's ~~upfront capital investment, this article pertains to~~
656 ~~Reclamation's timeliness in O&M payments subject to Articles 14 and 16. Payments of O&M~~
657 ~~will be considered timely if made on or before the date on which the associated costs to the~~
658 ~~Authority are incurred. In the event of the Authority's default, the Authority shall provide~~
659 ~~Reclamation with the right of first refusal to any and all assets.~~

660 **DISPUTE RESOLUTION**

661 11. ~~Default~~

662 (a) Written Demand
663 (i) If Reclamation fails to ~~(i) timely~~ make any ~~capital~~O&M payment in
664 full when due under this Agreement ~~or (ii) perform any other obligation under this Agreement,~~
665 the Sites Authority shall make written demand upon Reclamation. If a failure described in this
666 Section is not remedied within ~~30~~180 days from the date of such demand, such failure shall
667 constitute a ~~default~~failure of a timely payment at the expiration of such period; provided that if a

668 failure described in this Section cannot be remedied within 30180 days from the date of such
669 demand but Reclamation commences remedial action within such 30-180 day period and
670 diligently pursues the remedy of such defaultfailure of a timely payment until the remedy is
671 complete and (B) such failure is remedied within 90180 days from the date of the initial demand,
672 such failure shall not constitute a defaultfailure of a timely payment under this Agreement.

673 (ii) Upon failure of the Sites Authority to perform any obligation of
674 the Sites Authority under this Agreement, Reclamation may make written demand upon the Sites
675 Authority. If such failure is not remedied within 30180 days from the date of such demand, such
676 failure shall constitute a default at the expiration of such period.

677 (iii) In addition to any default resulting from breach by the Sites
678 Authority or Reclamation of any agreement, condition, covenant or term of this Agreement, if
679 the Sites Authority or Reclamation files any petition or institutes any proceedings under any law,
680 state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any
681 amendment of such law, either as a bankrupt, as an insolvent, as a debtor or in any similar
682 capacity, wherein and whereby the Sites Authority or Reclamation asks or seeks or prays to be
683 adjudicated as bankrupt, or is to be discharged from any or all of its debts or obligations, or
684 offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks
685 or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its
686 debts or for any other similar relief, or if the Sites Authority or Reclamation shall make a general
687 or any assignment for the benefit of its creditors, then, in each and every such case, the Sites
688 Authority or Reclamation, as applicable, shall be deemed to be in default under this Agreement.

689 (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.

(e) 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~~

713 ~~and right to convey water to other non-defaulting Storage Partners in accordance with Section~~
714 ~~(ii) above, the Sites Authority may make such Defaulted Interests available to entities other than~~
715 ~~the non-defaulting Participants, and may enter into an agreement with such entities for the~~
716 ~~purchase of all or a portion of Reclamation's Defaulted Interests and the assumption of the~~
717 ~~related obligations under this Agreement.~~

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

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

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

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

736 ~~extent that the Sites Authority shall receive payment from the buyer thereof for that share of~~
737 ~~costs.~~

738

739 ~~(d)(b)~~ Enforcement of Remedies

740 (i) In addition to the other remedies set forth in this ~~Section 10, Article~~
741 ~~(Dispute Resolution)~~, upon the occurrence of an event of default in accordance with this
742 Agreement, any Party shall be entitled to proceed to protect and enforce the rights vested in such
743 Party by this Agreement by such appropriate judicial proceeding as such Party shall deem most
744 effectual, either by suit in equity or by action at law, ~~whether for the specific performance of any~~
745 ~~covenant or agreement contained herein or~~ to enforce any other legal or equitable right vested in
746 such Party by this Agreement or by law. The provisions of this Agreement and the duties of each
747 Party, their respective boards, officers or employees shall be enforceable by the other Parties by
748 mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction,
749 with the losing Party paying all costs and attorney fees of the prevailing Party.

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

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

755 ~~(2)(1) Injunction. By action or suit in equity to enjoin any acts or~~
756 things which may be unlawful or in violation of the rights of the Sites Authority or Reclamation,
757 as applicable.

DISPUTE RESOLUTION

(e) Waiver

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

768 12.10. Should any dispute arise concerning any provision(s) of this Agreement, or the
769 Parties' rights and obligations thereunder, the United States and the Authority shall meet and
770 confer in an attempt to resolve the dispute. Prior to commencing any legal action, or Reclamation
771 referring any matter to the Department of Justice, the Party shall provide to the other Party thirty
772 (30) days' written notice of the intent to take such action; *Provided*, That such notice shall not be
773 required where a delay in commencing an action would prejudice the interests of the Party that
774 intends to file suit. During the thirty (30) day notice period, the Parties shall meet and confer in
775 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
776 waive or abridge any right or remedy that the Sites Authority or the United States may have.

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

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

782 **OPINIONS AND DETERMINATIONS**

783 13.11. Where the terms of this Agreement provide for actions to be based upon the
784 opinion or determination of either Party to this Agreement, said terms shall not be construed as
785 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
786 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly
787 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
788 or unreasonable opinion or determination. Each opinion or determination by either Party shall be
789 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
790 affect or alter the standard of judicial review applicable under Federal law to any opinion or
791 determination implementing a specific provision of Federal law embodied in statute or
792 regulation.

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

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

802

WATER MEASUREMENT

803 14.12. The Sites Authority ~~shall measure or cause to be measured~~is responsible for the
804 ~~measurement of~~ all Sites Water pursuant to this Agreement at the point(s) of delivery or point(s)
805 of diversion established pursuant to Exhibit D.

806 (a) ~~Within 1 year after Prior to~~ Completion, the Authority shall ensure that, the
807 water measuring devices are installed and operating properly. The Authority will be responsible
808 for installing, operating, maintaining, and repairing all such measurement devices. The
809 equipment and methods used to make such measurement shall be in accordance with ~~sound~~
810 engineering practices.

811 (b)(a) ~~The Good Industry Practices. Upon request of the Contracting Officer, the~~
812 accuracy of such measurements will be investigated by the Sites Authority and ~~Reclamation~~ each
813 ~~agree that Reclamation shall be allowed, at reasonable times and upon reasonable prior notice,~~
814 ~~and at the Reclamation's expense, to enter onto the Sites Facilities for reasonable purposes~~
815 ~~(including dam safety), in accordance with the Sites Authority's reasonable safety regulations~~
816 ~~and policies and subject to applicable law and governmental approvals. any errors appearing~~
817 therein will be corrected.

818

SEVERABILITY

819 15.13. In the event that any one or more of the provisions contained herein is, for any
820 reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or
821 unenforceability will not affect any other provisions of this Agreement, but this Agreement is to
822 be construed as if such invalid, illegal or unenforceable provisions had never been contained
823 herein, unless the deletion of such provision or provisions would result in such a material change

824 so as to cause the fundamental benefits afforded the Parties by this Agreement to become
825 unavailable or materially altered.

826 **HOLD HARMLESS**

827 16.14. The Authority shall indemnify, defend, and hold harmless the United States, its
828 officers, agents, and employees from and against any and all claims, damages, losses, liabilities,
829 and expenses arising out of or resulting from the United States' work under this agreement, or
830 the design, operation, or maintenance of the Sites Project, provided the claims, damages, losses,
831 liabilities, or expenses are not the result of any willful or negligent acts or omissions on the part
832 of the United States. The Authority will not assert that Reclamation, its Director, officers, agents
833 or employees, are liable for damages of any nature whatsoever arising out of any actions or
834 omissions by the Authority, its directors, officers, agents or employees, related to the Authority's
835 performance of this Agreement, where such liability is caused by an act, error or omission of the
836 Authority, its director, officers, agents or employees.

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

847

NOTICES

848 **18.15.** Any notice, demand, or request authorized or required by this Agreement shall be
849 deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or
850 delivered to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800
851 Cottage Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage
852 prepaid, or delivered to the Sites **Project** Authority, 122 Old Highway 99 West, Maxwell, CA
853 95955.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

854 **19.16.** The expenditure or advance of any money or the performance of any obligation of
855 the United States under this Agreement shall be contingent upon appropriation or allotment of
856 funds. Absence of appropriation or allotment of funds shall not relieve the Authority from any
857 obligations under this Agreement. No liability shall accrue to the United States in case funds are
858 not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

860 **20.17.** No Member of or Delegate to the Congress, Resident Commissioner, or official of
861 the Authority shall benefit from this Agreement other than as a water user or landowner in the
862 same manner as other water users or landowners.

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

863 **21.18.** (a) The provisions of this Agreement shall apply to and bind the successors
864 and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or
865 interest therein by either Party shall be valid until approved in writing by the other Party.

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

BOOKS, RECORDS, AND REPORTS

868 **22.19.** The Authority shall establish and maintain accounts and other books and records
869 pertaining to administration of the terms and conditions of this Agreement, including the
870 Authority's financial transactions; water supply data; project operation, maintenance, and
871 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
872 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
873 parties may require.

876 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
877 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and
878 regulations, each Party to this Agreement shall have the right during office hours to examine and
879 make copies of the other Party's books and records relating to matters covered by this
880 Agreement.

881 **COMPLIANCE WITH LAWS**

882 23.20. (a) The Parties agree that the use of Federal ~~facilities~~Facilities pursuant to this
883 Agreement is subject to Federal ~~reclamation~~Reclamation law and the rules and regulations
884 promulgated by the Secretary of the Interior under Federal ~~reclamation~~Reclamation law.

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

889 (c) In protecting the interests of the United States, Reclamation's contracts
890 and its contracting process must comply with all applicable Federal, state, tribal, and local laws.
891 The Authority shall comply with all applicable Federal, State, and local laws, executive orders,
892 rules and regulations applicable to its performance under this contract. These laws may include
893 environmental, civil rights, and cultural resources protection laws, among others, as well as laws
894 that may be later enacted.

895 **COMPLIANCE WITH CIVIL RIGHTS**

896 24.21. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
897 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
898 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
899 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
900 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
901 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
902 Interior and/or Bureau of Reclamation.

903 (b) These statutes prohibit any person in the United States from being
904 excluded from participation in, being denied the benefits of, or being otherwise subjected to
905 discrimination under any program or activity receiving financial assistance from the Bureau of
906 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this

907 Agreement, the Authority agrees to immediately take any measures necessary to implement this
908 obligation, including permitting officials of the United States to inspect premises, programs, and
909 documents.

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

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

FUNDS TO BE PROVIDED

921 22. In accordance with the Prompt Payment Act, Reclamation shall transmit payment
922 to the Sites Authority in accordance with Exhibit A and subject to Article 16 of this Agreement.

923 (a) As of the effective date of this Agreement, the total amount of funding
924 available for contribution by Reclamation under the WIIN Act PL 114-322 and the Infrastructure
925 Investment and Jobs Act PL 117-58 is \$X,XXX,XXX,XXX. The Parties understand that if
926 Reclamation receives additional funding for the Sites Project it may be transferred to the
927 Authority if determined to be appropriate by the Contracting Officer.

928 (b) Upon execution of this Agreement, funds may be transmitted to the
929 Authority, provided that any such advance of funds shall be released in as many installments as
930 the Contracting Officer deems necessary. The Authority may request an advance of funds in
931 particular installments in accordance with the Spend Plan (Exhibit A); provided that, the
932 Authority must provide the Contracting Officer written justification for the immediate need for
933 the funds requested, including how the funds would be applied, and the Contracting Officer shall
934 have the final determination of how and when installments are transmitted.

(c) The Sites Authority will deposit each payment in an individual insured 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 proportionate Project costs in accordance with the terms of this Agreement. Such accounts and any investments shall be held in compliance with applicable law.

(d) Payments Associated with O&M: The Authority will submit a proper invoice to Reclamation, and Reclamation will submit payment subject to this Agreement. A proper invoice shall include: Contracting Officer's name and address; the invoice date and invoice number; Contract number [25-WC-20-6377]; a description including quantity, unit of measure, unit price, and extended price of services performed; and the name and address of Authority's billing point of contact.

MEDIUM FOR TRANSMITTING PAYMENTS

25-23. (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.

956

COUNTERPARTS; ELECTRONIC EXECUTION

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

962

AGREEMENT DRAFTING CONSIDERATIONS

964 **27.24.** This Agreement has been negotiated and reviewed by the parties hereto, each of
965 whom is sophisticated in the matters to which this Agreement pertains. The double-spaced
966 Articles of this Agreement have been drafted, negotiated, and reviewed by the parties, and no
967 one party shall be considered to have drafted the stated articles. Single-spaced articles are
968 standard articles pursuant to Reclamation policy.

969

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day

970

and year first above written.

971 (SEAL)

THE UNITED STATES OF AMERICA

972
973
974
975

By: _____
Regional Director
Interior Region 10: California-Great Basin
Bureau of Reclamation

976

SITES ~~WATER~~-AUTHORITY

977
978
979 Attest:

By: _____
Chair, Board of Directors

980 _____